

Part 1

Minimum Property Standards for One- and Two- Family Dwellings



*Part 1 of a Study of the HUD
Minimum Property Standards for One- and Two- Family Dwellings
and Technical Suitability of Products Programs*

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The National Institute of Building Sciences appreciates the opportunity to study these long-standing HUD programs and hopes the findings and recommendations herein will be helpful in addressing the needs the programs have traditionally served.

Disclaimer

The study's findings are solely those of the National Institute of Building Sciences and do not reflect the views of the U.S. Department of Housing and Urban Development, the study's participants, or its reviewers. The Institute has made every effort to verify the accuracy of the study's content, but no guarantee of the accuracy or completeness of the information is either offered or implied.

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1. Introduction

This is a study of the one- and two-family dwelling portion of the HUD Minimum Property Standards (MPS) program, a well known and once venerated building regulatory program associated with the approval of HUD-insured mortgage loans. The one- and two-family dwelling portion of the MPS is used for qualifying “high-ratio” loans for new homes (loans for 90 percent or more of a home’s value), and, nationwide, it applies to about one half of one percent of all home mortgages. The MPS has its roots in the National Housing Act of 1934, the law that created HUD’s predecessor, the Federal Housing Administration, and the nation’s first government-backed mortgage insurance program. An examination of the multifamily housing portion of the MPS was not included in this study.

Information for the study was gathered by reviewing the statutory, regulatory, and administrative documents and procedures governing the MPS and by interviewing present and retired MPS staff from HUD’s Washington, D.C., headquarters, personnel from HUD’s four regional Home Ownership Centers, and representatives from the home building and building products industries. The study took approximately eighteen months and was concluded early in 2003.

A related study of the Technical Suitability of Products (TSP) Program was conducted simultaneously. The TSP program, mandated by the Housing and Urban Development Act of 1965, provides acceptance criteria for nonstandard materials, components, and systems used in HUD-insured housing and covered by the MPS program.

2. History of the MPS Program¹

The 1920s and 1930s

In 1922, twelve years before passage of the landmark National Housing Act of 1934, the Department of Commerce's Bureau of Standards issued a new publication called *Recommended Minimum Requirements for Small Dwelling Construction*. It was prepared by the Bureau's Building Code Committee and was based on extensive hearings held the previous year by the Senate Committee on Reconstruction and Production. The Committee found that

The building codes of the country have not been developed upon scientific data but rather on compromise; they are not uniform in practice and in many instances involve an additional cost to construction without assuring more useful or more durable buildings.

Federal interest in housing regulation continued throughout the 1920s and intensified during the early years of the Depression. In 1931, civic leaders from across the country attended the President's Conference on Home Building and Home Ownership in Washington, D.C. The same year, the Bureau of Standards reestablished its Building Code Committee (which included the remaining four of its original seven members) to revise and update the *Recommended Minimum Requirements for Small Dwelling Construction*. The second edition, issued in 1932, contained 25 pages of general construction requirements and 77 pages of acceptable practices. Its foreword, written by then-Secretary of Commerce, R. P. Lamont, thanked the Committee and noted that

The prominent part played by the earlier edition of your committee's recommended small-dwelling requirements has already done much to bring about progressive changes. Your work has thereby helped to reduce costs and assure better quality of construction. These, your latest recommendations, should greatly assist local code committees in framing and revising codes and encouraging uniformity in their requirements.

It was at this nascent stage of a national effort to develop sound local housing codes and standards that the National Housing Act was enacted in 1934. The following year, the newly established Federal Housing Administration (FHA) published the earliest version of what much later became the HUD *Minimum Property Standards*. Titled *Circular 2, Property Standards: Requirements for Mortgage Insurance under Title II of the National Housing Act*, the 16-page publication focused primarily on neighborhood design and planning. Almost four pages were devoted to providing broad requirements for construction and equipment, such as "All parts of buildings shall be designed and constructed to safely support their own weight and that portion of the dead and live loads which they may carry."

¹ A detailed chronology of the history of the MPS is included in Appendix A.

The stated purpose of *Property Standards* was two-fold —the reduction of mortgage risks and the improvement of housing standards and conditions:

This circular is issued for the purposes of guiding the judgement of lenders contemplating applications for mortgage insurance and of providing to borrowers, architects, and builders information as to the policy of the Federal Housing Administration in regard to the character of properties which constitute eligible security for an insured mortgage loan.

The Federal Housing Administration, as the custodian of funds accumulated from insurance premiums, must eliminate, so far as possible, the risks to which these funds may be subjected [emphasis added]. The mortgage insurance facilities of the Federal Housing Administration may be made available, therefore, only to those properties whose prospects of continued utility are sufficiently good to give assurance of their enduring as sound investments throughout the life of the mortgage.

In addition, the National Housing Act definitely places upon the Federal Housing Administration the obligation to encourage improvement in housing standards and conditions [emphasis added]. While this obligation permits the Administration to view property standards from considerations of the security and well-being of the occupants of dwellings, entirely apart from the factors involved in the safety of the investment itself, it is the conviction of the Administration that, in long-time investment, the qualities which produce a satisfactory social condition also tend to assure economic soundness.

In 1936, FHA published a second edition of *Property Standards* that included five pages of general requirements for construction and equipment. It concluded by referencing another publication, *Minimum Construction Requirements for New Dwellings*, which the FHA state insuring offices began issuing in early 1937. While *Property Standards* focused on neighborhood design and planning, *Minimum Construction Requirements* addressed construction materials and techniques. Using an FHA master text as the basis, each state insuring office modified its version of *Minimum Construction Requirements* to match local construction practices (the modifications were mostly minimal) and to inspect each property proposed for FHA mortgage insurance. Since there was at least one, and often several, FHA insuring offices in each state, many localized versions of *Minimum Construction Requirements* were printed. About the same time, the state insuring offices began producing their own slightly modified versions of *Property Standards*.

FHA regularly updated the master text of both publications, and the state insuring offices did likewise, so that each local version of *Property Standards* and *Minimum Construction Requirements* was revised and republished two or three times by 1941, when housing construction slowed, and then stopped, in most places, because of the war.

The early versions of *Minimum Construction Requirements*—about 17 pages in length—covered masonry, structural iron and steel, lumber, framing, roof coverings, sheet metal, lathing, plaster work, stucco, painting, electrical work, plumbing, and heating. The preface of *Minimum Construction Requirements* stated that “The requirements contained herein provide for a Minimum Standard of Construction for properties offered as security for an insured mortgage” and that

The Minimum Construction Requirements shall be applied –

- (a) When the requirements contained in the specifications submitted are not specific or are lower than those contained in the Minimum Construction Requirements.
- (b) When the requirements of applicable Building Codes and Regulations are of a lower standard than those contained in the Minimum Construction Requirements.
- (c) Where there are no existing Local Building Codes and Regulations.

This wording is significant because it required conformance to Minimum Construction Requirements only when a project's construction specifications or the local building code's requirements were of a lower standard. That is, *Minimum Construction Requirements* was designed to serve as a default standard for deficiencies in local code enforcement.

The 1940s and Early 1950s

In January 1942, the FHA published a new master text that combined *Property Standards* and *Minimum Construction Requirements* into one document called *Minimum Property Requirements*. It was used by at least one FHA insuring office—the Southern California District, probably because of housing construction for wartime personnel. In May 1942, FHA published *Minimum Requirements for Rental Housing Projects*, the precursor to a multifamily edition that was to appear four years later. In January 1943, the FHA published *Amendments to the Minimum Property Requirements for All New Dwellings*, which dealt with wartime material shortages.

In September 1945, the FHA issued *Master Draft of Proposed Minimum Property Requirements for Properties of One or Two Living Units*, the first post-war master text. Greatly expanded, it ran approximately 180 pages in length and contained detailed prescriptive construction requirements for every part of a dwelling. Within a year, the state insuring offices were publishing and enforcing their own versions of *Minimum Property Requirements for Properties of One or Two Living Units* as well as a new multifamily edition, *Minimum Property Requirements for Properties of Three or More Living Units*.

In August 1947, FHA published *Significant Variations of the Minimum Property Requirements of FHA Insuring Offices*, apparently in response to post-war interest in industrialized housing. This examination of variations in construction requirements among state insuring offices appears to be the beginning of a consolidation process; within a year or two, the insuring offices were issuing *Minimum Property Requirements* on a multi-state basis. A southern version, for instance, covered the states of Georgia, Alabama, South Carolina, North Carolina, Mississippi, and Tennessee. These consolidated editions were revised every few years from the late 1940s through the mid-1950s by FHA.

1958 to 1980: Expansion of the MPS

In November 1958, *Minimum Property Requirements* was renamed *Minimum Property Standards* and issued in a single, national edition titled *Minimum Property Standards for One and Two Living Units*. The introduction stated that

The purpose of the National Housing Act, as stated in the preamble, is “to *encourage improvement in housing standards and conditions* [emphasis added], to provide a system of mutual mortgage insurance, and for other purposes.”

In pursuance of this purpose, the Federal Housing Administration has established these Minimum Property Standards. They are intended to obtain those characteristics in a property which will *assure present and continuing utility, durability and desirability as well as compliance with basic safety and health requirements* [emphasis added]. To provide this assurance, these standards set forth the minimum qualities considered necessary in the planning, construction and development of the property which is *to serve as security for an insured mortgage* [emphasis added].

This new, completely revised edition numbered 315 pages and was the result of several years of intensive work by the FHA. According to the introduction of the March 1959 *Review of Minimum Property Standards for One and Two Family Living Units*, a publication written to explain the new MPS to home builders:

In 1951 there were 51 separate editions of the MPR’s in use. By 1956 the number had been reduced to 21. Even that was too many. It was not only hard on builders to have 21 sets of requirements—it was hard on the FHA itself to make consistent interpretations, keep them all revised and to stock the various quantities needed. As builders increased the scope of their operations, distances began to shrink. Local customs began to be absorbed in a more general pattern of construction practices. The multiple MPR’s were unsatisfactory on this account, and in addition they were out of date in many respects as well as being deficient or incomplete in others. They needed to be consolidated, clarified, and updated.... It was decided that the best way to do the job would be to forget the old MPR’s and make a completely new start.

1. One set of standards would be established for use anywhere in the United States.
2. The title would be “Minimum Property Standards,” since standards of performance were the aim and purpose.
3. The standards would define the minimum level of quality acceptable to FHA and to VA, keeping in mind the dual objective of reaching the needs of purchasers in low income brackets and at the same time assuring the purchaser full value for his dollar.
4. The standards would be designed for use by both small and large builders. They would cover everything necessary, and they would be spelled out so clearly that there would be the least possible need for interpretation and the least possible chance of misinterpretation.
5. In arrangement as well as content, the book would be planned for the convenience of those who would use it most—builders, architects, and engineers.
6. Generally accepted standards developed by nationally recognized authorities would be relied on for determining whether materials were suitable, how they should be tested and assembled, and how they should be expected to hold up when in use.
7. Illustrations should be used whenever they would help to explain a standard.

8. Requirements that would apply only in certain localities would be omitted.

The new MPS was created by an FHA task force that “examined the 21 sets of minimum property requirements and consulted with the FHA state field offices” as well as with “materials manufacturers, architects, engineers, and over 150 trade associations.” Concurrently, representatives from the National Association of Home Builders collected comments from local builder groups across the country. The introduction to the 1959 Review continued:

Altogether, 4 drafts of the standards were prepared. The final result is a set of standards for which the industry itself is largely responsible. It represents an outstanding cooperative effort by industry and Government.

With this new, renamed, and greatly expanded version of the pre-war *Minimum Property Requirements*—originally intended by FHA as a set of minimal default requirements where local codes were poor or unenforced— the 1958 edition of the MPS became a de facto building code, a largely prescriptive document that went well beyond local codes in specifying allowable building methods, materials, components, and finishes, as well as minimum dimensions, room sizes, and the like.

In 1965, Congress created the Department of Housing and Urban Development. Within several years, FHA’s long tradition as an independent agency with a separate staff and autonomous budget authority ended. But *Minimum Property Standards* continued to expand. In 1973, HUD published it in four volumes:

Volume 1, *Minimum Property Standards for One and Two Family Housing*
Volume 2, *Minimum Property Standards for Multifamily Housing*
Volume 3, *Minimum Property Standards for Care-Type Housing*
Volume 4, *Manual of Acceptable Practices to the HUD Minimum Property Standards*

Each volume contained the following Foreword, which reiterated the objective of improving housing standards and conditions, this time with a unified set of standards:

A Congressionally directed objective of the Department of Housing and Urban Development is to *encourage improvement in housing and residential land development standards and conditions*. The publication of these revised Minimum Property Standards provides the Department for the first time with a single unified set of technical and environmental standards. They define the *minimum level of acceptability of design and construction standards* for low-rent public housing as well as housing approved for mortgage insurance [emphasis added].

Volume 4, the new *Manual of Acceptable Practices*, ran several hundred pages in length, the result of a major effort by HUD “to help builders more readily meet the requirements of the MPS.”

In 1978, Public Law 95-619 (subsequently amended in 1980, 1983, and 1984)² added stricter

² The amendments are minor and are described in Appendix F under the 12 USC 1735f-4 heading.

energy performance requirements to the MPS:

12 USC Section 1735f-4 (a). To the maximum extent feasible, the Secretary of Housing and Urban Development shall promote the use of energy saving techniques through minimum property standards established by him for newly constructed residential housing, other than manufactured homes, subject to mortgages insured under this chapter. Such standards shall establish energy performance requirements that will achieve a significant increase in the energy efficiency of new construction. Such requirements shall be implemented as soon as practicable after November 9, 1978. Following November 30, 1983, the energy performance requirements developed and established by the Secretary under this subsection for newly constructed residential housing, other than manufactured homes, shall be at least as effective in performance as the energy performance requirements incorporated in the minimum property standards that were in effect under this subsection on September 30, 1982.

In the history of the MPS for one- and two-family dwellings and its predecessors stretching back to 1934, this is one of only two pieces of legislation directly affecting the MPS's content.³ The balance of the MPS has been created solely under the regulatory authority of HUD and its predecessor, the FHA—guided by the intent stated in the preamble of the 1934 National Housing Act, “to encourage improvement in housing standards and conditions, to provide a system of mutual mortgage insurance, and for other purposes,” and by the wording of similar statements in later housing acts.

In 1979, HUD issued an updated *Minimum Property Standards, One and Two Family Dwellings*. At 196 pages, it was considerably reduced in size from the 1958 edition (a reduction no doubt enabled by existence of the *Manual of Acceptable Practices*). Its Preface declared:

These Minimum Property Standards are intended to provide a *sound technical basis for the construction of housing* under the numerous programs of the Department of Housing and Urban Development. The standards describe those characteristics in a property which will provide present and continuing *utility, durability, economy of maintenance, and a safe and healthful environment* [emphasis added].

1980 to the Present: Declining Role of the MPS

In August 1980, the National Association of Home Builders Research Foundation sent a report to HUD titled *Recommendations for Solutions to Permit Compatible Use of the One and Two Family Code and the Minimum Property Standards*. By way of background, the report praised the MPS program but said its role in homebuilding was decreasing:

The MPS originated as a set of mortgage insurance criteria to assure the health, safety, durability, and marketability of homes financed under FHA programs. In the past, much of the housing in the U.S. was produced under these programs. In the post World War II period up to the early 1960s a majority of middle priced housing was sold with FHA-

³ The other legislation, passed in 1983, is described below. A handful of related amendments apply to multifamily and care-type housing; see Appendix F.

insured mortgages. The added security afforded to the lenders made long term, low down payment mortgages available to millions of Americans who could not otherwise have afforded a home. The program was self supporting through a small surcharge in the mortgage payment.

During this period, the Minimum Property Requirements (MPR), later called the Minimum Property Standards (MPS), played a major role in assuring the construction of sound, marketable housing. It also had a tremendous influence on establishing and standardizing sound building practices beyond FHA jurisdiction.

At the time, the MPR represented the first complete set of practical building standards in the U.S. It was essentially a textbook for home building with detailed instructions and illustrations for all phases of construction, written in simple language and logical format for the home building industry. Many builders were influenced to alter their practices, resulting in better homes at less cost. Lenders were better able to judge the soundness and value of homes for mortgage applications. Building code groups modified their requirements to resemble the superior technical provisions of the MPS. Manufacturers were able to standardize products and market them nationally, and FHA approval of a product became paramount to market acceptance.”

In fact, the earlier FHA program was so successful that the private financial sector became convinced that they could assume the same risks on a profitable basis. *At the same time, building codes were becoming more responsive, and most communities who previously had an inadequate code or no code at all were adopting an updated building code based on a national model code* [emphasis added]. Meanwhile, building methods, materials, and products had become increasingly standardized across the U.S. In short, there was a new climate portending a long term decline in FHA activity in home building, and a steadily decreasing role for the MPS.

The report then summarized the findings of a 1978 HUD Task Force on Housing Costs, which found the requirements of the MPS excessive and inflexible and recommended that HUD “immediately remove unjustifiable cost-increasing technical and design requirements.”

The report noted that HUD had raised many MPS requirements to the point that they impeded the production of affordable housing, and that HUD should adopt the *CABO One and Two Family Dwelling Code* in its place.⁴

It was generally concluded that the [CABO]1-2 Family Dwelling Code offers a viable and logical alternative to MPS health/safety requirements in its present form and should be accepted as such by HUD as soon as possible.

The remaining portion of the MPS dealing with other requirements related to mortgage insurance, various Federally mandated items, or other HUD operations should also come under scrutiny..... Regulations pertaining to such areas as appearance, livability and marketability represent arbitrary value judgments. The Minimum Property Standards no

⁴ The *CABO One and Two Family Dwelling Code*, a distillation of model building code requirements applying specifically to housing, was first published in 1971 as a joint effort of four model code groups—BOCA, ICBO, SBCCI, and the American Insurance Association. It was well received by home builders and code officials and adopted in many areas of the country by 1980.

longer represent minimum standards for adequate housing. Such arbitrary provisions have tended to escalate in recent years, partly through a narrow interpretation of HUD's mandate to improve the "quality of housing." A broader interpretation of this mandate, however, would hold that the overall quality of housing can be improved by making affordable housing available to an increasing proportion of the populace who cannot now afford a home. Many of these people are less concerned with the level of quality, features and amenities than with the availability of a clean, safe and sound home that they can afford. The effect of unnecessary quality-related requirements is to deny an adequate home to many of these people. The alternative is substandard housing.

In 1981, the National Institute of Building Sciences' Task Force on Federal Regulations Impacting Housing and Land Development made a similar recommendation:

HUD should initiate a comprehensive and rational process to phase out the MPS for HUD-insured housing and rely on the nationally recognized model codes, and on State and/or local authorities that have adopted such codes or that have their equivalent, to regulate the health and safety aspects of such housing, and on free market forces to establish acceptable performance levels for livability and marketability of such housing.⁵

The same year, HUD staff prepared an "Issue Paper on the Minimum Property Standards" that summarized the background of the MPS and presented three options for action, with pros and cons for each: (1) do nothing; (2) make the MPS identical to the *CABO One and Two Family Code*; and (3) phase out the MPS and depend entirely on the local codes and the marketplace. No recommendations were presented, but the paper concluded by saying that downsizing the MPS appeared to be underway.⁶

Modest revisions to the single family MPS were published for proposed rule making in the Federal Register in September 1980. Extensive revisions to the proposed rule are now in process in response to the comments received following that initial publication. Proposed changes resulting from those comments would delete large portions of the MPS in favor of letting the local market conditions prevail where possible. Other changes would remove these portions duplicated by the [CABO] One and Two Family Dwelling Code. The final rule will be published pending a decision on the need for an environmental impact statement. The discussions in this paper reflect the changes now being proposed for the single-family MPS.

In 1982, HUD again issued an updated *Minimum Property Standards, One and Two Family Dwellings*. Its introduction is identical to that of the 1979 edition but its foreword states that the one- and two-family MPS will be phased out "because they have largely accomplished their purpose" and that "home buyers' interests can be protected with less federal intervention":

This revision of the Minimum Property Standards for One- and Two-Family Dwellings will be the last revision. The content of this revision is reduced in substance and in bulk. *It reflects the policy of the Department to move away from imposing Federal standards*

⁵ *Federal Regulations Impacting Housing and Land Development: Recommendations for Change*, page 5. National Institute of Building Sciences, Washington, D.C. April 15, 1981.

⁶ The full text of this paper is printed in Appendix B.

where market forces, local requirements and nationally recognized standards developed in the private sector serve to achieve the same goals [emphasis added].

Thus, *many of the 'livability and marketability' provisions have been eliminated [emphasis added], provisions from the One and Two Family Dwelling Code developed by the Council of American Building Officials replace analogous MPS requirements, and quotations from readily available standards are referenced rather than repeated.*

This revision is a step toward phasing out the Minimum Property Standards for One- and Two-Family Dwellings because they have largely accomplished their purpose [emphasis added]. The Department is indebted to the many groups whose recommendations support our conclusion that both the Department's and the home buyers' interest can be protected with less federal intervention.

In 1983, Congress passed Public Law 98-181, title IV, Sec. 405, permitting HUD to allow compliance with model or local building codes as a means of satisfying mortgage insurance requirements, thereby virtually eliminating the need for the one- and two-family MPS except for specifying allowable codes and determining code comparability:

12 USC Section 1735f-4 (b). The Secretary may require that each property, other than a manufactured home, subject to a mortgage insured under this chapter shall, with respect to health and safety, *comply with one of the nationally recognized model building codes, or with a State or local building code based on one of the nationally recognized model building codes or their equivalent. The Secretary shall be responsible for determining the comparability of the State and local codes to such model codes and for selecting for compliance purposes an appropriate nationally recognized model building code where no such model code has been duly adopted or where the Secretary determines the adopted code is not comparable [emphasis added].*

This is the second of the two pieces of federal legislation that directly affect the content of the MPS. Note that it does not confine itself to one- and two-family dwellings.

In 1984, HUD issued *Minimum Property Standards for Housing*. The previous *Minimum Property Standards, One- and Two-Family Dwellings* and the *Minimum Property Standards, Multifamily Housing* were now combined into one document, with the one- and two-family portion renamed "Rules for One and Two Family Dwellings" and relegated to a 31-page Appendix K. The hundreds of MPS livability and durability provisions, previously applicable to one- and two-family dwellings as well as to multifamily housing, now applied only to multifamily housing.

About two-thirds of the new Appendix K focused on HUD state field office requirements for specifying allowable codes and determining local code acceptability. The balance contained several pages of requirements for site design and planning, energy conservation, and private water supply systems and wells, as well as a small number of modifications to model code structural requirements. These remaining contents were strikingly similar in size and intent to those of the 16-page *Property Standards* of 1935.

In 1994, HUD issued the current edition of *Minimum Property Standards for Housing*, renaming Appendix K "Minimum Property Standards for Property which Is Not Multifamily or Care-Type

Property.” The appendix is identical to its 1984 counterpart except that the reference standards are updated, the term “physically handicapped” is changed to “disabilities,” FEMA requirements under the National Flood Hazard Program are added, and a reference to the *CABO Model Energy Code* replaces the energy conservation section.

The foreword and introduction to the 1994 MPS declare:

These Minimum Property Standards reference nationally recognized model building codes for concerns relating to health and safety. *Locally adopted building codes can be used for the same purpose* when they are found acceptable by the HUD field office [emphasis added].

