

(7) The mortgagor for a rehabilitation loan insured under § 203.50 of this part may hold title subject to a condition subsequent, provided that the holder of the right of entry for condition broken also executes the mortgage, and that the right is exercisable only for failure by the mortgagor to complete the rehabilitation or occupy the property as agreed by the mortgagor.

(8) Property may be subject to a legal restriction on conveyance to the extent approved in writing by an authorized representative of the Secretary prior to September 10, 1993.

(e) *Exception for tax-exempt bond financing.* A mortgage may be funded through tax-exempt bond financing and may include a due-on-sale provision in a form approved by the Secretary which permits the mortgagee to accelerate a mortgage that no longer meets Federal requirements for tax-exempt bond financing or for other reasons acceptable to the Secretary. Except as provided in this paragraph (e), a mortgage funded through tax-exempt bond financing shall comply with all form requirements prescribed under § 203.17(a) of this part and shall contain no other provisions designed to enforce compliance with Federal or State requirements for tax-exempt bond financing. Other legal restrictions on conveyance are permitted as provided in other paragraphs of this section.

(f) *Exception for protective covenants excluding non-elderly.* Mortgaged property may be subject to protective covenants which prohibit or restrict occupancy by, or transfer to, persons who are not elderly if:

(1) The restrictions do not have an undue effect on marketability; and

(2) The restrictions do not constitute illegal discrimination and are consistent with the Fair Housing Act and all other applicable nondiscrimination laws.

(g) *Exceptions for specific jurisdictions.* Notwithstanding the provisions of paragraph (b) of this section, mortgages insured on certain Indian land or Hawaiian home lands under sections 247 and 248 of the National Housing Act and §§ 203.43h and 203.43i of this part, or on property in the Northern Mariana Islands or American Samoa, shall not

be ineligible for insurance under this section solely because applicable law does not permit free alienability of title to all persons.

[58 FR 42648, Aug. 11, 1993; 59 FR 15112, Mar. 31, 1994]

#### § 203.42 Rental properties.

(a) A mortgage on property upon which there is a dwelling to be rented by the mortgagor shall not be eligible for insurance if the property is a part of, or adjacent or contiguous to, a project, or group of similar rental properties, in which the mortgagor has a financial interest in eight or more dwelling units.

(b) Paragraph (a) of this section shall not apply where:

(1) A mortgage qualifies as a rehabilitation loan under § 203.50 of this part;

(2) The mortgage is to be used for the rehabilitation of property located in a specific area or neighborhood that has been targeted by a State or local government for redevelopment, in accordance with a specific program that involves substantial public or private commitments in support of neighborhood improvement or redevelopment; and

(3) The State or local government has approved, and has submitted to the Commissioner a plan describing the program of neighborhood redevelopment and revitalization, including the geographic area targeted for redevelopment, and the nature and proportion of public or private commitments that have been made in support of the redevelopment program.

(c) No two-, three-, or four-family dwelling, and no single-family dwelling, if it is part of a group of five or more single-family dwellings held by the same mortgagor, or any part or unit thereof, shall be rented or offered for rent for transient or hotel purposes, as defined in § 203.16, so long as the dwelling is subject to any insured mortgage.

[56 FR 27692, June 17, 1991, as amended at 61 FR 36264, July 9, 1996]

#### § 203.43 Eligibility of miscellaneous type mortgages.

(a) A mortgage which meets the requirements of this subpart, except as

modified by this section, shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage may be accepted for insurance if:

(1) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing acquired or constructed under Public Law 849, Seventy-sixth Congress, as amended; Public Law 781, Seventy-sixth Congress, as amended; or Public Law 9, 73 or 353, Seventy-seventh Congress, as amended (including any property acquired, held or constructed in connection with such housing or to serve the inhabitants thereof); or

(2) Executed in connection with the sale by the Public Housing Administration, or by any public housing agency with the approval of the said Administration, or any housing (including any property acquired, held or constructed in connection with such housing or to serve the inhabitants thereof) owned or financially assisted pursuant to the provisions of Public Law 671, Seventy-sixth Congress; or

(3) Executed in connection with the sale by the Government, or any agency or official thereof, or any of the so-called Greenbelt towns, or parts thereof, including projects, or parts thereof, known as Greenhills, OH; Greenbelt, MD; and Greendale, WI, developed under the Emergency Relief Appropriation Act of 1935; or of any of the village properties or employee's housing under the jurisdiction of the Tennessee Valley Authority; or of any housing under the jurisdiction of the Department of the Interior located within the town area of Coulee Dam, WA, acquired by the United States for the construction, operation, and maintenance of Grand Coulee Dam and its appurtenant works or of any permanent housing under the jurisdiction of the Department of the Interior constructed under the Boulder Canyon Project Act of December 21, 1928, as amended and supplemented, located within the Boulder City municipal area; or

