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§ 232.256 Partial payment of claims.

(a) When a lender for a loan on a healthcare project becomes eligible to file an insurance claim and to assign the mortgage to the Commissioner pursuant to § 207.258, the Commissioner may request the lender, in lieu of assignment, to accept a partial payment of the claim under the mortgage insurance contract and recast the mortgage, under such terms and conditions as the Commissioner may determine.

(b) The Commissioner may request the lender to participate in a partial payment of claim in lieu of assignment only after a determination that partial payment would be less costly to the Federal Government than other reasonable alternatives for maintaining the project and that would keep the healthcare facility operational to serve community needs. In addition to any findings that may be provided in other guidance, the Commissioner shall base the determination on the findings listed below:

(1) The lender is entitled, after a default as defined in § 207.255, to assign the mortgage in exchange for the payment of insurance benefits;

(2) The relief resulting from partial payment, when considered with other resources available to the project, would be sufficient to restore the financial viability of the project;

(3) The project is or can (at reasonable cost) be made physically sound;

(4) The current or proposed operator of the facility is satisfactory to the Commissioner, as demonstrated by past experience in operating similar types of healthcare facilities and by state regulatory performance;

(5) The default under the insured mortgage was beyond the control of the borrower and/or operator, or in the case of a transfer of physical assets (TPA), the proposed borrower or operator, unless the Commissioner determines that any borrower/operator deficiencies giving rise to the default have clearly been addressed; and

(6) The project is serving as, or potentially could serve as, a needed nursing home, intermediate care facility, board and care home, or assisted living facility.

(c) Partial payment of a claim under this section shall be made only when:

(1) The property covered by the mortgage is free and clear of all liens other than the insured first mortgage and such other liens as the Commissioner may have approved;

(2) The lender has voluntarily agreed to accept a PPC under the mortgage insurance contract and to recast the remaining mortgage amount under terms and conditions prescribed by the Commissioner; and

(3) The borrower has agreed to repay to the Commissioner an amount equal to the partial payment, with the obligation secured by a second mortgage on the project containing terms and conditions prescribed by the Commissioner. The terms of the second mortgage will be determined on a case-by-case basis to ensure that the estimated project income will be sufficient to cover estimated operating expenses and debt service on the recast insured mortgage. The Commissioner may provide for postponed amortization of the second mortgage.

(d) Payment of insurance benefits under this section shall be in cash.

(e) A lender receiving a partial payment of claim, following the Commissioner's endorsement of the mortgage for full insurance under 24 CFR part 252, will pay HUD a fee in an amount set forth through FEDERAL REGISTER notice. HUD, in its discretion, may collect this fee or deduct the fee from any payment it makes in the claim process.

[77 FR 72922, Dec. 7, 2012]

Subpart C—Eligibility Requirements—Supplemental Loans To Finance Purchase and Installation of Fire Safety Equipment

SOURCE: 39 FR 28966, Aug. 12, 1974, unless otherwise noted.

§ 232.500 Definitions.

In addition to the definitions contained in subpart A, incorporated herein by reference, the following terms, as used in §§ 232.500 *et seq.*, shall have the meaning indicated:

(a) *Insured loan* means a loan insured by the endorsement of the credit instrument by the Commissioner.

(b) *Insurance premium* means the loan insurance premium paid by the financial institution to the Commissioner in consideration of the contract of insurance.

(c)(1) *Fire safety equipment* means equipment that is purchased, installed, and maintained in a nursing home, intermediate care facility, assisted living facility, or board and care home and that meets the following standards for the applicable occupancy:

(i) The Life Safety Code of the National Fire Protection Association (any edition after 1966); or

(ii) A standard mandated by a State, under the provisions of section 1616(e) of the Social Security Act; or

(iii) Any appropriate requirement approved by the Secretary of Health and Human Services for providers of services under title XVIII or title XIX of the Social Security Act.

(2) In addition to those requirements approved by the Secretary of Health and Human Services as necessary for the appropriate level of occupancy, *fire safety equipment* may also include fire safety-related improvements that are not mandatory under the requirements of the Secretary of Health and Human Services, but which the Secretary of Health and Human Services considers acceptable and reasonable for protection against the hazards of fire and which the borrower agrees to install.

(3) For the purposes of this definition, the terms *nursing home* and *intermediate care facility* shall include those facilities designated as skilled nursing facilities or intermediate care facilities by the Department of Health and Human Services.

(d) *Fire safety loan* means any form of secured or unsecured obligation determined by the Commissioner to be eligible for insurance under this subpart and, in the case of an assisted living facility or a board and care home, made with respect to such a home located in a State which the Secretary has determined is in compliance with the provisions of section 1616(e) of the Social Security Act.

(e) *Equipment cost* means the reasonable cost of *fire safety equipment* fully installed as estimated by the Secretary of Health and Human Services and as determined by the Commissioner.

(f) *Insured loan maturity* means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for in the loan instrument or instruments.

(g) *Approved lender* means a financial institution or other mortgagee approved by the Commissioner as eligible for insurance under section 2 of the National Housing Act, or a mortgagee approved under section 203(b)(1) of the National Housing Act.

[39 FR 28966, Aug. 12, 1974, as amended at 50 FR 37522, Sept. 16, 1985; 59 FR 61228, Nov. 29, 1994]

FEES AND CHARGES

§ 232.505 Application and application fee.

(a) *Prior approval.* An application for insurance of a fire safety loan under this part shall be considered only in connection with a proposal which has been approved by the Secretary of Health and Human Services, or his designee, based upon (1) his determination of need for such equipment to be installed in the facility as a condition for participation for providers of services under title XVIII and title XIX of the Social Security Act, and (2) his determination that upon installation of such equipment the project will meet the fire safety requirements prescribed by the Secretary of HHS for participation under titles XVIII and XIX of the Social Security Act, and (3) his judgment that the cost estimate for purchase and installation of the equipment is a reasonable cost estimate.

(b) *Filing of application.* An application for insurance of a fire safety loan for a nursing home, intermediate care facility, assisted living facility or board and care home shall be submitted on an approved HUD form by an approved lender and by the owners of the project to the local HUD office.

(c) *Application fee.* An application fee of $2.00 per thousand dollars of the amount of the fire safety loan applied for shall accompany the application.