The full text of MPS Appendix K is provided in Appendix C.

In May 2001, the International Code Council, under subcontract to the National Evaluation Service, submitted a report to HUD titled *Proposed 2001 Edition of the Minimum Property Standards for Housing*. The proposed changes to MPS Appendix K are confined almost entirely to updating referenced codes and standards to, in almost all cases, the 2000 edition of the *International Residential Code*, the successor to the *CABO One and Two Family Dwelling Code*.

3. Current Compliance with MPS Appendix K

Appendix K of the MPS, where the one- and two- family dwelling requirements were consigned in 1984, sets forth detailed instructions to the HUD state field offices for determining the acceptability of state and local building codes in Sections 200.926, 200.926a, 200.926b and 200.926c, and it adds a small number of supplemental structural design requirements in Section 200.926e.⁷

Specifically, subsection 200.926a(4) instructs the HUD field offices to:

....maintain a current list of jurisdictions with accepted local or State building codes, [and] a current list of jurisdictions with partially accepted local or State building codes which have not been accepted. For local codes, the lists will state the most recent date when the code or changes thereto were submitted to the Secretary.... In addition, the list of jurisdictions whose codes have been partially accepted shall be identified in accordance with Section 200.926c [or] those portions of the codes listed at Section 200.926b(a) with which the property must comply.

This requires HUD to keep track of the building codes used in thousands of jurisdictions across the United States and to certify their acceptability. Such a large, continuing task could not be adequately carried out even prior to 1994, when the HUD state field offices had design and construction staffs, and it is not being performed at all now by the four regional Home Ownership Centers (HOCs). To quote the four HOCs:

The [code certification process] applied only in the context of our old organizational structure. Our previous structure of 81 field offices has been reduced to only four. We have no resources or staff to do it. Our office relies on and defers to the builder's certification of code compliance. (Philadelphia)

We do not specify a code for compliance. We rely on the local jurisdiction for code compliance, inspection, and enforcement (Atlanta)

Our construction analysts—there are two for the entire region—have a somewhat superficial knowledge of the MPS and other codes.... We make no recommendations regarding code requirements or compliance. (Santa Ana)

Our philosophy is to allow use of the local building codes.... We have taken the position that the local jurisdiction is ultimately responsible for code compliance and we will accept whatever they decide is proper. (Denver)

In the mortgage insurance application process, HUD addresses code compliance in Form HUD-92541, "Builder's Certification of Plans, Specifications, and Site," which includes a blank for writing in the name of the building code used by the builder, and three check-off boxes for certifying the builder's adherence to the *CABO One and Two Family Dwelling Code*, the *CABO*

⁷ The MPS, including Appendix K, is published in HUD Handbook 4910.1, *Minimum Property Standards for Housing*. HUD added Appendix K to the Code of Federal Regulations, and CFR section numbers are used within the Appendix, which is generally referred to as 24 CFR 200.926.

1992 Model Energy Code, and the 1984 *NFPA Electrical Code for One- and Two-Family Dwellings*. Form HUD-92541 also lists many of the same requirements set forth in Section 200.925d of MPS Appendix K. (Form HUD-92541 is shown in Appendix E.)

To be eligible for a high-ratio loan, a builder also must certify compliance with Section 200.926d and HUD Handbook 4145.1, *Architectural Processing and Inspections for Home Mortgage Insurance*. Most of the requirements of Section 200.926d do not apply to houses built in areas with adequate subdivision regulations and public water supply systems—that is, they do not apply to the vast majority of new houses (an exception is 200.926d’s energy requirements, which universally apply). Handbook 4145.1, last issued in 1991, is a process document containing requirements for home builders (for the submission of architectural exhibits); for HUD field offices (processing procedures); for fee inspectors (inspection procedures); and for home warranty providers (including an 12-year-old list of “HUD-accepted Insured Ten-Year Protection Plans”). Most of this material is outdated and many procedures are not followed.⁸

Regardless, according to the HOCs, Form HUD-92541 is not reviewed by anyone at HUD beyond ensuring that it has been completed, signed, and included in the mortgage file. Few, if any, applications for HUD mortgage insurance are said to be denied on the basis of non-compliance with MPS Appendix K (which stands to reason since the HOCs have no consistent way of verifying that the information in Form HUD-92541 is correct⁹).

Recognizing this dilemma, HUD issued Mortgagee Letter 2001-27 in October 2001, which permitted the issuance of a local building permit as evidence of HUD pre-approval and the issuance of a certificate of occupancy as evidence of code compliance for a HUD-insured high-ratio loan. (Mortgagee Letter 2001-27 is shown in Appendix D.)

Allowing the building permit, which the builder must obtain anyway, to be used as pre-approval for HUD insurance not only circumvents the weaknesses of Form HUD-92541, it provides a substantial benefit to potential homeowners because it means the builder does not have to decide before the home is built if it needs to be HUD-eligible. Since October 2001, homes with building permits and certificates of occupancy—virtually all homes built—are eligible.¹⁰

⁸ HUD Handbook 4145.1 is being revised, but the HUD staffer in charge said that its content has changed little and that the project is “on hold.”

⁹ Most field inspections ceased after the HUD field office design and construction staffs were disbanded in 1994, and they are virtually impossible for the HOCs to make now, except as random checks, because of the HOCs’ vast geographic coverage.

¹⁰ Except in some rural areas of the country where there are no building codes (and usually little construction).

4. Findings

1. Mortgagee Letter 2001-27 has, in effect, rendered MPS Appendix K and HUD Handbook 4145.1 irrelevant.¹¹ It is now the building permit and certificate of occupancy that determine eligibility for a HUD-insured high-ratio loan. This change virtually completes the 20-year transition of the MPS for one- and two-family dwellings from requiring conformance to a unique body of largely prescriptive construction requirements to deferring to the requirements of local building codes, thereby allowing HUD-insured properties to be regulated in the same manner as millions of other housing units nationwide, regulations that by conventional standards provide sound, safe, healthy, and livable housing.

All that remains is to remove the layers of accumulated regulatory remnants that have made the one- and two-family construction requirements of the HUD mortgage insurance process unnecessarily misleading, contradictory, confusing—and honored largely in the breach.

2. The segment of the housing market affected by the MPS is tiny. The MPS for one- and two-family dwellings applies only to high-ratio loans for new homes (loans for 90 percent or more of a home's value). Of the 1.3 million mortgages HUD insured in 2001, only 47,000 were for *new* homes, and not all of them involved high-ratio loans. This amounts to less than 3.6 percent of total HUD mortgage loans, and, because HUD only insures about 15 percent of the home mortgage market, it amounts to only about 0.5 percent of all home mortgages. While this does not affect the regulatory role of the MPS, it puts it in perspective.

3. The MPS for one- and two-family dwellings does not increase housing durability. A common justification for the MPS is that it promotes increased durability. This is arguably true for the multifamily portion of the MPS, which still contains hundreds of livability and durability criteria (such as minimum dimensions and room sizes and allowable building methods, materials, components, and finishes) that go well beyond building code requirements, but it is not true for MPS Appendix K. As noted, when the one- and two-family dwelling requirements were moved to Appendix K in 1984, *the livability and durability requirements did not go with them*. Section 200.926e of Appendix K modifies several structural requirements of the *CABO One and Two Family Code*, but otherwise only the requirements of the model codes apply.

The Technical Suitability of Products (TSP) Program (referenced in Section 200.926d(d) of MPS Appendix K) is said to be another factor in increasing durability, and all of the TSP Program's Materials Releases and a few of the Structural Engineering Bulletins do in fact require product warranties. *But these warranties are typically the same as those carried by the products anyway.* Furthermore, Mortgagee Letter 2001-27 formally ended the need for third-party inspections of new homes, so there is no way to check whether or not products with TSP acceptances are used in homes seeking HUD mortgage insurance. In fact, few site inspections have been made since the HUD state field offices lost their design and construction personnel in 1994.

4. Few HUD mortgage defaults are tied to housing defects. According to interviews with the

¹¹ Along with Early Start Letters and HUD-approved 10-year warranty plans, and the regulations that accompany them. The background and details are provided in Mortgagee Letter 2001-27, reproduced in Appendix D.

HOCs and other present and retired HUD personnel, it is rare that a home owner defaults because of housing defects, although no hard data exist. No one has suggested that housing defects caused by lack of code conformance have a measurable effect on mortgage default rates. This may be because builders are accustomed to building to current code requirements, even where codes are not enforced, or it may be that the marketplace is driving equivalent performance, or it may be that the problem exists but is too small to be recognized. At any rate, the average number of HUD-insured new homes built in areas lacking code enforcement is probably so low (perhaps a few hundred per year, perhaps less?) that the number of defect-related defaults (three, one, zero?) over a period of several years may be too few to justify the costs of additional enforcement.

5. The MPS is confusing to homebuilders. Homebuilders seem to view conformance with the locally adopted code as necessary for MPS compliance, but they are uncertain if the MPS might require something more or different. After all, they must sign Form HUD-92541, certifying compliance with parts of Section 200.926 of the Code of Federal Regulations and with HUD Handbook 4145.1. In the unlikely event they obtain these documents, they must then decipher them and decide what applies to one- and two-family dwellings (in most instances, little or nothing does). Then there are the 716 HUD mortgagee letters and numerous HUD handbooks, guidebooks, and notices.¹² All of this introduces needless confusion, ambiguity, and discomfort in homebuilders regarding HUD mortgage requirements.

6. The MPS also confuses and misleads Congress, consumers, product manufacturers, and policy makers—and even HUD staff. The 67-year-old MPS has confused more than home builders. No clean break was made in 1984 either with the name, *Minimum Property Standards*, or with the huge accompanying MPS regulatory infrastructure of handbooks, guidebooks, notices, and mortgagee letters—an infrastructure that remained fully in place for multifamily housing but only partially and confusingly so for one- and two-family dwellings. Congress still thinks of the MPS as an active program to which it can append new requirements. Consumers, and nearly everyone else, believe that the MPS provides better quality and more durable housing. Product manufacturers confuse it with the TSP Program. Policy makers remember the MPS as a time-tested means of improving the nation's housing stock. At HUD, there appears to be no one left who knows all the parts of the MPS program and few who understand its current condition.

7. FmHA and VA no longer rely on the MPS. At one time, both the Farmers Home and Veterans Administrations used the MPS as a model for their own housing insurance programs; citations in some MPS documents still refer to this. But FmHA lists the MPS only as a reference in its “RD Instruction 1924-A,” and the VA's *Minimum Property Requirements*, modeled after an older version of the MPS, no longer references the MPS at all.

¹² The FHA Mortgagee Starter Kit on the HUD website lists 14 HUD handbooks and several hundred mortgagee letters “that you will want in your library to support your single family business.”

8. Conventional mortgage lenders rely on local codes, not the MPS. According to Merrill-Lynch, which covered about \$8 billion in single family mortgage underwriting in 2000, “We do not use, and as far as we know, no lender uses, the MPS. Over the years, model codes have substantially replaced the need for HUD-based standards. We rely entirely on local enforcement of local codes in our lending process.”¹³

9. References to the MPS abound in HUD publications and documents. The long life of the MPS has left a trail of statutory, regulatory, and administrative references to “minimum property standards,” “minimum standards,” “property standards,” “minimum property requirements,” and “minimum requirements,” the last two terms reminders of the period from 1942 to 1958 when the *Minimum Property Requirements* governed.

– Statutory references. The 16 statutory references to the phrase ‘minimum property standards’ are generic and written in lower case. Only two references (regarding energy conservation and the use of state and local codes, as described earlier) have affected the actual content of the MPS. The remaining 14 references have no specific application to one- and two-family dwellings or are explicitly directed to multifamily, care-type, or manufactured housing. Appendix F contains the text of those parts of the U.S. Code using the term ‘minimum property standards.’

– Regulatory and administrative references. The regulatory and administrative references to “minimum property standards” (in upper and lower case) and to “MPS,” however, are numerous. A search of HUD documents on www.hudclips.org¹⁴ for the phrase “minimum property standards” finds it used 22 times in the Code of Federal Regulations, five times in HUD guidebooks, 189 times in HUD handbooks and notices, and nine times in HUD mortgage letters. References to “MPS” are even more numerous; Handbook 4950.1 on the TSP Program, for instance, uses the initials ‘MPS’ 35 times. Appendix G contains the text of the 22 citations in the CFR using the term “minimum property standards.”

10) There is no constituency for the MPS. The homebuilders, through their national association, NAHB, have pushed for the elimination of the MPS for more than twenty years, and no consumer groups are on record as supporting the program. Most product manufacturers (as described in the accompanying TSP study) see the MPS and its related TSP Program as irrelevant or redundant. Resources at HUD have been reduced for both programs and experienced MPS staff have not been replaced.

¹³ Interview with Charles Gueli of Merrill-Lynch.

¹⁴ Some of the documents listed here, such as Directive 1100.3 listing regional and field offices, and Handbook 4940.2, *Minimum Design Standards for Community Water Systems*, are long out of date or no longer issued.

5. Conclusions

The one- and two-family portion of the MPS is burdened by 68 years of outdated associations and expectations and a large body of outmoded regulations and procedures. HUD headquarters and field personnel have kept the one- and two- family program functioning over the past two decades largely by working around increasingly antiquated regulatory requirements.

These problems may be readily resolved by realigning HUD regulations and administrative documents with present HUD practices. There is no explicit provision in federal law mandating the MPS, so the following changes can be made administratively:

- Eliminate the one- and two-family portion of the MPS (Appendix K).
- Formalize the one- and two-family mortgage approval process now in use. The process works well in everyday practice and its requirements are similar to those used by the rest of the mortgage industry.
- Completely separate the new one- and two-family program from the remaining multifamily MPS program and give it a separate identity, thereby drawing a clear line between the two.
- Remove all one- and two-family references from the MPS program and its related administrative documents and procedures; revise these documents and procedures as appropriate; and eliminate or revise outmoded MPS regulations.

These actions will rationalize and clarify the one- and two-family mortgage approval process, provide greater certainty to homebuilders and more transparency to consumers, and help manage expectations among members of Congress, policy makers, and product manufacturers about the uses and capabilities of HUD's one- and two-family mortgage insurance program.

Specific recommendations for accomplishing these tasks follow.

6. Recommendations

1. Delete the MPS for one- and two-family dwellings (MPS Appendix K) and delete its regulatory counterpart, 24 CFR 200.926, et al, from the Code of Federal Regulations. MPS Appendix K was codified in 1984 because it delegated authority to specific private sector codes and standards. Mortgagee Letter 2001-27 eliminated the need for such delegation. The multifamily portion of the MPS has never been codified and nothing in the MPS was codified prior to 1984.
2. Delete all programmatic documents related to the MPS for one- and two-family dwellings, as well as references to the MPS for one- and two-family dwellings in all other HUD regulations, handbooks, guidebooks, notices, mortgagee letters, forms, web sites, and consumer publications. This will be a time consuming task because so many documents and references apply jointly to the MPS for multifamily housing and to MPS Appendix K for one- and two-family dwellings. Some may be impossible to separate without major rewriting. See Appendix J for a list of affected documents. An alternative is to eliminate the multifamily MPS as well and avoid this task altogether.
3. Create a new program for one- and two-family dwellings and give it a new name that has no association to the MPS.
4. Retain the requirement that new homes need a building permit and certificate of occupancy to qualify for HUD high-ratio mortgage insurance. This formalizes what HUD Mortgagee Letter 2001-27 of October 2001 has already accomplished.
5. Examine the site analysis requirements listed in the Builder's Certification, Form HUD-92541. This form (shown in Appendix E) was last updated in April 2001, and its site analysis requirements—*evolved from but no longer identical to those in Appendix K of the MPS*—are the only non-code requirements for one- and two-family dwellings that HUD still includes in the mortgage insurance application process. These requirements address potential flood hazards, noise, aircraft landing zones, explosive materials storage, toxic waste hazards, and hazardous and adverse conditions. As mentioned above, they are similar in intent and number to the requirements in FHA's *Property Standards* of 1935, indicating that they are important for meeting the National Housing Act's goal of reducing mortgage risks and improving housing conditions. The site analysis requirements may be similar, however, to those of current building codes and the National Flood Insurance Program, so HUD should compare the various requirements to determine what should be included in Form HUD-92541.
6. Require certification of code compliance by an independent third-party inspector in non-code areas. For rural areas without building code enforcement, HUD should require, in lieu of a local building permit and certificate of occupancy, a written certification by a licensed architect or engineer of that state that the property is located in a non-code area and that the requirements of the *International Residential Code* or the prevailing state building or residential code have been met.

7. Prepare a new Builder’s Certification form. The current Builder’s Certification, Form HUD-92541, should be modified to reflect the above recommendations, as follows (a copy of Form HUD-92541 is shown in Appendix E):

- If the site analysis requirements on page 1 are retained, the reference to CFR 200.926d(c)(4) under “Flood Hazards” and the references to HUD Handbook 4145.1 and FHA Data Sheet 79g under “Foreseeable Hazards or Adverse Conditions” should be changed or eliminated.
- Boxes 2 through 7 should be eliminated.
- Two statements should be added, one of which the builder must check: (a), a statement that the property has a building permit and a certificate of occupancy and that both are attached; and (b), a statement that the property was built in an area without code enforcement but that it conforms to the requirements of the *International Residential Code* or the prevailing state building or residential code, and that a written certification to this effect, prepared by a licensed architect or engineer of that state, is attached.
- The remainder of the form can be kept as-is, except that the builder’s certification statement on page 2 should use substitute text for the references to 24 CFR 200.926d, and page 3 should be revised to reflect the changes made to the site analysis section on page 1, eliminating all references to MPS documents.

8. Examine 12 USC 1735f-4 to determine if it should be amended. HUD’s General Counsel should examine the legislation directly affecting MPS Appendix K that is incorporated in 12 USC 1735f-4(a) on energy conservation and 12 USC 1735-4(b) on state and local codes:

- Part 12 USC 1735f-4(a) specifies that energy performance requirements for HUD-insured housing must be at least as effective as those in effect on September 30, 1982. Section 109 of the Energy Policy Act of 1992 requires new HUD-insured homes to meet the energy efficiency standards of the 1992 *CABO Model Energy Code*, which exceed the energy standards in effect in 1982, so USC 1735f-4(a) does not require amending.
- Part 12 USC 1735f-4(b) gives HUD discretion about what building codes it can specify, does not require amending.

9. Review the requirements of Section 801. Section 801 of the National Housing Act (12 USC 1701j-1), “Builders Certification as to Construction,” requires that the seller or builder provide the homeowner with a warranty that the home is constructed according to the plans and specifications upon which HUD based its valuation.¹⁵ HUD no longer reviews the plans and specifications for one- and two-family housing. If it does not review them for multifamily housing, HUD should seek repeal of Section 801. Otherwise, Section 801 should be amended to exclude one- and two-family dwellings.

¹⁵ The full text of Section 801 is included in Appendix H.

10. Accept local codes as meeting the requirements of Executive Order 12699 and Section 947 of the National Affordable Housing Act of 1990 on seismic safety. Executive Order 12699 and Section 947 require HUD to develop and enforce seismic safety standards for the programs it administers. This includes its mortgage insurance programs. HUD is permitted by the Executive Order and Section 947 to defer to local building codes that meet its seismic standards. Because the *CABO One and Two Family Dwelling Code* and its successor, the *International Residential Code*, are widely adopted nationwide and already include seismic standards that meet or exceed HUD standards, HUD should continue to follow Mortgagee Letter 2001-27, which defers to local codes for seismic safety compliance.

11. Accept local codes as meeting the requirements of Section 109 of the Energy Policy Act of 1992. Section 109 requires new HUD-insured homes to meet the energy efficiency standards of the 1992 *CABO Model Energy Code*. Because the 1992 *CABO Model Energy Code* and its successor, the *International Residential Code*, are widely adopted nationwide, HUD should continue to follow Mortgagee Letter 2001-27, which defers to local codes for energy efficiency compliance.

12. Review with HUD's General Counsel the need for references to private sector codes and standards to be published in the CFR. Code and standard references published in the CFR are subject to lengthy rule-making processes and quickly become frozen in time—outdated impediments to a constantly evolving regulatory system. A way must be found to avoid this fate for the new one- and two-family dwelling program. One alternative is to reference no private sector codes or standards by name.

13. Amend the multifamily portion of the MPS to include appropriate code references. The MPS for multifamily housing requires conformance to the codes referenced in MPS Appendix K. If Appendix K is eliminated, the multifamily MPS will have to be amended to accept local building codes, similar to what has been done with the MPS for one- and two-family dwellings by Form HUD-92541.¹⁶ Of course, eliminating the multifamily MPS would solve this problem, too.

14. Consult with affected interests. HUD should consult with the following interests and explain why it needs to take the above actions: appropriate Congressional committee staff, the housing staff of the VA and the Farmers Home Loan Administration, the International Code Council, the Building Owners and Managers Association (BOMA), the National Fire Protection Association (NFPA), the National Multi Housing Council, and National Association of Home Builders (NAHB).

15. Develop, launch, and widely publicize a distinctive, easy-to-understand HUD single family mortgage insurance requirements package for homebuilders, lenders, and buyers. The revised HUD construction-related mortgage requirements (which would be identical to those printed on the new Builder's Certification form recommended above), should be stated clearly and succinctly on an attractive, single-page brochure or poster for use by builders, lenders, and home buyers; on appropriate HUD mortgage application forms; and on a well-designed and easy-to-

¹⁶ An examination of the multifamily portion of the MPS was not included as a part of this study; it may use a mechanism similar to Form HUD-92541.

locate page of the HUD website. As discussed, the program should be given a new and separate name, and no references should be made to “minimum property standards,” “MPS,” or any related designations. If the multifamily MPS is retained, it might be wise to explain in its documentation the separation between it and the new one- and two-family program.

16. Maintain a focus on housing durability through HUD research programs. As noted, HUD eliminated hundreds of livability and durability provisions for one- and two-family dwellings in the 1984 edition of *Minimum Property Standards*. It did so “[to reflect] the policy of the Department to move away from imposing Federal standards where market forces, local governments and nationally recognized standards developed in the private sector serve to achieve the same goals.”¹⁷ In the intervening 17 years, there has been no indication that HUD-insured housing has experienced an increase in durability-related problems or that there has been a consequent increase in HUD-insured mortgage defaults, even after 1994, when the HUD state field offices lost their design and construction personnel and virtually ceased making site inspections.

Nonetheless, housing durability is a concern. As the staff director for research at State Farm Insurance Companies, Rosemarie Geier Grant, notes,¹⁸ “Periodically, State Farm hears from frustrated consumers who have terrible problems with their new homes—problems that are serious and which, since they are durability/maintenance problems, are not covered by their homeowners insurance policy, nor by the typical one-year warranty provided by their builder.” While acknowledging that the market share of HUD-insured homes is small (about one half of one percent of all new home mortgages), Ms. Grant continues, “regardless of who has written the mortgage, there is not a zero trend in people walking away from a mortgage due to construction or material defects.”

There is no ready answer to this dilemma, and good data on housing durability do not exist. Increased regulation may reduce housing defects, but *the aggregate costs to housing consumers of doing so may be significantly higher than the aggregate costs of the defects*. This was believed to be the case when HUD eliminated the durability and livability requirements from the MPS in 1984. The better course of action is for HUD, through its PATH and other technology-based research programs,¹⁹ to continue working with the housing industry to make increased durability a long-term national goal, a goal similar to that of the 1934 National Housing Act’s, “to reduce mortgage risks and improve housing standards and conditions.”

¹⁷ From the Foreword of the 1979 edition of *Minimum Property Standards*.

¹⁸ Email from Rosemarie Geier Grant to William Brenner of December 30, 2002. The email also suggests, as have others, that ISO’s Building Code Effectiveness Grading Scale may provide useful information on local code adoption and enforcement (and hence serve as something against which to compare mortgage defaults). An examination of the ISO material (at www.iso.com/products/2400/prod2409.html), however, reveals that the information it provides has limited usefulness for housing.

¹⁹ The Partnership for Advanced Technology in Housing, or PATH, is a private/public effort to improve the quality, durability, environmental efficiency, and affordability of the nation’s housing.

7. Recommendations Considered but Rejected

1. Do nothing. Currently, HUD personnel keep the MPS one- and two- family dwelling program functioning by working around antiquated program requirements and regulatory procedures. This has caused confusion among homebuilders, homeowners, and policy makers. With the retirement of the last experienced MPS manager early in 2002, the “do nothing” alternative has become untenable—particularly since making the changes recommended above should not be particularly difficult to achieve and would result in simply realigning the program to meet actual current practices.

2. Reinstate the pre-1984 MPS requirements for one- and two-family dwellings. If the transition to state and local building codes had not worked, this would be an option worth considering. But the transition has in fact worked well, and, as mentioned above, HUD-insured properties are now regulated by the same requirements that apply to all the other houses built and insured nationwide—requirements that provide sound, safe, healthy, and livable housing to millions of families.

Appendix A DETAILED MPS CHRONOLOGY

Note: Underlining added for emphasis.

1922. *Recommended Minimum Requirements for Small Dwelling Construction.* Report of the Department of Commerce Building Code Committee, Bureau of Standards, U.S. Department of Commerce. U.S. Government Printing Office; Washington, 1922. Initiated by a report of the Senate Committee on Reconstruction and Production, appointed in by Secretary Hoover 1920.

“The building codes of the country have not been developed upon scientific data but rather on compromise; they are not uniform in practice and in many instances involve an additional cost to construction without assuring more useful or more durable buildings.” Commerce Secretary Hoover organized the Building Code Committee at the Bureau of Standards in May 1921.”

1932. Updated *Recommended Minimum Requirements for Small Dwelling Construction.* Building and Housing Publication No. 18. Report of the Department of Commerce Building Code Committee, Bureau of Standards, U.S. Department of Commerce. U.S. Government Printing Office. Washington, 1932. Contains 25 pages of requirements and 77 pages of acceptable practices. Available in HUD library.

The requirements of this publication may have been partially adopted by the early drafters of FHA’s construction requirements.

National Housing Act signed on June 17, 1934 “to encourage improvement in housing standards and conditions, to provide a system of mutual mortgage insurance, and for other purposes.” The Act creates the FHA and allows it to insure actuarially sound, low-interest, long-term mortgages on private homes. Section 203(b) provides insurance for one-to-four family dwellings.

Late 1934 or early 1935. *Circular No. 2, Property Standards: Requirements for Mortgage Insurance under Title II of the National Housing Act.* Federal Housing Administration. Washington, D.C. The earliest copy in the HUD Library is labeled “Revised February 15, 1935.” There may be an earlier edition. It is 16 pages in length and its contents are:

- Objectives, 1-1/2 page
- Article I, Definition of Terms, 1-3/4 pages
- Article II, General, 1/3 page
- Article III, Neighborhood Standards, 1 page
- Article IV, Relation of Property to Neighborhood, 1 page

- Article V, Land Utilization, 2/3 page
- Article VI, Character of Design, 2/3 page
- Article VII, Planning and Accommodation, 2-1/4 pages
- Article VIII, Construction, 2-1/4 pages, with window lighting area illustration
- Article IX, Services and Equipment, 1 page
- Article X. Local Standards and Exceptions, 1 page

Note that the emphasis is mostly on neighborhood standards and planning, with construction and equipment covered in three pages.

The inside cover and introduction state:

“One of five circulars of Information Available on Title II of the National Housing Act. Others are Circ. No. 1, *Mutual Mortgage Insurance Regulations*; Circ. No. 3, *Low-Cost Housing*, Circ. No. 4, *Operative Builders*; Circ. No. 5, *Subdivision Development*.

“This circular is issued for the purposes of guiding the judgement of lenders contemplating applications for mortgage insurance and of providing to borrowers, architects, and builders information as to the policy of the Federal Housing Administration in regard to the character of properties which constitute eligible security for an insured mortgage loan.

“The Federal Housing Administration, as the custodian of funds accumulated from insurance premiums, must eliminate, so far as possible, the risks to which these funds may be subjected. The mortgage insurance facilities of the Federal Housing Administration may be made available, therefore, only to those properties whose prospects of continued utility are sufficiently good to give assurance of their enduring as sound investments throughout the life of the mortgage.

“In addition, the National Housing Act definitely places upon the Federal Housing Administration the obligation to encourage improvement in housing standards and conditions. While this obligation permits the Administration to view property standards from considerations of the security and well-being of the occupants of dwellings, entirely apart from the factors involved in the safety of the investment itself, it is the conviction of the Administration that, in long-time investment, the qualities which produce a satisfactory social condition also tend to assure economic soundness.”

June 1936. *Circular No. 2, Property Standards. Requirements for Mortgage Insurance under Title II of the National Housing Act.* “Revised June 1, 1936.”

This is probably the next edition of *Property Standards*, which has been increased to 23 pages:

- Part I, Objectives, 3-1/2 pages
- Part II, Desirable Characteristics, 7-1/2 pages (201 Location; 202 Planning of the Plot; 203 Planning of the

Dwelling; 204 Design of the Dwelling; 205 Construction and Materials; 206 Mechanical Equipment; 207 Plumbing; 208 Heating and Air-Conditioning; 209 Electric Wiring; 210 Insulation)

Part III, Definitions, 2-1/2 pages

Part IV, Conditions Determining Acceptability, 2 pages (401 Plot; 402 Accessibility; 403 Number of Living Units; 404 Types of Eligible Dwellings; 405 Non-Residential Use of Dwellings)

Part V, General Minimum Requirements, 5 pages (501 Local Regulations; Natural Light and Ventilation; 502 Lot Coverage; 503 Dimensions of Front and Rear Yards; 504, Dimensions of Side Yards; 505 Dimensions of Courts; 506 Windows; 507 Ventilation of Bathrooms and Water Closet Compartments; 508 Ventilation of Basement, Laundry, and Utility Rooms; 509 Living Unit; 510 Separation of Living Units; 511 Privacy; 512. Ceiling Heights; 513 Storage; 514 Stairways; 515. Basement Rooms; 516 Construction of Dwellings; 517 Approval of New Methods of Construction; 518 Protection; 519 Soil; 520 Foundations; 521 Chimneys, Fireplaces, and Hearths; 522 Floors on the Ground; 523 Spaces Between Floors and Ground; 524 Defective Conditions; 525 Compliance with Laws; 526 Plumbing Fixtures; 527 Water Supply; 528 Approval of Wells; 529 Cisterns; 530 Sewage Disposal; 531 Sewage Disposal Systems; 532 Approval of Sewage Disposal Systems; 533 Heating; 534 Electric Wiring)

Part VI: "Minimum Requirements contained in Part VI defining these general requirements locally are published separately for each insuring office."

This edition provides for a supplementary publication, called the "Minimum Construction Requirements," published separately by each insuring office, to be part of the *Property Standards*, as Part VI, above, explains.

The introduction to this edition states:

"The Federal Housing Administration has established standards covering the physical characteristics of property for two purposes. The first is stated in the preamble to the Act, making it in effect the guiding principle of the legislation, namely, "to encourage improvement in housing standards and conditions." the second appears in Section 203 and makes it mandatory upon the Administration to provide assurances that "the project with respect to which the mortgage is executed is economically sound."

"It is the conviction of the Administration that these purposes, far from being conflicting, are essentially one, and that from the point of view of long-term investment the qualities which produce a satisfactory social condition will provide also the best possible assurances of economic soundness.

"In order to make sure that such qualities are in fact present, certain general considerations have guided the policy of the Administration. These refer especially to

- (I) the soundness of the property to the equity holder;
- (II) the regulation of the property to the neighborhood as it affects security over a long period; and
- (III) the characteristics of the individual property as security for a long term mortgage."

— **1937** (date varies among FHA insuring offices). *Property Standards, Part VI. Minimum Requirements for the State of Texas*. "Revised July 15, 1937." 7 pages. Each insuring office made slight changes to the FHA master copy. This edition begins with this note:

"Note: These Local Minimum Requirements as contained in Part VI are in addition to, define, and further qualify the General Requirements as contained in Part V of Circular 2, *Property Standards*, for the district to which they refer. The General Requirements in Part V are numbered to correspond to the Local Minimum Property Requirements in Part VI."

In the State of Texas, the *Minimum Requirements* were revised in June 15, 1938 and January 15, 1939. This revision pattern is typical for all the insuring offices, with the first *Minimum Requirements* being issued in 1937 or 1938 and the last in 1939 or 1940. Only minor changes were made in each revision and the page count (7) remained the same. All were printed by the Government Printing Office.

— **1937** (date varies among FHA insuring offices). *Minimum Construction Requirements for New Dwellings. Federal Housing Administration, St. Louis, Mo.* "Revised February 15, 1937." This is the first stand-alone edition of the *Minimum Construction Requirements* which, in 1958, become the *Minimum Property Standards*. Similar to the *Property Standards*, each insuring office made slight changes to the FHA master copy.

This early edition of the *Minimum Construction Requirements* is 17 pages in length and covers the following topics:

- Excavation; Masonry (General, Footings, Foundations, Exterior Walls, Chimneys, Cement floors, driveways, and walks)
- Dampproofing
- Structural Steel and Iron
- Lumber
- Termite Protection
- Framing (Floors and roofs, Exterior Walls, Spans [added ca. 1938], Interior Partitions)
- Miscellaneous
- Roof Coverings
- Sheet Metal
- Lathing
- Plaster Work
- Stucco
- Painting
- Electric Work
- Plumbing
- Heating
- General
- Full-age illustration containing footing, chimney, sill, and framing details.

The preface states:

“1. The requirements contained herein provide for a Minimum Standard of Construction for properties offered as security for an insured mortgage and shall apply to all new construction on which the mortgage is insured by the Federal Housing Administration.

“NOTE. These requirements do not eliminate the necessity of providing complete specifications in connection with new construction.

“2. Strict compliance the Local Building Code Requirements and Sanitary Regulations, together with the provisions contained in the specifications submitted will be required in all cases. It is understood that the requirements set forth herein are purely *minimum*. These requirements are not to be built down to but form a basis to build up from, and the Administration will recognize and give credit to construction that exceeds these Minimum Construction Requirements. The Minimum Construction Requirements shall be applied—

- (a) When the requirements contained in the specifications submitted are not specific or are lower than those contained in the Minimum Construction Requirements
- (b) When the requirements of applicable Building Codes and Regulations are of a lower standard than those contained in the Minimum Construction Requirements.
- (c) Where there are no existing Local Building Codes and Regulations.”

— 1937 (date varies among FHA insuring offices). ***Minimum Construction Requirements for New Dwellings. Federal Housing Administration, Indianapolis, In.*** “Revised December 1, 1937.” Revised edition of the MCR for the Indianapolis office.

“The MCR has been increased to 24 pages plus a full page of construction details, with virtually the same subject headings and content as above, but with a greatly expanded span section under Wood Framing and minor expansions of most other headings. Span tables have become a separate heading.

“In the Baltimore FHA office, the first *Minimum Construction Requirements* was issued on May 1, 1937. It was reissued on August 1, 1938, August 15, 1939, and February 15, 1941. The number of pages was 21 for the 1937 edition and 25 for the ones that followed. Beginning in 1940, a note on the inside front cover stated, ‘For requirements applying to single-family 1-story detached dwellings, see “Supplemental Property Standards and Minimum Construction Requirements for [state or district insuring office].”’

The state and district FHA insuring offices seem to have adopted their first edition of the MCR in 1937 or 1938 and republished it, with minor revisions and local variations, every year or so until 1940 or 1941.

All were printed by the Government Printing Office.

A second paragraph has been added to the standard preface, as follows:

“2. Because of the wide variation in building code requirements covering materials and specific features in building construction, no attempt has been made to make the provisions contained herein comply with building code regulations. The Federal Housing Administration has used the recommendations of the National Bureau of Standards, United States Department of Commerce; the Forest Products Laboratory, United States Department of Agriculture; and the Public Health Service, United States Treasury Department, as a basis for setting up these requirements. The requirements contained herein are considered necessary to produce a well-constructed dwelling which will serve as sound security for a long-term mortgage loan. However, strict compliance with the local building code requirements and sanitary regulations, together with the provisions contained in the specifications submitted, will be required in all cases where such requirements, regulations, and provisions are of a higher standard than those contained herein.”

National Housing Act Amendments create Federal National Mortgage Association and authorize FHA insurance on 90-percent financing with a term of up to 25 years for low-cost, owner-occupied properties.

January 1942. *Master Form, Property Standards and Minimum Construction Requirements for Dwellings.* The one FHA master copy in the HUD Library, “Revised January 1942.” Contained:

Foreword
Property Standards
Minimum Construction Standards
Drawings and Specifications Requirements
Appendices (Span tables, Definitions, Standards)
Suggested Construction Details.

This publication combines, for the first time, the *Property Standards* and the *Minimum Construction Requirements* into one document.

— 1942 (date varies among FHA insuring offices). ***Property Standards and Minimum Construction Requirements for Dwellings Located in the Southern California District.*** “Revised January 1, 1942.” Typical edition. Apparently based on the January 1942 FHA master form.

May 1942. *Minimum Requirements for Rental Housing Projects.* A spin-off of the MCR, which previously applied only for dwellings. This may have been the beginning of the multifamily requirements.

January 1943. *Amendments to the Minimum Property Requirements for All New Dwellings.*

“Revised January 21, 1943.” Amends the MCR for materials in short supply. The preface states:

“Consistent with the objectives of the War Housing Construction Standards, revised January 21, 1943, issued jointly by the War Production Board and the National Housing Agency, the following amendments to the Federal Housing Administration Minimum Construction Requirements supersede the Amendments to the Minimum Construction Requirements issued under date of November 18, 1942 and apply to all new construction offered as security for insured mortgages under the National Housing Act. These amendments shall apply on to those phases of the construction which are affected by the shortages of critical materials and they supercede all conflicting requirements currently effective. The current local Minimum Construction Requirements remain in effect with respect to all phases of the construction which are not so affected.”

September 1945. Master Draft of Proposed Minimum Property Requirements for Properties of One or Two Living Units. “Revised September 1945.” The first post-war master form. Puts FHA Property Standards and Minimum Construction Requirements into two sections titled “Minimum Planning Requirements” and “Minimum Construction Requirements.” References three new documents, “Minimum Property Requirements for Properties of Three or More Living Units,” “Minimum Subdivision Regulations,” and “Minimum Street Improvement Requirements for Residential Developments.” Contains detailed, prescriptive construction requirements. Unnumbered; about 180 pages, type-written.

— 1946 (date varies among FHA insuring offices). **Minimum Property Requirements for Properties of One and Two Living Units Located in the State of Tennessee, Memphis Insuring Office.** “Revised December 1946.” About 180 pages (typewritten). Makes reference to “Minimum Property Requirements for Properties of Three or More Living Units” and “Minimum Street Improvement Requirements for Residential Developments.” Typical early post-war edition that combines the former Property Standards and Minimum Construction Requirements into one document.

July 1946. Minimum Property Requirements for Properties of Three or More Living Units. Revised October 1946 and August 1948. Probably the first multifamily edition.

August 1947. Significant Variations of the Minimum Property Requirements of FHA Insuring Offices. August 1947. Explains variations “for manufacturers marketing on a national basis,”

apparently in response to post-war interest in industrialized housing.

Housing Act of 1948 allows the FHA to insure mortgages with only 5 percent down and with 30-year terms on low cost homes.

Housing Act of 1949 sets the goals of “a decent home and a suitable environment” for every U.S. family. Title I creates the urban renewal program. Title V creates the basic rural housing program under the Farmers Home Administration.

— 1949 (date varies among FHA insuring offices). **Minimum Property Requirements for Properties of One and Two Living Units Located in Six Southern States: Georgia, Alabama, South Carolina, North Carolina, Mississippi, and Tennessee.** “Revised January 1949.” About 220 pages. Each edition now covers several states—the beginning of greater uniformity in requirements—and were typically revised every few years from 1946 or 1947 through the 1950s.

Housing Act of 1954 liberalizes terms for FHA-insured mortgages.

November 1958. Minimum Property Standards for One and Two Living Units. First 8-1/2x11" format, 315 pages. The MPR is now renamed the MPS and for the first time covers the entire country. Regional editions have been eliminated. The foreword and introduction state:

“These new Minimum Property Standards are intended to encourage new methods and new ideas which will result in better and more economical housing for American families.

“FHA is indebted to many industry leaders and professional advisors for their assistance in preparing these Minimum Property Standards and we gratefully acknowledge our appreciation.”

“The purpose of the National Housing Act, as stated in the preamble, is ‘to encourage improvement in housing standards and conditions, to provide a system of mutual mortgage insurance, and for other purposes.’

“In pursuance of this purpose, the Federal Housing Administration has established these Minimum Property Standards. They are intended to obtain those characteristics in a property which will assure present and continuing utility, durability and desirability as well as compliance with basic safety and health requirements. To provide this assurance, these standards set forth the minimum qualities considered necessary in the planning, construction and development of the property which is to serve as security for an insured mortgage.

“As these standards define the minimum level of quality acceptable to FHA, a property complying with them is considered technically eligible in all FHA insuring office

jurisdictions. Other factors, however, such as the appropriateness of the dwelling to the site and to the neighborhood and the anticipated market acceptance of the property as a whole must also be considered in FHA underwriting analysis.

“Planning and construction which exceed the minimums set forth herein and which will result in increased marketability of the property or which will reduce the expense of maintenance or early replacement of equipment, will be reflected in the FHA estimate of value.

“The standards are based upon extensive study by the technical staff of FHA headquarters and field offices, and upon recommendations of builders, architects, engineers and material producers. While they represent good current practice in residential technology, they may be modified in the future as additional data and experience are gained.

“The standards are not intended to serve as a building code. Such codes are primarily concerned with factors of health and safety and not the many other aspects of design and use which are included herein as essential for mortgage insurance determinations.”

March 1959. Review of Minimum Property Standards for One and Two Living Units. Federal Housing Administration. Explains why the state and regional editions have been combined into a single national standard, and why the name has been changed from MPR to MPS. The introduction states:

“Notice. It is not intended that this “Review” be used as a substitute for the Minimum Property Standards for One and Two Living Units. Its purpose is to help explain the reasons for the major items which are changes from the old MPR or additions which were considered to be essential.

“In 1951 there were 51 separate editions of the MPR’s in use. By 1956 the number had been reduced to 21. Even that was too many. It was not only hard on builders to have 21 sets of requirements—it was hard on the FHA itself to make consistent interpretations, keep them all revised and to stock the various quantities needed.

“As builders increased the scope of their operations, distances began to shrink. Local customs began to be absorbed in a more general pattern of construction practices. The multiple MPR’s were unsatisfactory on this account, and in addition they were out of date in many respects as well as being deficient or incomplete in others. They needed to be consolidated, clarified, and updated.

“In view of all this, the PHA Commissioner ordered the technical standards staff in the Washington office to restudy the existing requirements and to prepare a set of standards that would apply throughout the United States. He pointed out that this would not necessarily mean raising or lowering the requirements then in effect. The main thing was to clarify and standardize the requirements to make them more effective in helping the industry to build good homes.

“In spite of all the progress and changes that have taken place in homebuilding, it is still governed to some extent by local custom and tradition. Things are often done in a certain way simply because that is the way they always have been done. The old accepted ways are hard to

dislodge, and they often stand in the way of new technical developments. This was one of the difficulties faced by FHA in undertaking to rework its requirements and make them uniform.

“It was decided that the best way to do the job would be to forget the old MPR’s and make a completely new start.

“Basic Determinations:

“1. One set of standards would be established for use anywhere in the United States.

“2. The title would be “Minimum Property Standards”, since standards of performance were the aim and purpose.

“3. The standards would define the minimum level of quality acceptable to FHA and to VA, keeping in mind the dual objective of reaching the needs of purchasers in low income brackets and at the same time assuring the purchaser full value for his dollar.

“4. The standards would be designed for use by both small and large builders. They would cover everything necessary, and they would be spelled out so clearly that there would be the least possible need for interpretation and the least possible chance of misinterpretation.

“5. In arrangement as well as content, the book would be planned for the convenience of those who would use it most—builders, architects, and engineers.

“6. Generally accepted standards developed by nationally recognized authorities would be relied on for determining whether materials were suitable, how they should be tested and assembled, and how they should be expected to hold up when in use.

“7. Illustrations should be used whenever they would help to explain a standard.

“8. Requirements that would apply only in certain localities would be omitted.

“Public Cooperation:

“The Commissioner appointed a small task force of FHA technicians to devote their full time to preparing the new standards. He also appointed an advisory committee representing a number of industry groups.

“Setting up a set of standards for nationwide use was a job that needed the knowledge and experience of the entire homebuilding industry. That knowledge and experience were sought and were made available very generously.

“The FHA task force began by codifying the 21 sets of minimum property requirements in order to see where they differed from one another and why. A working committee of Chief Architects from each of the six FHA zones of operation in the field was called in to headquarters for two three-week sessions of discussion and suggestion.

“The FHA task force sought to consult every group in the construction field. They consulted all the FHA field offices, gathering from the comments and recommendations based on their experience of more than 20 years in the housing field. A group of Chief Architects from the field offices of FHA who were called into Washington to assist in the initial development of the new standards were appointed technical advisors at the Women’s Congress on Housing in 1956. The discussions and recommendations of this Congress resulted in more complete understanding of the desires, needs and problems of the homeowner and assisted in determining how they could be related to any standards set up by FHA.

Subsequently another committee of women representing

the consumers was invited to submit their recommendations. The task group consulted materials manufacturers, architects and engineers and over 150 trade associations. In fact, they sought the advice of any group that had studied a particular phase of dwelling construction or for any other reason might have something to contribute. More than 2,000 copies of the third draft of the proposed standards were distributed, and comments were received from most of the recipients.

“Meanwhile, the National Association of Home Builders had appointed a Special Technical Committee which met in July, September, and November, 1957, to review comments resulting from scores of meetings on the proposed standards held by local builders associations throughout the country. In October 1957, and in January and April, 1958, FHA officials met with the NAHB Committee to go over, step by step, the comments of the local builder groups and the recommendations of the NAHB Committee.

“Altogether 4 drafts of the standards were prepared. The final result is a set of standards for which the industry itself is largely responsible. It represents an outstanding cooperative effort by industry and Government.

“The same spirit of cooperation will bring about a smooth change-over from the old MPR to the new Minimum Property Standards.

“The present Minimum Requirements for Low Cost Housing under the National Housing Act will continue in effect until July 1, 1959, by which time a revision will have been released relating them to the new Minimum Property Standards.”

May 1963. *Minimum Property Standards for Urban Renewal Rehabilitation, One to Eleven Units.* An MPS version that existed during the 1960s. Revised June 1966. Later changed to *Minimum Design Standards for Rehabilitation of Residential Properties*. No longer published.

Housing and Urban Development Act of 1965 establishes HUD.

HUD reorganization of 1969-1970 ends the FHA’s long tradition as an independent agency with a separate staff and autonomous budget authority.

1973. Minimum Property Standards published in four volumes: Volume 1, *MPS for One and Two Family Housing*; Volume 2, *MPS for Multifamily Housing*; Volume 3, *MPS for Care-Type Housing*; Volume 4, *Manual of Acceptable Practices to the HUD MPS*. The new Manual of Acceptable Practices is extensive and “provides design and construction methods which have been demonstrated to perform satisfactorily in residential construction in most parts of the country.” Each MPS volume had this foreword:

“A Congressionally directed objective of the Department of Housing and Urban Development is to encourage improvement in housing and residential land development

standards and conditions. The publication of these revised Minimum Property Standards provides the Department for the first time with a single unified set of technical and environmental standards. They define the minimum level of acceptability of design and construction standards for low-rent public housing as well as housing approved for mortgage insurance.

“HUD is indebted to the many organizations of the housing industry, to the other Federal and State agencies and to individual professional advisors for their valuable assistance in reviewing and commenting on the drafts of these MPS, and gratefully expresses appreciation.”

1978. *Public Law 95-619 adds energy performance requirements to the MPS to achieve a significant increase in the energy efficiency of new construction.* In **1983, *Pub. L. 98-181*** amends this, requiring that the energy performance requirements for residential housing be at least as effective as those in the MPS in effect on September 30, 1982.

“12 USC Sec. 1735f-4. (a) To the maximum extent feasible, the Secretary of Housing and Urban Development shall promote the use of energy saving techniques through minimum property standards established by him for newly constructed residential housing, other than manufactured homes, subject to mortgages insured under this chapter. Such standards shall establish energy performance requirements that will achieve a significant increase in the energy efficiency of new construction. Such requirements shall be implemented as soon as practicable after November 9, 1978. Following November 30, 1983, the energy performance requirements developed and established by the Secretary under this subsection for newly constructed residential housing, other than manufactured homes, shall be at least as effective in performance as the energy performance requirements incorporated in the minimum property standards that were in effect under this subsection on September 30, 1982.”

1979. *Minimum Property Standards, One and Two Family Dwellings*, HUD Handbook 4900.1. 196 pages plus appendices. The foreword states:

“These Minimum Property Standards are intended to provide a sound technical basis for the construction of housing under the numerous programs of the Department of Housing and Urban Development. The standards describe those characteristics in a property which will provide present and continuing utility, durability, economy of maintenance, and a safe and healthful environment.”

August 1980. *Recommendations for Solutions to Permit Compatible Use of the One and Two Family Code and the Minimum Property Standards.*

National Association of Homebuilders Research Foundation. This report to HUD, quoting extensively from a 1978 report by a HUD Task on Housing Costs, states (with Task Force quotes in italics):

“The MPS originated as a set of mortgage insurance

criteria to assure the health, safety, durability and marketability of homes financed under FHA programs. In the past, much of the housing in the U.S. was produced under these programs. In the post World War II period up to the early 1960's a majority of middle priced housing was sold with FHA-insured mortgages. The added security afforded to the lenders made long term, low down payment mortgages available to millions of Americans who could not otherwise have afforded a home. The program was self supporting through a small surcharge in the mortgage payment.

"During this period the Minimum Property Requirements (MPR), later called the Minimum Property Standards (MPS), played a major role in assuring the construction of sound, marketable housing. It also had a tremendous influence on establishing and standardizing sound building practices beyond FHA jurisdiction. At the time, the MPR represented the first complete set of practical building standards in the U.S. It was essentially a textbook for home building with detailed instructions and illustrations for all phases of construction, written in simple language and logical format for the home building industry. Many builders were influenced to alter their practices, resulting in better homes at less cost. Lenders were better able to judge the soundness and value of homes for mortgage applications. Building code groups modified their requirements to resemble the superior technical provisions of the MPS. Manufacturers were able to standardize products and market them nationally, and FHA approval of a product became paramount to market acceptance."

"In fact, the earlier FHA program was so successful that the private financial sector became convinced that they could assume the same risks on a profitable basis. At the same time, building codes were becoming more responsive, and most communities who previously had an inadequate code or no code at all were adopting an updated building code based on a national model code. Meanwhile, building methods, materials and products had become increasingly standardized across the U.S. In short, there was a new climate portending a long term decline in FHA activity in home building, and a steadily decreasing role for the MPS.

"The HUD Task Force on Housing Costs in their final report in May 1978 recognized the adverse cost impact of duplicative and conflicting regulations on housing costs. The task force identified *'the proliferation of government regulations (at all levels), many of which are unduly burdensome...'* as *'factors in escalating the costs of financing, land development, housing construction and rehabilitation, supporting amenities, and occupancy.'* A *'major solution'* to these problems was *'a blunt attack on poorly conceived and cost-inducing regulation.'* It was further noted that *'the federal government cannot expect state and local governments to improve their methods of operation, nor can it hope for massive private participation until HUD and its companion agencies sweep their houses clean of excessive requirements, dilatory processing, and inefficient management.'*

"The Task Force recommended, *'At a minimum, the MPS should be reconciled with a revised nationally recognized consensus version of the 1-2 Family Dwelling Code. Furthermore, a housing unit which is structurally and*

mechanically sound and which conserves energy can be more basic in terms of space and amenities than current MPS allow. The design requirements imposed through the MPS are excessive and inflexible. It is clear that the MPS, as currently written and interpreted, does not enable developers to construct or renovate housing to meet the marketable shelter needs of all possible consumers. We also find it desirable for HUD to explore ways of adjusting the MPS to the provisions of revise 1-2 Family Dwelling code...' It was recommended that *'HUD should revise the MPS to allow design and construction or renovation of otherwise marketable low-priced basic, starter, unusual, or different types of housing, both single-Family and multifamily; and study current MPS requirements and immediately remove unjustifiable cost-increasing technical and design requirements from the MPS.'* Further, it was noted that Section 101(a) of the Housing Act of 1949 requires the Secretary to consider *'the elimination of restrictive practices which unnecessarily increase housing costs and encourage code or land use control revisions which cut the cost of housing.'*

"It was generally concluded that the 1-2 Family Dwelling Code offers a viable and logical alternative to MPS health/safety requirements in its present form, and should be accepted as such by HUD as soon as possible."

"The remaining portion of the MPS dealing with other requirements related to mortgage insurance, various Federally mandated items or other HUD operations should also come under scrutiny... Regulations pertaining to such areas as appearance, livability and marketability represent arbitrary value judgments. The Minimum Property Standards no longer represent minimum standards for adequate housing. Such arbitrary provisions have tended to escalate in recent years, partly through a narrow interpretation of HUD's mandate to improve the "quality of housing". A broader interpretation of this mandate, however, would hold that the overall quality of housing can be improved by making affordable housing available to an increasing proportion of the populace who cannot now afford a home. Many of these people are less concerned with the level of quality, features and amenities than with the availability of a clean, safe and sound home that they can afford. The effect of unnecessary quality-related requirements is to deny an adequate home to many of these people. The alternative is substandard housing."

1981. Issue Paper on the Minimum Property Standards. From "Selected Background Papers: Housing Construction Codes and Standards." HUD Office of Policy Development and Research. November 1981. Discusses the background of the MPS and presents three options for action, with pros and cons for each: (1) Do nothing; (2) Make the MPS identical to the CABO One and Two Family Code; and (3) Phase out the MPS and depend entirely on the local codes and marketplace. The full text of this paper is presented in Appendix B.

1982. Minimum Property Standards, One and Two

Family Dwellings, HUD Handbook 4900.1, 1982 Edition. The introductory statement is identical to that of the 1979 edition, but the foreword states that One- and Two-Family MPS will be phased out.

“This revision of the Minimum Property Standards for One- and Two-Family Dwellings will be the last revision. The content of this revision is reduced in substance and in bulk. It reflects the policy of the Department to move away from imposing Federal standards where market forces, local requirements and nationally recognized standards developed in the private sector serve to achieve the same goals.

“Thus, many of the ‘livability and marketability’ provisions have been eliminated, provisions from the One- and Two-Family Dwelling Code developed by the Council of American Building Officials replace analogous MPS requirements, and quotations from readily available standards are referenced rather than repeated.

“This revision is a step toward phasing out the Minimum Property Standards for One- and Two-Family Dwellings because they have largely accomplished their purpose. The Department is indebted to the many groups whose recommendations support our conclusion that both the Department’s and the home buyers’ interest can be protected with less Federal intervention.”

1983. Public Law 98-181, title IV, Sec. 405, permits HUD to require that HUD-insured housing comply with model or local building codes, effectively allowing the elimination of the MPS for One- and Two-Family Dwellings:

“12 USC Section 1735f-4. (b) The Secretary may require that each property, other than a manufactured home, subject to a mortgage insured under this chapter shall, with respect to health and safety, comply with one of the nationally recognized model building codes, or with a State or local building code based on one of the nationally recognized model building codes or their equivalent. The Secretary shall be responsible for determining the comparability of the State and local codes to such model codes and for selecting for compliance purposes an appropriate nationally recognized model building code where no such model code has been duly adopted or where the Secretary determines the adopted code is not comparable.”

1984. Minimum Property Standards for Housing, HUD Handbook 4910.1, 1984 Edition with Changes. With this edition, the MPS for One- and Two-Dwellings and the MPS for Multifamily Housing have been combined into one document, with the MPS for One- and Two-Dwellings renamed “Rules for One and Two Family Dwellings” and consigned to a 31-page Appendix K. Most of the material in Appendix K addresses ways of determining which model and local codes can be used.

1994. Minimum Property Standards for Housing,

HUD Handbook 4910.1, 1994 Edition. This is the current edition of the MPS, as published in the Code of Federal Regulations at 24 CFR 200.925 and 200.925a–e. This edition changes the name of Appendix K to “Minimum Property Standards for Property which is not Multifamily or Care-Type Property” and reduces Appendix K’s size to 26 pages. Appendix K is identical to the 1984 edition except that the reference standards are updated, the term “physically handicapped” is changed to “disabled,” FEMA requirements under the National Flood Hazard Program are added, and a reference to the Model Energy Code replaces an extensive energy conservation section.

The foreword and introduction to the 1994 MPS state:

(Foreword:) “These Minimum Property Standards reference nationally recognized model building codes for concerns relating to health and safety. Locally adopted building codes can be used for the same purpose when they are found acceptable by the HUD field office.

“These standards establish the acceptability of properties for mortgage insurance, and will further the goal of a decent and suitable living environment for every American family. These standards will protect the Department’s interest by requiring certain features of design and construction which are not normally required by state and local codes. These requirements will insure the durability of the project for the life of the mortgage.”

(Introduction:) “These minimum Property Standards (MPS) are intended to provide a sound technical basis for the construction of housing under the numerous programs of the Department of Housing and Urban Development.....Chapters 1 thru 6 and Appendices A thru J now apply to multifamily and care-type housing. Appendix K applies to one and two family dwellings.”

May 2001. International Code Council, Inc., submits its ***Proposed 2001 Edition of the Minimum Property Standards for Housing***, dated May 3, 2001. Proposed changes to Appendix K mainly have to do with updating referenced codes and standards, in almost all cases to the International Residential Code, 2000 Edition.

