

notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to HUD as to term, amount, and conditions.

(d) *HUD override of prepayment restrictions.* In the event of a default, HUD may override any lockout, prepayment penalty, or combination of penalties in order to facilitate a partial or full refinancing of the mortgaged property and avoid a claim.

§ 242.38 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge in accordance with terms, conditions, and standards of HUD for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

Subpart D—Endorsement for Insurance

§ 242.39 Insurance endorsement.

Initial endorsement of the mortgage note shall occur before any mortgage proceeds are insured, and the time of final endorsement shall be as set forth in paragraph (b) of this section.

(a) *Initial endorsement.* The Commissioner shall indicate the insurance of the mortgage by endorsing the original mortgage note and identifying the section of the Act and the regulations under which the mortgage is insured and the date of insurance.

(b) *Final endorsement.* When all advances of mortgage proceeds have been made and all the terms and conditions of the commitment have been met to HUD's satisfaction, HUD shall indicate on the original mortgage note the total of all advances approved for insurance and again endorse such instrument.

(c) *Contract rights and obligations.* The Commissioner and the mortgagee or lender shall be bound from the date of initial endorsement by the provisions of the Contract of Mortgage Insurance stated in subpart B of part 207, which is hereby incorporated by reference into this part.

§ 242.40 Mortgagee certificate.

At initial endorsement, the mortgagee shall execute a Mortgagee Certificate in a form prescribed by HUD.

§ 242.41 Certification of cost requirements.

Before initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee, and HUD shall enter into an agreement in form and content satisfactory to HUD for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement, the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and shall agree:

(a) To execute a Certificate of Actual Costs, upon completion of all physical improvements on the mortgaged property.

(b) To apply any cost savings in accordance with the provisions below.

§ 242.42 Certificates of actual cost.

(a) The mortgagor's certificate of actual cost, in a form prescribed by HUD, shall be submitted upon completion of the physical improvements to the satisfaction of HUD and before final endorsement, except that in the case of an existing hospital that does not require substantial rehabilitation and where the commitment provides for completion of specified repairs after endorsement, a supplemental certificate of actual cost will be submitted covering the completed costs of any such repairs. The certificate shall show the actual cost to the mortgagor, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor, any of its officers, directors, stockholders, partners, or other entity member ownership, of construction and other costs, as prescribed by HUD.

(b) The Certificate of Actual Cost shall be verified by an independent certified public accountant or independent public accountant in a manner acceptable to HUD.

(c) Upon HUD's approval of the mortgagor's certification of actual cost, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.