

§ 232.251

service reserve account and the minimum long-term balance to be maintained in that account will be determined during underwriting and separately identified in the firm commitment. Although HUD may, when appropriate to avert a mortgage insurance claim, permit the balance to fall below the required minimum long-term balance, the borrower may not take any distribution of mortgaged property except when both the long-term debt service reserve account is funded at the minimal long-term level and such distribution is otherwise permissible.

[77 FR 55136, Sept. 7, 2012]

Subpart B—Contract Rights and Obligations

§ 232.251 Cross-reference.

(a) All of the provisions, except § 207.258b, of part 207, subpart B of this chapter relating to mortgages insured under section 207 of the National Housing Act, apply to mortgages insured under section 232 of the Act.

(b) For the purposes of this subpart all references in part 207 of this chapter to section 207 of the Act shall be construed to refer to section 232 of the Act.

[36 FR 24618, Dec. 22, 1971, as amended at 50 FR 38787, Sept. 25, 1985]

§ 232.252 Definitions.

All of the definitions contained in § 232.1 shall apply to this subpart. In addition, as used in this part, the following term shall have the meaning indicated:

(a) *Contract of insurance* means the agreement evidenced by the Commissioner's insurance endorsement and includes the provisions of this subpart and of the Act.

§ 232.254 Withdrawal of project funds, including for repayments of advances from the borrower, operator, or management agent.

Borrower may make and take distributions of mortgaged property, as set forth in the mortgage loan transactional documents, to the extent and as permitted by the law of the applicable jurisdiction, provided that, upon each calculation of borrower surplus

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cash (as defined by HUD), which calculation shall be made no less frequently than semi-annually, borrower must demonstrate positive surplus cash, or to the extent surplus cash is negative, repay any distributions taken during such calculation period within 30 calendar days unless a longer time period is approved by HUD. Borrower shall be deemed to have taken distributions to the extent that surplus cash is negative unless, in conjunction with the calculation of surplus cash, borrower provides to HUD documentation evidencing, to HUD's reasonable satisfaction, a lesser amount of total distributions. To the extent that the provisions of this section are inconsistent with the provisions in a borrower's existing transactional loan documents, including without limitation any HUD-required regulatory agreement, the provisions of the transactional loan documents shall apply.

[77 FR 55136, Sept. 7, 2012]

§ 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