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CHAPTER 6 - INSURED TEN-YEAR PROTECTION PLAN

- \* 6-1. GENERAL. The requirements for an insured ten-year protection plan (Plan) accepted by the Department are in 24 CFR 203.200 through 203.209.

For cases where the HUD Field Office determines the property will be covered by a HUD accepted insured ten-year protection plan, only the final inspection is required. However, this does not preclude the HUD Field Office from making additional inspections at any time. It allows the Field Office to reduce the number of inspections to one, a "final inspection." In this case a Certificate of Occupancy or similar approval from the local jurisdiction is required.

Builders whose quality of construction has not been demonstrated, or builders who have a record of construction complaints will be required to obtain all inspections from HUD, as outlined in paragraph 4-4. When all inspections are required, the HUD Field Office will notify the Plan in which the builder participates.

"Insured ten-year protection plan (Plan)" means an agreement between a homeowner and a Plan Issuer which, among other things, contains warranties regarding the construction and structural integrity of the homeowner's one-to-four-family dwelling covered by an FHA insured mortgage. A Plan Issuer may be a State, an insurance company, a warranty company, a Risk Retention Group, a builder, or any other HUD-approved entity with the required insurance backing.

While the vast majority of defects and claims can be readily assessed to determine warranty coverage, unusual circumstances sometimes arise that do not always lend themselves to an obvious answer. While an arbitration process exists to normally resolve such disputes and the Department could sustain a financial loss regarding the outcome of such a dispute, the Office of the Deputy Assistant Secretary for Single Family Housing expects HUD Field Offices to provide Headquarters notification of such disputes upon learning of such a problem.

circumstances surrounding the claim. The Field Office may be requested to provide information relating to the nature and severity of the actual physical damage to a property, the extent to which further engineering tests identified additional unseen damage, the anticipated costs to restore the structural member, etc. Such information will be reviewed and a position adopted as to whether a structural defect exists under the criteria specified in HUD's regulations. Headquarters will advise the homeowner and the warranty provider of its decision.

The term "proposed construction" is defined as "A property approved for mortgage insurance or loan guaranty prior to the beginning of construction and inspected during the construction period by HUD-FHA or the Department of Veterans Affairs (VA) (Refer to HUD Handbook 4070.1).

Refer to the Architectural Requirements Grid in Appendix 11. A borrower may obtain a maximum loan-to-value ratio mortgage (minimum downpayment) in cases involving proposed construction. In such cases the borrower may, if circumstances warrant, file an application to HUD (within four years from endorsement of the mortgage) for assistance to correct structural defects under Section 518(a) of the National Housing Act (See Handbook 4070.1).

A borrower will not be considered ineligible for Section 518(a) assistance merely because the borrower chooses to increase the downpayment amount. However, a borrower will be ineligible for assistance if construction was started prior to HUD's issuance of a Conditional Commitment (or early start letter) or the issuance of a Statement of Appraised Value from a DE lender. Similarly, if VA processing is used by the mortgagee, a borrower will be deemed ineligible for 518(a) assistance if construction was started prior to VA's issuance of a Certificate of Reasonable Value (or early start letter).

A borrower may obtain a maximum loan-to-value ratio mortgage if the builder began construction prior to the issuance of a conditional commitment and a HUD accepted insured 10-year protection plan is provided to the borrower. However, since construction was already started, item 16 of the specific

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conditions on the back of Form HUD 92800.5B would be applicable, stating:

"Borrower Notification: At the time of the application

for Firm Commitment, the mortgagee must include a certificate that the borrower was notified that the property was not approved for mortgage insurance prior to the start of construction and the Department does not have authority to provide financial relief for any future property repairs under Section 518(a) of the National Housing Act."

- 6-2. ACCEPTANCE CRITERIA. Requests for initial HUD acceptance or renewal of acceptance of a Plan should be made to the Deputy Assistant Secretary for Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Requests must be accompanied by information and documentation evidencing Plan compliance with the provisions in this chapter. Applicants will be notified of the Department's determination to accept or reject their Plan. If a Plan is rejected, the applicant will be advised of the reason for rejection. A list of the acceptable plans is in Appendix 10.

