

## § 232.600

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.

### § 232.600 Title evidence.

The lender, without expense to the Commissioner, shall furnish to the Commissioner a policy of title insurance, or if the lender is unable to furnish a policy for reasons satisfactory to the Commissioner, the lender, without expense to the Commissioner, shall furnish an abstract of title. The following are the requirements covering the title insurance and abstract of title:

(a) The policy of title insurance shall be issued by a company, and in a form, satisfactory to the Commissioner. The policy shall name as the insureds the lender and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the lender or the Secretary, the policy of title insurance will continue to provide the same coverage as the original policy, and will run to the lender or the Secretary, as the case may be.

(b) The abstract of title shall be satisfactory to the Commissioner, prepared by an abstract title company or an 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.

[39 FR 28966, Aug. 12, 1974, as amended at 58 FR 34216, June 24, 1993]

## FORM OF CONTRACT

### § 232.605 Contract requirements.

(a) 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 fire safety equipment, its installa-

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tion, and such other work to be performed by the contractor as necessary to meet the requirements of the Secretary of Health and Human Services and the Commissioner. 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 allowance for overhead and profit as may be approved by the Commissioner and shall provide that the total cost under the contract shall not exceed an upset price as approved by the Commissioner.

(b) 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 interests of the borrower or the Commissioner.

## COST CERTIFICATION REQUIREMENTS

### § 232.610 Certification of cost requirements.

(a) *Certificate and adjustment.* No loan shall be insured unless:

(1) A certification of actual cost is made by the contractor in cases in which a cost plus form of contract is used; and

(2) The amount of the loan is adjusted to reflect the actual cost to the borrower of the improvements when either a cost plus or lump sum form of contract is used.

(b) *Cost computation.* The term *actual cost of the improvements* shall mean the cost to the borrower of the improvements, after deducting the amount of any kickbacks, rebates, or trade discount received in connection with the improvements, and including the amounts paid under any contract for the improvements, labor, materials, and for any other items of expense approved by the Commissioner.

(c) *Statement of facts.* Any agreement, undertaking, statement or certification required in connection with cost certification shall specifically state that it has been made, presented and delivered for the purpose of influencing an official action of the Commissioner