

original credit instrument the total approved for insurance and again endorse such instrument.

(c) *Effect of endorsement.* From the date of initial endorsement, the Commissioner and the mortgagee or lender shall be bound by the provisions of this subpart to the same extent as if they had executed a contract including the provisions of this subpart and the applicable sections of the Act.

(d) *Insurance upon completion.* When all advances of mortgage proceeds have been made and all the terms and conditions of the commitment have been complied with to the satisfaction of the Commissioner, he/she shall indicate the total approved for insurance and endorse the credit instrument, identifying the date of insurance.

§ 241.580 Application of payments.

(a) The security instrument shall provide that all monthly payments to be made by the borrower shall be added together and this aggregate amount shall be paid by the borrower upon each monthly payment date in a single payment. The lender shall apply the payment to the following items in the order set forth:

- (1) Premium charges under the contract of insurance;
- (2) Interest on the loan;
- (3) Amortization of the principal of the loan.

(b) Any deficiency in the amount of any monthly payments required under paragraph (a) of this section shall constitute an event of default and the loan shall further provide for a grace period of 30 days within which time the default must be cured.

§ 241.585 Prepayment privileges and prepayment charge.

The security instrument shall contain a provision permitting prepayment of the loan in whole or in part upon any interest payment date after giving to the lender 30 days advance written notice and it may contain a provision, with the approval of the Commissioner, for a reasonable charge in the event of prepayment. The borrower shall be permitted to prepay up to 15 percent of the original principal amount of the loan in any one calendar year without an additional charge. A

provision for a charge in the event of prepayment may not be included in a loan of \$200,000 or less.

§ 241.586 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan insured under this subpart, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

[53 FR 8886, Mar. 18, 1988]

PROPERTY REQUIREMENTS

§ 241.590 Eligibility of property.

(a) A loan to be eligible for insurance shall be on real estate held:

- (1) In fee simple; or
- (2) On the interest of the lessee under a lease for not less than seventy-five years which is renewable; or
- (3) Under a lease having a period of not less than twenty-five years to run from the date the loan is executed.

(b) The property constituting security for the loan transaction must be held by an eligible borrower as herein defined and must at the time the loan is insured be free and clear of all liens other than those specifically approved by the Commissioner.

TITLE

§ 241.595 Eligibility of title.

In order for the property which is to be the security for a loan to be insured under this subpart to be eligible for insurance, the Commissioner shall determine that the title to the property is vested in the borrower as of the date the security instrument is filed for record. The title evidence will be examined by the Commissioner and the endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 241.600 Title evidence.

(a) Upon insurance of the loan, the lender shall furnish to the Commissioner a survey, satisfactory to the Commissioner, and a policy of title insurance as provided in paragraph (a)(1) of this section. If the lender is unable

to furnish such policy for reasons satisfactory to the Commissioner, the lender shall furnish such evidence of title as provided in paragraph (a) (2), (3), or (4) of this section as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The acceptable types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name the lender and the Secretary of Housing and Urban Development, as their respective interests may appear, as the insured. The policy shall provide that upon acquisition of title by the lender or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the lender upon its acquisition of the property in extinguishment of the debt, and to the Secretary upon acquisition of the property pursuant to the loan insurance contract.

(2) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(3) A Torrens or similar title certificate.

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or territory thereof.

(b) The survey required by paragraph (a) of this section need not be furnished in connection with a project where the loan does not exceed \$200,000.

[45 FR 57983, Aug. 29, 1980, as amended at 58 FR 34217, June 24, 1993]

FORM OF CONTRACT

§ 241.605 Contract requirements.

(a) When the principal amount of the loan is \$100,000 or less, the form of contract between the borrower and the contractor shall be in accordance with the following:

(1) The contract between the borrower and the general contractor may be in the form of either a lump sum contract or a cost plus contract. Either form of contract shall include the cost of the energy conserving improvements, their installation, and such other work to be performed by the contractor as necessary to meet the requirements of the Secretary. A lump sum contract shall provide for the payment of a specified amount. A cost plus contract shall provide for the payment of the contractor's actual cost of compliance with the requirements of the contract, plus such allowances for overhead and profit as may be approved by the Commissioner and shall provide that the total cost under the contract shall not exceed the upset price as approved by the Commissioner.

(2) If agreed to by the general contractor and borrower, a lump sum form of contract between the borrower and the general contractor may be used unless the Commissioner determines that a cost plus contract with a maximum upset price is necessary to protect the interest of the borrower or the Commissioner.

(b) When the principal amount of the loan is over \$100,000, the form of contract between the borrower and the contractor shall be in accordance with the following:

(1) *Lump sum contract.* If the Commissioner determines that there is no identity of interest between the borrower or any of the officers, directors or stockholders of the borrower and the contractor, there may be used a lump sum contract providing for payment of the specified amount.

(2) *Cost plus fixed fee contract.* (i) If the Commissioner determines that there is any identity of interest (financial or otherwise) between the borrower, its officers, directors or stockholders and the contractor, the form of contract shall provide for payment of the actual cost of construction not to exceed an upset price and may provide for payment of a fixed fee not exceeding a reasonable allowance as established by the Commissioner in accordance with customary practices in the area.

(ii) In any case where the borrower is a nonprofit entity, a cost plus fixed fee