The applicant may appeal the rejection to the Assistant Secretary for Housing, at the above address, stating specifically why the Plan should be approved. The Assistant Secretary (whose decision is final) will, within a reasonable time, advise the applicant whether the rejection will be upheld or reversed.

Plans may be issued (1) by a builder, warranty company, insurance company, or a Risk Retention Group; or (2) by a State that guarantees the builder's performance and the State's continuing financial backing throughout the Plan's coverage period. The functions of a Plan issuer and an insurance backer may be performed by a single corporate entity.

All Plans must have insurance backing unless backed by the full faith and credit of a State, in compliance with the requirements in this chapter. HUD will not accept Plans backed by a State agency or a State insurance guaranty fund unless HUD is assured that the full faith and credit of the State is pledged to satisfy any and all obligations of the State agency or guaranty fund that may arise in connection with its financial backing of a Plan. Where a State has a

home protection act or other statutes or regulations that require its approval of Plans, a Plan Issuer must demonstrate such approval to HUD as an additional prerequisite to HUD acceptance.

"Insurance backing" means the direct insurance or reinsurance of potential Plan obligations by one or more insurance companies.

- A. Plan Acceptability. HUD must be assured that:
- 1) If a builder fails to correct structural defects or construction deficiencies in a property covered by a Plan during the term of any warranty offered by the builder on the property, the Plan Issuer will effect the corrections in accordance with the terms of the Plan; and
  - 2) If a Plan Issuer fails to correct the deficiencies or defects, or otherwise fails to honor the terms of its coverage, its insurance backer or, if the Plan Issuer is an insurance company, the insurance company itself, will effect the corrections or otherwise honor the Plans terms.
- B. Expiration of Plan Acceptance. Unless renewed, Plan acceptance by HUD expires automatically on the second anniversary date of acceptance. Plan acceptance by HUD will be for a two-year period. Insofar as practicable, HUD will respond to a Plan Issuer's request for acceptance of a change within 30 days of receipt.
- 1) The Plan Issuer must apply for acceptance renewal at least two months, but no more than three months, in advance of expiration to avoid automatic acceptance termination.
    - a. Plan Issuer must submit a written certification, no later than three weeks before the anniversary date of the Plan's acceptance by HUD, that the insurance company backing its Plan is still an insurance carrier approved by the State insurance commission (or the equivalent entity) in each

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jurisdiction in which the Plan is offered.

Any company operating as a Risk Retention Group will be regarded as having met licensing, filing and approval requirements of all states provided the Plan demonstrates that it (1) meets licensing, filing and approval requirements in its domicile state;

(2) meets each of the requirements of Section (a)(4) of the Liability Risk Retention Act, paragraphs (A) through (H).

- b. Plan Issuer must submit a written certification, no later than three weeks before the anniversary date of the Plan's acceptance by HUD, which sets forth the states in which the Plan operates.
- c. Plan Issuer must submit a listing of claims, repairs and awards made on FHA insured properties. The first list is due no later than September 1, 1992, and on an annual basis thereafter. Provide the following information on an individual and accumulative basis: (1) Plan Issuer's enrollment number; (2) FHA case number; (3) Homeowner's name; (4) Property address; (5) Effective date of enrollment; (6) Date the claim was received; (7) Date the claim was closed; (8) Number of days to resolve claim; (9) Amount of award; and (10) Description of claim.

Plan Issuers enrollment and claim forms must include a space showing whether the property is FHA insured (or other); another space is required for the FHA case number, when applicable.

- d. Plan Issuer must provide a Quality Control Plan by April 15, 1992, that is acceptable to the Secretary describing how the Plan: (1) approves a builder; (2) assures the proper inspection of a property; (3) field reviews the quality of inspections; (4) reviews the construction quality of the builder; (5) terminates a relationship with a builder; (6) processes homeowner complaints and

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(6-2.B.1)d.) arbitration proceedings; and (7) notifies HUD of any problems with the above. In addition, the Plan must provide a homeowner information pamphlet describing in "plain English" the (a) insurance provisions of their Plan; (2) complaint handling procedures; and (3) the procedures required for arbitration.

- 2) Acceptance of a Plan will be continued beyond the date of automatic termination only by a written

notification to the Plan Issuer by HUD and only if the delay is caused by a lack of timely HUD processing of a renewal application.

- 3) HUD will not extend the expiration date of a prior Plan acceptance if the Plan Issuer has negligently provided incomplete information with its renewal application.
- 4) After a Plan has been accepted by HUD, there will be no change in, or modification to, the Plan coverage or the obligations of the homeowner under the Plan or in its insurance backers or insurance contract(s), without prior written HUD acceptance of such change or modification, except changes mandated by other applicable laws may not require HUD's prior approval. written notification to HUD with adequate documentation will be necessary, prior to the change taking affect.

A violation of this condition may be cause for termination of a Plan's acceptance, and may be grounds for initiation of sanctions against the Plan Issuer in accordance with 24 CFR Part 24.

- C. Termination of Plan Acceptance. The Department will take into consideration such reliable evidence as is made available to the Department of a Plan Issuer's failure to fulfill its obligations.

Where HUD has credible evidence of a Plan Issuer's failure to correct covered homeowner problems, or there are justifiable homeowner complaints about untimely problem resolution by a Plan Issuer, HUD will consider this as cause for termination of a Plan's acceptance and as grounds for initiation of sanctions against a

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Plan Issuer or insurance backer in accordance with 24 CFR Part 24. The Department will always look to the Plan Issuer if their insurance backer does not properly satisfy the intent of the complaint process.

Under no circumstances can a Plan Issuer require the surrender of the insurance policy without the express written consent by the Department except where the homeowner has in the aggregate received full payment for the face amount of coverage provided by the policy or Certificate of Enrollment. If a Plan accepts the

surrender of the policy without HUD's consent, the Plan will still be liable for any damage that may occur to the home, throughout the warranty period.

Field Offices must submit documentation to support any recommendation for Plan termination to the Deputy Assistant Secretary for Single Family Housing. If the Department proposes to terminate a Plan's acceptance, Plan Issuer will be advised in writing of the reason(s). Procedures in 24 CFR Part 24 will apply.

- D. Insurance Coverage. The protection plan must be backed by an insurance company that is licensed and approved to offer that coverage by the proper State Regulatory Agency in each State in which the plan will operate.

Any company operating under the Product Liability Risk Retention Act of 1981 (The Act), as amended, will be regarded as having met licensing, filing, and approval requirements of all States, provided the Plan demonstrates that it (1) meets licensing, filing and approval requirements in its domiciliary State; and (2) meets each of the requirements of Section (a)(4) of the Act, paragraphs (A) through (H).

- 1) Warranty document. A Plan Issuer must provide homeowners an executed coverage contract clearly describing the following:
  - a. Identity of the property covered;
  - b. The time at which coverage begins. Plan coverage must take effect at closing or settlement following the initial sale of the

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(6-2.D.1)b.) property to the homeowner.

Insurance does not begin when the builder rents the property to a potential buyer; but only after the closing of the loan occurs and the first homebuyer takes possession. The home is considered complete at the time of settlement of the loan to the homebuyer and in no event later than date of the FHA endorsement Of the mortgage;

- c. Maximum amount of Plan liability;
- d. Non-cancellable by the Plan Insurer or its insurance backer;

- e. Transferability. Coverage must automatically transfer to subsequent owners without any additional cost;
- f. The property coverage provided;
- g. Any exclusions from coverage;
- h. Performance standards for resolving homeowner complaints and claims.

Standards must be fair, reasonable and consistent with the intent of the Plan, including the requirements in this chapter. The standards must be acceptable to HUD.

- i. Dispute settlement procedures;
- j. Disclosure to homeowner on the ability to appeal an arbitrators decision to HUD.

The disclosure must be of such "type size" to be easily readable by the homeowner.

- k. Names, addresses and telephone numbers of the Plan Issuer and its insurance backers; and
- l. When, to whom, under what conditions, and to what address homeowners should submit any construction deficiency complaint or structural defect claim.

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- 2) Cost of Plan. Must be prepaid by the builder, or the Plan Issuer must provide irrevocable coverage to the lender and purchaser at the time of settlement. The coverage documents may be provided to the homeowner in specimen form at the time of settlement with the actual documents to be delivered thereafter in a four to six week timeframe. The cost of any optional coverage that is in addition to what is required by HUD may be paid by either the builder or the homebuyer.
- 3) Payments under a Plan. If a Plan Issuer or insurance backer elects to compensate a homeowner for damage to the homeowner's property that is covered under a Plan in lieu of the Plan issuer's

making repairs, any such payment must be made jointly to the mortgagee and the homeowner.