(4) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing (including any property acquired, held, or constructed in connection therewith or

to serve the inhabitants thereof) pursuant to the Atomic Energy Community Act of 1955, as amended: *Provided*, That such insurance shall be issued without regard to any preferences or priorities except those prescribed by the National Housing Act or the Atomic Energy Community Act of 1955, as amended; or

(5) Executed in connection with the sale by a State or municipality, or an agency, instrumentality, or political subdivision of either, of a project consisting of any permanent housing (including any property acquired, held or constructed in connection therewith or to serve the inhabitants thereof), constructed by or on behalf of such State, municipality, agency, instrumentality or political subdivision, for the occupancy of veterans (persons who have served in the active military or naval service of the United States at any time on or after September 16, 1940, and prior to July 26, 1947, or on or after June 27, 1950, and prior to February 1, 1955) their families and others: *Provided*, That the principal obligation of a mortgage referred to in this paragraph shall not exceed 90 percent of the appraised value of the mortgaged property; or

(6) Executed in connection with the first resale, within two years from the date of its acquisition from the Government, of any portion of a project or property of the character described in paragraphs (b) (1), (2), (3), and (4) of this section.

(c) The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in the other provisions of this subpart, any mortgage given to refinance an existing mortgage insured under the National Housing Act. The refinancing mortgage must meet the following special requirements:

(1)(i) Except as provided by paragraph (c)(1)(ii) of this section, the refinancing mortgage must be in an amount that does not exceed the least of (A) the original principal amount of the existing mortgage; (B) the sum of the outstanding principal balance of the existing mortgage, plus loan closing charges approved by the Commissioner; or (C) in the case of an eligible non-occupant mortgagor (as defined in

§203.18(f)), the outstanding balance of the existing mortgage.

(ii) In the case of graduated payment mortgages insured under section 203 of the Act pursuant to section 245 (a) or (b) of the Act (§203.45 or §203.46 [as in effect immediately before its removal at 52 FR 32754, published August 28, 1987]), the refinancing mortgage must have a principal amount that does not exceed the outstanding balance of the existing mortgage.

(iii) If a one-time mortgage insurance premium (MIP) was financed as part of the existing mortgage referred to in paragraphs (c)(1) (i) and (ii) of this section, the amount of the premium refund to which the mortgagor is entitled must be deducted in determining the original principal amount and the unpaid principal balance of the existing mortgage under paragraph (c)(1)(i) of this section and the outstanding balance of the existing mortgage under paragraph (c)(1)(ii) of this section. However, the maximum amount of the refinancing mortgage computed in accordance with this paragraph (c)(1) may be increased by the amount of the one-time MIP (if any) associated with the refinancing mortgage;

(2) It must have a term which does not exceed the unexpired term of the existing mortgage, except that in any case where the Commissioner determines that an extension of the term of the mortgage will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage, the term may be extended to the lesser of (i) 30 years or (ii) the unexpired term of the existing mortgage, plus 12 years;

(3) The mortgage must result in a reduction in regular monthly payments by the mortgagor, except:

(i) When a fixed rate mortgage is given to refinance an adjustable rate mortgage held by a mortgagor who is to occupy the dwelling as a principal residence or secondary residence, as these terms are defined in §203.18(f); or

(ii) When refinancing a mortgage for a shorter term will result in an increase in the mortgagor's regular monthly payments of no more than \$50. In the case of a graduated payment mortgage, the reduction in regular

monthly payments means a reduction from the payment due under the existing mortgage for the month in which the refinancing mortgage is executed.

(4) It must be made by a mortgagor whose record of payment on the existing mortgage meets standards established by the Commissioner; and

(5) The mortgagee may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

(d)-(f) [Reserved]

(g) The provisions of §203.28 shall not apply to mortgages insured under this section.

(h) The provisions of §203.38 shall not apply to mortgages of the character described in paragraph (b) of this section and at the time any such mortgage is insured there must be located on the mortgaged property a dwelling unit designed principally for residential use for not more than eight families.

(i)-(j) [Reserved]

(k) The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in this subpart, any mortgage assigned to the Commissioner in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by the Commissioner of any property acquired in the settlement of an insurance claim under any section or title of the National Housing Act.

[36 FR 24508, Dec. 22, 1971, as amended at 45 FR 30602, May 8, 1980; 47 FR 29525, July 7, 1982; 52 FR 4139, Feb. 10, 1987; 52 FR 37287, Oct. 6, 1987; 52 FR 44861, Nov. 23, 1987; 53 FR 8880, Mar. 18, 1988; 55 FR 34805, Aug. 24, 1990; 55 FR 38033, Sept. 14, 1990; 61 FR 36264, July 9, 1996]

**§203.43a Eligibility of mortgages covering housing in certain neighborhoods.**

(a) A mortgage financing the repair, rehabilitation, construction, or purchase of property located in an older declining urban area shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage shall meet all of the requirements of this subpart, except such requirements as are judged to be not applicable on the basis of the following determinations to be made by the Commissioner: