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CHAPTER 1. GENERAL FEATURES OF THE PROGRAM

- 1-1. THE PURPOSE OF SUBSECTION 232(i). Subsection 232(i) of the National Housing Act enables nursing homes, skilled nursing facilities, and intermediate care facilities to provide fire safety equipment. This program provides loan insurance for the purchase and installation of fire safety equipment to qualified applicants.
- 1-2. PROGRAM AUTHORIZATION. P. L. 93-204 authorizes the Secretary of HUD to make commitments to insure, and to insure loans, made by financial institutions to nursing homes, skilled nursing facilities and intermediate care facilities for the purchase and installation of fire safety equipment.
- 1-3. PROGRAM DEVELOPMENT. The Department of Housing and Urban Development and the Department of Health, Education, and Welfare, have developed these guidelines and operating instructions to implement the program. HEW has agreed to assist HUD by approving the architectural exhibits, issuing statements of compliance, and inspecting the installation of equipment;
- 1-4. ELIGIBLE FACILITIES. A nursing home, skilled nursing facility, intermediate care facility, or a combination skilled nursing facility/intermediate care facility is eligible under this Subsection. Under this program a nursing home, skilled nursing facility, intermediate care facility or combination facility refers to a facility which is a proprietary (profit motivated) facility or facility of a private nonprofit corporation or association, licensed or regulated by the State (or if no State law provides for such licensing or regulation by the municipality or other political subdivision in which the facility is located).
- a. A nursing home under this program refers to a facility as defined by HUD-FHA under the basic Section 232 program or as defined by HEW.
- (1) Section 232 definition. A nursing home is for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require skilled nursing care and related medical services. Such nursing care and medical services are prescribed by or performed under the general direction of licensed persons in accordance with the laws of the State or municipality where the facility is located.

- (1-4) (2) HEW Definition. (The following is an abbreviated definition. For the complete definition see 45 C.F.R. 249.10(b)(4)(i)). A skilled nursing facility as defined by the Department of Health, Education, and Welfare is an institution primarily engaged in providing to patients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.
- b. An intermediate care facility under this program refers to a facility as defined by HUD-FHA under the basic Section 232 program or as defined by HEW.
- (1) HUD-FHA Definition. A proprietary facility or facility of a private nonprofit corporation or association licensed or regulated by the State (or, if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located) for the accommodation of persons who, because of incapacitating infirmities, require minimum but continuous care but are not in need of continuous medical or nursing services.
- (2) HEW Definition. (The following is an abbreviated definition. For the complete definition see 45 C.F.R. 234.130(d)(3)). An intermediate care facility is a facility that provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them through institutional facilities.
- 1-5. PROPERTY REQUIREMENTS. The owner must have one of the following interests in the real estate, for the property to be eligible under this program:
- a. A fee simple title.
- b. A lease for not less than 99 years which is renewable.
- c. A lease having a term of not less than 25 years to run from the date the loan is executed.

- 1-6. NATURE OF IMPROVEMENTS. To be eligible, the loan must be for the purpose of financing the purchase and installation of fire safety equipment. This includes the cost of structural modifications where necessary to install the equipment. The equipment to be installed must be in compliance with or exceed the requirements approved by the Secretary of Health, Education, and Welfare as conditions of participation for providers of services under Title XVIII and Title XIX of the Social Security Act (Medicare and Medicaid).

Medicare and Medicaid fire safety requirements are established by HEW. Since HEW is responsible for the architectural review and determination of the acceptability of the proposed installation of the fire safety equipment and other pertinent health and safety requirements, HUD-FHA will consider the following HEW definition in arriving at its decision to insure the loan:

- a. HEW Definition. Fire safety equipment means apparatus, construction, devices, equipment, fixtures, furnishings, improvements, machinery, or materials, to be purchased and installed (including the cost of remodeling the structure where necessary for such installation) in a nursing home or intermediate care facility (whether or not to be affixed to the structure) necessary and appropriate to enhance the fire safety of the structure and to meet or exceed the minimum requirements of the applicable code or of recommended but optional higher standards approved by the Secretary of Health, Education, and Welfare for the purpose of enhancing the fire safety of such structures. (See Appendix #1 concerning Fire Safety Equipment Standards).

If the owner of a facility desires to finance improvements or modernization in addition to the fire safety equipment, it is not allowable under this program. However, if the facility has a HUD-insured mortgage under basic Section 232 and the owners want to finance other improvements or additions, they should explore using Section 241 for a supplemental loan to cover up to 90% of the value of such improvements. If the facility is conventionally financed the owners may wish to consider refinancing. If substantial rehabilitation is involved the facility may be eligible for refinancing under the basic Section 232. If the total cost of the equipment and installation is \$10,000 or less, it may be financed under Title I of the National Housing Act.

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NOTE: Any nursing home, skilled nursing facility, or intermediate care facility planned construction, whether it intends to use this program or not, should make itself aware of the requirements of Section 1122 of the Social

Security Act. Briefly, Section 1122 states that to have any capital improvement eligible for reimbursement through either Medicare or Medicaid any proposal which will:

- a. Cost \$100,000 or more,
- b. Change the bed composition, or
- c. Make a major change in services

must obtain approval of the Designated Planning Agency in the State).

- 1-7. SUBMISSION OF APPLICATION AND STATEMENT OF COMPLIANCE. An Application under this Subsection must be submitted on FHA Form No. 2013(NH-ICF) (See Appendix #2) by an FHA approved lender and must be accompanied by a statement from the Department of Health, Education, and Welfare that it has determined that the physical plant of the facility, when the fire safety equipment has been installed, will be in compliance with the HEW requirements for fire safety and will meet other pertinent health and safety requirements for providers of services under Titles XVIII and XIX of the Social Security Act. In lieu of a facility being able to meet HEW's requirements for other pertinent health and safety requirements at the time of application, HEW may accept a list of deficiencies from the State Agency responsible for determining compliance with HEW's requirements for other pertinent health and safety requirements for providers of such services along with a plan prepared by the applicant for correcting those deficiencies. In such event, HEW will inform HUD that, if the facility complies with such plan, the facility will meet the applicable health and safety requirements of HEW for providers of services under Titles XVIII and XIX of the Social Security Act upon the installation of the fire safety equipment. Accompanying the statement will be the architectural exhibits as approved by HEW, together with any commitment requirements HEW deems appropriate.

NOTE: HEW may withhold such determination in the event that disqualifications under Medicare and Medicaid exist in health and safety areas other than fire safety.

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- 1-8. LOAN FINANCING. The owner is responsible for locating a source for the loan funds. All financial institutions or mortgagees approved by the Secretary of HUD as eligible mortgagees or Title I lenders are eligible under this program.
- 1-9. LOAN SECURITY. Security on these loans will be a recorded lien

against the property on a form prescribed by HUD-FHA and consistent with the laws of the State in which the property is located. In proposals where the property is already encumbered by a first mortgage or deed of trust, HUD-FHA will accept as security a mortgage or deed of trust that is subordinate to the first lien.

1-10. CONSENT OF PRIME MORTGAGE HOLDER(S). Since many of the facilities expected to use this program may have outstanding existing mortgages that contain a covenant against the creation of liens and alterations or modifications to the property, it is essential in these cases that the borrower obtain the consent of the holder(s) or prior liens.

1-11. LOAN LIMITATIONS.

a. Maximum Loan shall involve a principal obligation in multiples of \$100 in a total amount not to exceed:

- (1) The Commissioner's estimate of the cost of the fire safety equipment including installation; provided, however,
- (2) That the sum of the fire safety loan and the liens superior to the fire safety loan may not exceed 90% of the estimated value of the project upon completion of the installation of the fire safety equipment as determined by residual income.

b. Minimum loan under this program is \$10,000.

c. Maximum Term of Loan. The loan term normally will not exceed 15 years or the 100% of the remaining economic life of the property whichever is lesser. Loan terms may be 5, 10, or 15 years on loans of \$50,000 or less. Loans in excess of \$50,000 are eligible for a term of 20 years or 100% of the remaining economic life whichever is the lesser. The method of amortization will be limited to the level annuity monthly payment plan (LAMP).

d. Maximum Interest Rate. The interest rate cannot exceed the maximum rate established by the HUD Secretary for this program.

e. Loan Insurance Premium. The FHA loan insurance premium shall be 1% of the loan balance per annum.

f. Commitments. Under this Subsection, commitments will be issued on an "Insurance Upon Completion" basis only. Construction financing will not be insured.

1-12. CONTRACTS. The contracts for equipment, material and installation must be on a "Lump Sum" basis. THERE CAN BE NO IDENTITY OF INTEREST BETWEEN THE BORROWER AND THE CONTRACTOR.

NOTE: If any contractor is named on either the HUD-FHA U.R.D. list or Precautionary Measures List (DEALERS AND INDIVIDUALS subject to the provisions of Section 201.8(b) and 201.(d) of the Title I Regulations) the HUD-FHA Field Office Director will take such action as he deems necessary to protect the Secretary's interest.

1-13. PREVAILING WAGE REQUIREMENTS. Prevailing wage requirements do not apply to this program.

1-14. ARCHITECTURAL EXHIBITS AND HEW COMPLIANCE DOCUMENTS. Prior to an application being filed with HUD-FHA, the applicant must have his architectural exhibits approved by the Long-Term Care Office of the HEW Regional Office having jurisdiction (See paragraph 2-1). HEW will issue a letter of determination that the physical plant of the facility, when the fire safety equipment has been installed, will be in compliance with the HEW requirements for fire safety and will meet other pertinent health and safety requirements of HEW for providers of services under Medicare and Medicaid unless an applicant cannot meet the other health and safety requirements at the time of application. In that case, a list of deficiencies prepared by the inspecting State Agency and a plan to correct those deficiencies is submitted by the applicant to HEW for its review. HEW will review the plan and inform HUD that, if the facility complies with such plan, the facility will meet the applicable health and safety requirements of HEW for providers of services under Medicare and Medicaid. Accompanying the architectural exhibits should be a bid and proposal covering the complete purchase and installation of the fire safety equipment.

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1-15. PREVIOUS PARTICIPATION REVIEW PROCEDURES. Those interested in using this program should make certain that the FHA Form 2530, (See Appendix #3) Previous Participation review procedures have been complied with. It is recommended that this be accomplished prior to submission of the HUD-FHA application in order to save time. Accompanying the form should be a letter from the owner explaining his desire to use this program. This FHA Form 2530 procedure provides HUD a central source of information on participants in HUD-FHA projects.

1-16. ENVIRONMENTAL CONSIDERATIONS. Due to the nature of this program environmental considerations are not applicable.

1-17. APPLICATION FOR INSURANCE. Application for Insurance is made to the local HUD-FHA Office through a HUD-FHA approved lender on FHA Form No. 2013(NH-ICF) (Appendix #2).

a. Accompanying the application must be the following exhibits:

- (1) Statement listing debt and debt service requirements on all outstanding indebtedness against the property plus the debt service requirements applicable to the requested 232(i) loan.
- (2) Copy of FHA Form 2530 Previous Participation Certificate.
- (3) Statement of Compliance from HEW.
- (4) HEW approved architectural exhibits and tabulation of bids.
- (5) Copy of selected bid and HEW statement on reasonableness of cost estimate.
- (6) A year-to-date balance sheet and operating statement, plus audited balance sheets and operating statements for the preceding two years.
- (7) A statement showing the annual per bed rates, and actual occupancy for each of the two years covered in the audited operating statements set forth in (6) above and the current occupancy and current monthly income.
- (8) Copy of Owner-Architect Agreement (Design) showing fee.

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- (9) Current commercial credit report.
  - (10) Verification and repayment terms of all outstanding indebtedness against the facility (secured or unsecured).
  - (11) Statements from appropriate Governmental agencies (Federal and State) that Medicare and Medicaid reimbursement mechanism will be adequate to amortize the cost and maintenance of the fire safety equipment (if applicable).
  - (12) Evidence that the facility is licensed by the State.
  - (13) Copy of Agreement to Certify actual costs, FHA Form No. 2422 (Appendix #12).

b. Fees and Charges Required under HUD-FHA Regulations.

- (1) Application Fee. An application fee of \$2.00 per thousand dollars of the loan amount applied for, and a commitment fee of \$2.00 per \$1,000 which, when added to the application fee will total \$4.00 per thousand of the face amount of the requested loan (with a minimum of \$50.00 total for both fees). These fees shall accompany the application for loan insurance.
- (2) Inspection Fee. An inspection fee of \$5.00 per thousand of the approved loan amount will be paid prior to the start of construction or installation of the improvements.
- (3) Lenders Initial Service Charge. An initial service charge not to exceed 1 1/2 percent of the original loan amount may be collected by the lender from the borrower.

1-18. HUD-FHA PROCESSING. The HUD-FHA processing will include an analysis of the income and expenses of the project to determine if the income can meet not only normal expenses and payments but the additional payment on the subject loan and the maintenance/service expenses connected with the fire safety equipment to be installed. A HUD-FHA Appraiser will visit the site to assist in making the HUD determination of remaining economic life (See Appendix 7).

1-19. FLOOD INSURANCE. If a property is located in an area designated by the Federal Insurance Administrator as a special flood hazard area, it shall be a special condition of the commitment that the borrower must obtain and maintain, when available, NFIP (National Flood Insurance Program) flood insurance on the property during such time as the loan is insured.

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1-20. COMMITMENT FOR INSURANCE UPON COMPLETION. FHA Form No. 2418, Commitment for Insurance Upon Completion (See Appendix #5) will be issued upon a favorable finding by the HUD Office. This commitment may contain conditions in addition to those printed on the form. If so, the additional requirements will be listed following the last printed form requirement or will be placed on a rider and attached to the commitment. The commitment will be valid for 120 days. If construction has not started at the end of that period of time the commitment becomes null and void. Once construction starts, the commitment may be extended up to one year from that date. If requested by the lender, and circumstances warrant, further extension may be given.

1-21. ASSURANCE OF COMPLETION. Since the commitment under this program is for insurance upon completion, the owner(s) may wish to take

such steps as he (they) deem(s) necessary to assure completion of the improvements.

NOTE: If the first mortgage on the facility is insured by HUD-FHA under an FHA program of mortgage insurance, the Secretary has the right to require such assurances of completion as he may determine necessary.

- 1-22. ADDITIONAL FUNDS SUPPLIED BY BORROWER. Any funds needed to complete the purchase and installation of the equipment, over and above the insurable loan amount, must be paid in cash by the borrower.
- 1-23. CONSTRUCTION/INSTALLATION. Construction/Installation may commence once the Commitment has been issued and the inspection fee has been paid to HUD-FHA. Care must be taken by the owner to assure that all commitment requirements can be met. Prior to the start of construction a meeting will be held in the local HUD field office to explain HUD requirements.
- 1-24. CONSTRUCTION CHANGES. The insurable loan amount is set when the commitment is issued and prior to commencement of construction. It is expected that construction changes once construction has started will be infrequent in this program. Any change must be approved by the HEW Regional Office. Any increase in the cost must be borne by the borrower. If the change causes a decrease in the cost, a corresponding decrease in the loan amount will normally be effected at endorsement of the loan.

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- 1-25. INSPECTIONS DURING CONSTRUCTION. In the case of nursing homes (SNF's), the HEW Regional Office will make an initial inspection prior to installation of the fire safety equipment and as many inspections during installation as it deems necessary. When the improvements have been completed, HEW will notify the HUD-FHA office in writing that a final inspection has been made by HEW and that the improvements have been satisfactorily completed. In the case of intermediate care facilities (ICF's), inspections are accomplished by state agencies, and the states certify to HEW that the improvements have been satisfactorily completed. HEW notifies HUD, based upon the state inspection, that the improvements have been satisfactorily completed.
- 1-26. COST CERTIFICATION. A modified form of cost certification will be completed by the borrower and reviewed by the HUD-FHA office prior to endorsement. The owner must furnish a certification of all costs including cost charged by the contractor for the improvements and also must certify that no rebate, kickback, refund, etc., has been or will be received.

- 1-27. ENDORSEMENT FOR INSURANCE. After the final inspection of the improvements by HEW, the loan may be endorsed by the HUD-FHA office. At endorsement, a title policy will be necessary, evidencing that the insured loan has the same priority position as shown in the application.
- 1-28. REGULATORY AGREEMENT. HUD management supervision of the borrower will be exercised through a Regulatory Agreement, FHA Form No. 2466-fse (See Appendix #4).