Mortgagees are responsible to ensure that the property continues to be in a liveable condition and the property does not become a foreclosure risk to the Department as a result of known defects. Endorsement of the check by the mortgagee will signify its acceptance of the settlement offer by the Plan Issuer. The repair(s) should be completed; however, in cases where it is determined that repair is not warranted, the mortgagee must apply the compensation in reduction of the outstanding indebtedness of the mortgage.

Settlement offers must be in writing and the homeowner given a minimum of 10 workdays to respond. Settlement offers over \$5,000 must be reviewed onsite by a HUD approved fee inspector (inspection costs to be paid by Plan Issuer) except: (1) where the settlement offer is made pursuant to a binding bid by an independent third party contractor, or (2) where payment is made to the homeowner in settlement of legal action, or (3) where the homeowner is represented by legal counsel.

The homeowner must be able to award a contract to the independent third party contractor that submitted the binding bid to the Plan Issuer.

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- E. Plan Coverage. Plans are not required to warrant that a covered property complies with (1) the original dwelling plans and specifications; (2) applicable building codes; or (3) specific terms of a homeowner's contract to purchase a property. However, the protection plan must provide:
- 1) During the first year of coverage, a warranty against construction deficiencies in workmanship and materials resulting from the failure of the covered property to comply with standards of quality as measured by acceptable trade practices, as well as correct the problems with, or restore the reliable function of, appliances and equipment damaged during installation or improperly installed by the builder.

"Construction deficiencies" are defects (not of a structural nature) in a dwelling covered by an insured ten-year protection plan that are attributable to poor workmanship or to the use of inferior materials which result in the impaired functioning of the dwelling or some part thereof. Defects resulting from homeowner abuse or from normal wear and tear are not considered construction deficiencies.

In instances of builder default, a Plan must provide insurance coverage to resolve any builder warranty obligation(s) that may affect the structural components of the dwelling, including site grading and drainage problems.

- 2) During the first and second year of coverage, a Plan must provide a warranty against defects in the wiring, piping and ductwork in the electrical, plumbing, heating, cooling, ventilating, and mechanical systems.
- 3) Basement slabs in "designated areas" must be covered by a warranty in the Plan against damage from the first through the fourth year.

The Secretary may designate any geographic area as a "high risk area" where construction practices

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allow basement slabs to be placed on expansive or collapsible soil. By virtue of this authority, the Secretary has designated the State of Colorado as a "high risk area."

- 4) From the first through the tenth year, a structural defect must be covered by the Plan, except for basement slabs in designated areas.

"Structural Defect" is defined as the actual physical damage to the designated load-bearing portions of a home caused by failure of such load-bearing portions of the home that affects their load-bearing functions to the extent that the home becomes unsafe, unsanitary, or otherwise unlivable.

Load-bearing components for the purpose of

defining structural defects are:

Footing and foundation systems; beams; girders; lintels; columns; load-bearing walls and partitions; roof framing systems; and floor systems, including basement slabs in homes constructed in designated areas containing expansive or collapsible soils.

Beginning August 6, 1991, Plan Issuers are required to cover roof sheathing on all FHA insured properties .

Damage to the following non-load-bearing components of the home is not considered a structural defect:

Roofing; drywall and plaster; exterior siding; brick, stone, or stucco veneer; floor covering material; wall tile and other wall coverings; nonload-bearing walls and partitions; concrete floors in attached garages; electrical, plumbing, heating, cooling and ventilation systems; appliances, fixtures and items of equipment; paint; doors

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and windows; trim, cabinets, hardware and insulation.

Repair of a structural defect is limited to:

- The repair of damage to designated load-bearing portions of the home which is necessary to restore their load-bearing ability;
- The repair of designated non-load-bearing portions, items or systems of the home, damaged by the structural defect, which make the home unsafe, unsanitary or otherwise unlivable (such as the repair of inoperable windows, doors and the restoration of functionality of damaged electrical, plumbing, heating, cooling, and ventilating systems); and
- The repair and cosmetic correction of only those surfaces, finishes and coverings, original with the home, damaged by the structural defect, or which require removal

and replacement attendant to repair of the structural defect, or to repair other damage directly attributable to the structural defect.

