

§ 203.33

24 CFR Ch. II (4-1-99 Edition)

(2) Periodic payments, if any, shall be collected monthly and be substantially the same;

(3) The sum of the principal amount of the insured mortgage and the second mortgage shall not exceed the loan-to-value limitation applicable to the insured mortgage, and shall not exceed the maximum mortgage limit for the area;

(4) The repayment terms shall not provide for a balloon payment before ten years, or for such other term as the Commissioner may approve, except that the mortgage may become due and payable on sale or refinancing of the secured property covered by the insured mortgage; and

(5) The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment.

(d)(1) With the prior approval of the Commissioner, the mortgaged property may be subject to a junior (second or third) mortgage securing the repayment of funds advanced to reduce the mortgagor's monthly payments on the insured mortgage following the date it is insured, if the junior mortgage meets the following requirements:

(i) The junior mortgage shall not provide for any payment of principal or interest until the property securing the junior mortgage is sold or the insured mortgage is refinanced, at which time the junior mortgage shall become due and payable;

(ii) The total amount of repayments under the junior mortgage shall not exceed the least of:

(A) One-half of the mortgagor's equity interest in the property at the time of sale or refinancing;

(B) Three times the amount of funds advanced to effect the interest rate buy-down; or

(C) The sum of the original loan amount plus the total accrued interest on the junior mortgage at the time of repayment; and

(iii) The junior mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment. Any

full or partial prepayment will not be recoverable by the mortgagor if, by application of paragraph (d)(1)(ii) on sale or refinancing of the property, a lesser amount than the amount prepaid would have been due.

(2) The sum of the principal amount of the insured mortgage, any second mortgage made under paragraph (b) or (c) of this section, and the mortgage securing the repayment of funds advanced to reduce the borrower's monthly payments (whether a second or third mortgage) may exceed the loan-to-value limitation applicable to the insured mortgage, but such sum may not exceed the maximum mortgage limit for the area.

[45 FR 19223, Mar. 25, 1980, as amended at 50 FR 20906, May 21, 1985; 56 FR 4477, Feb. 4, 1991; 58 FR 42647, Aug. 11, 1993]

§ 203.33 Relationship of income to mortgage payments.

(a) Adequacy of mortgagor's gross income. A mortgagor must establish, to the satisfaction of the Secretary, that his or her gross income is and will be adequate to meet (1) the periodic payments required by the mortgage submitted for insurance and (2) other long-term obligations.

(b) Determinations of adequacy of mortgagor income under this section shall be made in a uniform manner without regard to race, color, religion, sex, national origin, familial status, handicap, marital status, source of income of the mortgagor or location of the property.

[37 FR 16390, Aug. 12, 1972, as amended at 54 FR 38649, Sept. 20, 1989; 59 FR 59648, Nov. 18, 1994]

§ 203.34 Credit standing.

A mortgagor must have a general credit standing satisfactory to the Commissioner.

§ 203.35 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers,

as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502-0059, 2502-0159, and 2502-0268)

[54 FR 39693, Sept. 27, 1989]

§ 203.36 [Reserved]

ELIGIBLE PROPERTIES

§ 203.37 Nature of title to realty.

A mortgage, to be eligible for insurance, must be on real estate held in fee simple, or on leasehold under a lease for not less than 99 years which is renewable, or under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage.

[49 FR 21319, May 21, 1984]

§ 203.38 Location of dwelling.

At the time a mortgage is insured there must be located on the mortgaged property one or more dwellings designed principally for residential use for not more than four families.

[61 FR 36264, July 9, 1996]

§ 203.39 Standards for buildings.

The buildings on the mortgaged property must conform with the standards prescribed by the Commissioner.

§ 203.40 Location of property.

The mortgaged property shall be located within the United States, Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa. The mortgaged property, if otherwise acceptable to the Commissioner, may be located in any community where the housing standards meet the requirements of the Commissioner.

[49 FR 12697, Mar. 30, 1984, as amended at 61 FR 36264, July 9, 1996]

§ 203.41 Free assumability; exceptions.

(a) *Definitions.* As used in this section:

(1) *Low- or moderate-income housing* means housing which is designed to be affordable, taking into account available financing, to individuals or families whose household income does not

exceed 115 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families. The Secretary may approve a higher percentage up to 140 percent.

(2) *Eligible governmental or nonprofit program* means a program operated pursuant to a program established by Federal law, operated by a State or local government, or operated by an eligible nonprofit organization, if the program is designed to assist the purchase of low- or moderate-income housing including rental housing.

(3) *Legal restrictions on conveyance* means any provision in any legal instrument, law or regulation applicable to the mortgagor or the mortgaged property, including but not limited to a lease, deed, sales contract, declaration of covenants, declaration of condominium, option, right of first refusal, will, or trust agreement, that attempts to cause a conveyance (including a lease) made by the mortgagor to:

(i) Be void or voidable by a third party;

(ii) Be the basis of contractual liability of the mortgagor for breach of an agreement not to convey, including rights of first refusal, pre-emptive rights or options related to mortgagor efforts to convey;

(iii) Terminate or subject to termination all or a part of the interest held by the mortgagor in the mortgaged property if a conveyance is attempted;

(iv) Be subject to the consent of a third party;

(v) Be subject to limits on the amount of sales proceeds retainable by the seller; or

(vi) Be grounds for acceleration of the insured mortgage or increase in the interest rate.

(4) *Tax-exempt bond financing* means financing which is funded in whole or in part by the proceeds of qualified mortgage bonds described in section 143 of the Internal Revenue code of 1986, or any successor section, on which the interest is exempt from Federal income tax. The term does not include financing by qualified veterans' mortgage bonds as defined in section 143(b) of the Code.