It is the intent of this section to ensure the repair of a covered home to a condition approximating the condition just prior to the defect, not to a like new condition. It does not require refinishing of all interior or exterior surfaces if only one or two surfaces are damaged. It does not cover personal property items, not a part of the structure, which are damaged by the defect or as a result of the defect. It excludes damage covered by a homeowner's casualty insurance policy.

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F. Homeowner Complaints. A Plan must assure timely resolution of homeowners, complaints or claims. Warranties set forth in a Plan must comply with Section 2301(a)(1)-(13) of the Magnuson-Moss Warranty--Federal Trade Commission Improvement Act along with the requirements and criteria set forth in this chapter.

- 1) In the event of any dispute regarding a homeowner complaint or structural defect claim, Plans must, unless prohibited by applicable law, make available binding arbitration proceedings arranged through a nationally recognized dispute settlement organization. The Plan must also notify the homeowner that they can request a review of the disputed claim from the local HUD Field Office.

Under the Risk Retention Act, the domiciliary State should respond to homeowner complaints concerning insurance claims made to Plan Issuers. If a State will not accept responsibility and homeowner complaints are made to or become known to the HUD Field Office, then the Field Office has the authority to resolve such complaints. In reviewing these complaints, Field Offices should contact the Plan Issuers for an explanation or clarification of the complaint. If the Field Office is not satisfied with the Plan Issurer's response, then report the findings to the Deputy Assistant Secretary for Single Family Housing.

The sharing of arbitration charges will be as determined by the Plan. A Plan must make available prearbitration conciliation procedures at no cost to the homeowner, but arbitration, which must be available to a homeowner during the entire term of the coverage contract, must be an assured recourse for a dissatisfied homeowner.

Plan Issuer must submit to the HUD Field Office all arbitration requests for repairs in excess of \$10,000 or any arbitration request for structural defects on FHA insured properties. The HUD Field Office will contact the Plan Issuer if additional information is necessary about the nature of the repair. Arbitration awards in favor of the builder or the Plan are subject to HUD review if

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such review or appeal is requested by the homeowner. If HUD determines that the arbitrator's decision is incorrect or inadequate, then HUD can require the builder or the Plan to correct the defect(s). HUD's decision in this matter is final.

- 2) Exclusions from Plan coverage must not defeat coverage objectives stated in this chapter and must permit normal homeowner use of the covered property, including normal maintenance and emergency property protection measures.

G. Deductible. Unless prohibited by applicable law, Plans must, at a minimum, stipulate that all homeowner complaints covered by a Plan, including those regarding construction deficiencies and structural defect claims, will be settled in the amount of their actual cost to correct or for the original sales price of the property, whichever is the lesser.

- 1) The claim may be subject to a deductible not to exceed a total of \$250.00 for all claims filed by a homeowner during the first two years of coverage and not to exceed a maximum of \$250.00 per claim during the third through the tenth year of coverage.

A homeowner may be liable for a deductible if a builder defaults on warranty performance and the Plan Issuer has to make the covered corrections.

When the builder performs corrections under the builder's warranty, no deductible included in the Plan is applicable. A claim review fee is not allowed; therefore, a deductible cannot be paid by the homeowner as an upfront claim review fee. The Plan can require the deductible after the extent of the work is determined.

- 2) In the case of claims filed by a condominium association, a Plan must provide the condominium association with an additional warranty that allows for claims by homeowners involving the common elements of the building. The maximum deductible for each claim is \$250.00 per affected

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unit in the structure at the time of loss or \$5,000.00, whichever is less.

Recurrent claims for structural defects occasioned by a common cause may be subject to a payment of no more than one deductible. The unit owner(s) may file and pursue claim(s) involving individual units either directly with the warrantor or through a representative designated by the condominium association.

Upon requesting approval of the Condominium Project, the developer must show evidence of their architects/engineers professional liability insurance policy on all buildings over 13 units or on all buildings designed using a construction type other than the typical wood framing type found in single family homes.

6-3. MAXIMUM LOAN-TO-VALUE RATIOS FOR DWELLINGS WITH APPROVED WARRANTIES.

This is acceptable for some homes less than a year old and not approved for mortgage insurance or loan guarantee prior to the beginning of construction. This procedure does not waive satisfaction of existing subdivision requirements.

- A. Application Processing. Valuation Branch will process each case as existing construction (commitment term = 6 months). Refer to HUD Handbook 4115.3 REV-1, Master Conditional Commitment - Master Appraisal Report Procedure, for additional instructions.

- 1) Dwellings that are not approved prior to beginning of construction are not eligible for benefits under Section 518(a) of the National Housing Act.
- 2) The dwelling must satisfy the requirements that would have been applicable if it had been approved for mortgage insurance prior to the beginning of construction.

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- 3) Final inspection on properties "under construction" or "existing less than one year old":

- a. If the home is 100% complete:

The appraiser performs the appraisal and completes the Uniform Residential Appraisal Report (URAR) and all necessary exhibits. In this instance, the appraisal serves as the final inspection and Form [HUD 92051](#), Compliance Inspection Report, is not required.

Since the only additional work the appraiser will do is to verify general conformance with plans, an additional fee will not be allowed. The appraiser will:

1. Inspect for health and safety violations.
2. If there are no health and safety problems and the property is ready for occupancy, make the following statement in the remarks section of the URAR:

"This is a newly completed dwelling and appears to be in conformance with the submitted construction exhibits."

The appraiser is merely confirming that if the plans call for a two story, three bedroom, two bath house, that is what was found on the lot.

3. Take a color photograph of each diagonally opposite front and rear

corner of the house to record adequate grading and drainage of the site. When properly oriented, the photographs may be the same as those used as appraisal exhibits. Make a statement on the URAR

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of the acceptance of the grading and drainage.

- b. If the property is under construction and not 100 percent complete:

The appraiser will perform the appraisal, complete the URAR, require a final inspection and make the following requirement as a commitment condition:

"Property under construction; complete according to submitted construction exhibits."

In this case, a fee inspector will perform the final inspection and furnish photographs in accordance with paragraph 4-2.B.2)a. and b. Since these properties were not inspected by HUD or VA prior to the start of construction, the inspector makes the following comment on Form [HUD 92051](#):

"This is a newly completed dwelling that was not completed under HUD or VA inspections. The dwelling appears to be in conformance with the submitted construction exhibits."

- 4) The name of the warranty plan must be included with the application for conditional commitment for the inspection exception to apply.
- 5) Builders Certification (Form HUD 92541) must be provided (for both "under-construction" and "existing" cases) along with one complete set of plans and architectural exhibits (see paragraph 3-3). Post-commitment and post-endorsement review is performed by the Field Office according to instructions in paragraph 3-3.K.4) and 3-3.K.5).

Exhibits are placed in the case binder. See paragraph 2-1.

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- 6) Builder/seller must provide a one-year warranty, Form [HUD 92544](#); include the one-year performance guarantee on Form HUD 92544-A, in addition to the warranty of the HUD accepted Insured Ten-Year Protection Plan.
  - 7) A conditional commitment item must be added to require the submission of evidence that an acceptable ten-year protection plan is in effect before insurance endorsement can occur.
- B. Post-Commitment/Post-Endorsement Review. Architectural staff reviews according to instructions in paragraph 3-3. Also ensure the proper insurance binder from the 10-year insured protection plan is in the case binder.
- C. Firm Commitment Application. Mortgagee includes its certification that the borrower was notified in writing that:
- 1) The property was not approved for mortgage insurance or loan guarantee prior to beginning of construction; and
  - 2) HUD does not have statutory authority to provide financial assistance for any future property repairs.
- D. Coinsurance and Direct Endorsement Lenders.
- 1) At application, the lender contacts the HUD Field Office to determine whether the warranty is acceptable.
  - 2) When submitting the loan for insurance endorsement, provide copies of evidence that a HUD accepted insured ten-year protection plan is in effect. Ensure that Builders Certification, Form HUD 92541 (Appendix 2), and the Agreement to Execute Builder's Warranty of Completion of Construction, Form HUD 92541-A (Appendix 6), was provided as described in paragraph 3-3.

Also include the mortgagee certification as described in paragraph 6-3.C. above.

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