Appendix B

1981 HUD “ISSUE PAPER ON THE MINIMUM PROPERTY STANDARDS”

From “Selected Background Papers: Housing Construction Codes and Standards,” HUD-2451, November 1981

Abstract

The history and influence of the HUD single family MPS is described, followed by a discussion of the development of the One and Two Family Dwelling Code. The paper then discusses the MPS in transition and recommendations for reliance on local codes and the marketplace to govern the design and construction of insured housing in the same way as housing which is conventionally financed.

Finally, the paper describes the pros and cons of various degrees of Federal regulations vs. local control over all housing design and construction.

A. Statement of Issues

1. What is the current status of standards pertaining to single family and low and high rise multifamily? What is the timetable for changes to these? To what extent does HUD plan to rely on private sector codes and standards?
2. Are the MPS minimum in the sense of meeting health and safety concerns? If not, where are they standards more stringent, and for what purposes (e.g. marketability)?
3. To what extent do underwriting considerations dictate the content of the MPS and why?

B. Analysis

1. Background of the Minimum Property Standards (MPS)

In order to understand the current status of and possible future options regarding the Minimum Property Standards (MPS), it is appropriate to begin with a short summary of its original purpose and subsequent development.

The MPS was an integral part of the Federal Government’s efforts to rescue and restructure the nation’s housing markets in the 19030’s. A cornerstone of these efforts was the establishment of the Federal Housing Administration in the “National Housing Act of 1934”. The major purpose of the Federal Housing Administration (FHA) was to reduce lenders’ risks by providing mortgage insurance on residential loans. At the same time, this policy would assist homeowners and stimulate construction because these insured loans were to have low down payments and be self-amortizing over period as long as 30 years. Proper to FHA, housing was generally financed with short-term (3-5 years), high down payment (typically 50%), non-amortizing loans with the principal due at the end of the term.

In order to induce lenders to make this radically new type

of loan, the Federal government undertook several steps, including the development of the MPS. The main reference in law for the MPS was the opening in housing standards and conditions, to provide a system of mutual mortgage insurance, and for other purposes.” The MPS was established to assure lenders about the quality of the housing which they were being asked to finance in this entirely new way, as well as to establish the soundness of the FHA insurance fund. More specifically, the MPS was developed to meet the requirements of the 1934 legislation to insure housing which was “decent, safe and sanitary.” A national standard was used because of the uneven quality of codes and building inspection process in many areas and the absence of any codes in other areas at that time.

Through the establishment of the Federal National Mortgage Association in 1938, lenders across the country had a mechanism to buy and sell FHA mortgage loans. The MPS, both in terms of its “health and safety” provisions and its various underwriting criteria, provided a means by which lenders buying loans on properties outside of their immediate areas could judge the properties to be acceptable from an underwriting perspective.

Finally, the MPS helped assure that FHA-insured properties, when foreclosed and acquired, could be resold at a minimum loss to the insurance fund.

The initial MPS document was issued in 1935; by 1940 multifamily projects were covered in a separate publication. Since this time, the MPS has been revised several times and its coverage and requirements have generally increased as part of the general Federal mandate to improve the quality of the nation’s housing stock. Today, the MPS applies not only to FHA-insured housing, but officially extends to HUD’s public housing and other subsidy programs and to the Veterans Administration and Farms Home Administration housing programs. Together, this coverage accounts for about 20% of all new housing starts. In addition, the MPS has over time come to be used as a reference standard for many conventional financed housing units; many of its provisions have been incorporated into State and local building codes and generally accepted appraisal and underwriting procedures.

2. Background of the One and Two Family Dwelling Code

Whereas the MPS was created to meet the requirements for “decent, safe and sanitary” housing, building codes had been developed under the obligations of the states to protect the “health, safety and public welfare” of their citizens. Generally this obligation was delegated by the States to the local governing bodies. In this process of code development, and especially under the several model building codes, housing design and construction received little specific attention.

Since 1934, suburban areas outside the jurisdiction of the

cities have enjoyed a period of continuing growth and expansion, often in the absence of local regulation. Typically, when an area grew and became politically sophisticated it would develop zoning regulations and adopt a building code. These codes covered all types of buildings, with very little attention devoted specifically to one and two family housing. In addition, each jurisdiction developed its own code based on local conditions; even when model codes were adopted dependence on interpretation by the local inspectors has led to vast differences in requirements from one community to the next.

This code confusion, especially among home builders who were beginning to broaden their activities and build under several governmental jurisdictions, brought the three nationally recognized model code bodies together in 1970 to create the One and Two Family Dwelling Code. Much of its content was drawn from the MPS. For underwriting purposes, over a period of time HUD had incorporated more and more requirements in the areas of durability and marketability. For instance, the MPS has emphasized the need for at least minimum level of kitchen cabinet spaces, storage space in closets, and other space needs, none of which has any relationship to health and safety. While the One and Two Family Dwelling Code is primarily a health and safety code, it also contains sections above and beyond its health and safety code, it also contains sections above and beyond its health and safety provisions, such as minimum room size requirements. This may be an acceptance of a broader interpretation of the term “public welfare”, or it could be an adoption of some of the more readily acceptable marketability features from the MPS.

The One and Two Family Dwelling Code has not yet been widely adopted by local governments, but an NAHB Research Foundation survey found that, of the houses built in 1978, 28 % were constructed in jurisdictions which had adopted the code.

3. The MPS in Transition

The single family MPS has become, either directly or indirectly, a widely used document. In addition to its use for Federal programs it is widely referenced by home builders, lending agencies, and manufacturers of residential building products across the country. It is also widely copied by local authorities, insurance companies, and banks in writing their codes and standards requirements for construction under their own programs. For example the township of Levittown, New Jersey, during its construction period in the late fifties, adopted the HUD single family MPS as its dwelling code.

Because of this widespread influence over virtually all housing built during the last 25 or 30 years, a market has developed whereby the consumers have come to expect a certain size shape, and amenity level which would undoubtedly continue even if the MPS were to cease to exist. In fact, the buying public now demands most of the underwriting, or marketability, features required by the current MPA. This is not to state that it has become an

altogether redundant document, but rather to say that in those jurisdictions where the local codes are adequately enforced they have already, in effect, replaced the necessity for Federal enforcement of an additional layer of standards. The MPS has over the period of its 45 years fully accomplished the purposes for which it was developed. The country is now ready for a transition from the MPS to dependence upon the codes and the demands of the market.

An analytical comparison of the HUD single family MPS and the One and Two Family Dwelling Code performed by the NAHB Research Foundation concluded that the Code offers a viable and logical alternative to the MPS health and safety requirements in its present form, and should be accepted as such by HUD.

C. **Options**

Three alternatives seem to be available:

Option 1. Do nothing. Continue using the MPS as in the past.

Pros

– This is the easy way. No further debate or negotiations are necessary on HUD’s part.

– The document is already well-known and used by the industry. No adjustments to a new document are necessary.

– HUD central office and field office staffs are not in place for revision and enforcement.

Cons

– Revision and enforcement require a continuing involvement of HUD staff at both central office and field office levels.

– Builders must conform to both the MPS and local codes if they build VA, FmHA, or HUD insured housing.

Discussion

This option ignores the recognized need for reducing regulation at the Federal level. Because of the high degree of visibility and the size of the MPS, the administration could be criticized for not tackling an obvious regulatory issue.

Option 2. Revise the MPS to make it identical to the One and Two Family Code, which essentially means that HUD would adopt the One and Two Family Dwelling Code in place of the MPS. This allows the market to regulate the insurance standards.

Pros

– Maintenance of a standard would no longer require a

large HUD staff.

- Builders would be governed by only one code in areas which had adopted the One and Two Family Code.

- Lower building costs could result from use of the One and Two Family Dwelling Code, which is being kept up to date by CABO.

Cons

- Builders in local jurisdictions which have not adopted the One and Two Family Dwelling Code still must meet two sets of requirements.

- Would require legislation to eliminate MPS requirements now mandated by the Congress such as the energy saving requirements and the technical suitability of materials program.

Discussion

Reliance upon the code and the marketplace for HUD insured housing could be realized in those areas of the U.S. where the local governments have adopted the One and Two Family Dwelling Code.

Option 3. Phase out the MPS and depend entirely on the local codes and the marketplace.

Pros

- Gives local communities more control over their own dwelling construction.

- Releases HUD responsibility for maintaining the MPS.

Cons

- Code uniformity might be slow in coming because of differing local requirements.

- Would require legislation to eliminate MPS requirements now mandated by the Congress such as the energy saving requirements and the technical suitability of materials program.

- Must confront the FmHA and VA problems.

Discussion

This option would probably be slow in progressing to the ultimate goal of complete phase-out. The health and safety provisions would be removed in favor of acceptable local code provisions, along with removal of those underwriting requirements that are traditionally controlled by the local markets. One major problem with this option is that there would be no standard available in areas without building codes where housing is now being built. Some special procedure might be required in such areas.

Current Status

Modest revisions to the single family MPS were published for proposed rule making in the Federal Register in September, 1980. Extensive revisions to the proposed rule are now in process in response to the comments received following that initial publication. Proposed changes resulting from those comments would delete large portions of the MPS in favor of letting the local market conditions prevail where possible. Other changes would remove these portions duplicated by the One and Two Family Dwelling Code. The final rule will be published pending a decision on the need for an environmental impact statement. The discussions in this paper reflect the changes now being proposed for the single-family MPS.

Appendix C MPS APPENDIX K

“Minimum Property Standards for Property Which Is Not Multifamily or Care-Type Property”

Note: Shaded areas denote instructions to HUD field offices for determining code comparability or contain supplemental code requirements. Italicized areas denote information about the Technical Suitability of Products (TSP) Program. Unshaded areas contain the vestiges of the former MPS for one- and two-family dwellings and constitute the last remaining non-code requirements:

Sec. 200.926 Minimum Property Standards for One- and Two-Family Dwellings

(a) Construction Standards.

(1) Applicable structures. The standards identified or contained in this section and in Secs. 200.926a-200.926e, apply single family detached homes, duplexes, three-unit homes, and to living units in a structure where the units are located side-by-side in town house fashion. Section 200.926d(c)(4) also applies to four-unit homes.

(2) Applicability of standards to new construction. The standards referenced in paragraph (a)(1) of this section are applicable to structures which are:

(i) Approved for insurance or other benefits prior to the start of construction, including approval under the Direct Endorsement process described in Sec. 203.5 of this chapter, or under the Lender Insurance process described in Sec. 203.6 of this chapter;

(ii) Approved for insurance or other benefits based upon participation in an insured warranty program; or

(iii) Insured as new construction based upon a Certificate of Reasonable Value issued by the Department of Veterans Affairs.

(b) Conflicting standards.

The standards listed in this subpart requirements contained in Sec. 200.926d do not preempt local or State standards, nor do they alter or affect a builder's obligation to comply with any local or State requirements. However, a property shall be eligible for benefits only if it complies with the requirements of this subpart, including any referenced *the listed standards, except when such requirements conflict with local or State requirements, in which case the stricter requirements shall apply.* When any of the requirements identified in Sec. 200.926c 200.926b are in conflict with a partially accepted local or state code, the conflict will be resolved by the HUD Field Office servicing the jurisdiction in which the property is to be located.

(c) Standard for Evaluating Local or State Building Codes.

The Secretary shall compare a local building code submitted under paragraph (d) of this section or a State code to the list of construction related areas contained in Sec. 200.926a.

(1) A local or State code will be accepted if it regulates each area and subarea on the list.

(2) A State or local building code will be partially accepted if it regulates most of the areas on the list. However, no code may be partially accepted if it fails to regulate the subarea for seismic design (see Sec. 200.926a(c)(5)), or if it fails to regulate subareas in more than one of the following major areas listed in Sec. 200.926a: fire safety, light and ventilation, structural loads and seismic design, foundation systems, materials standards, construction components, glass, mechanical, plumbing, and electrical.

(3) For purposes of this paragraph, a local or State code regulates an area or subarea if it establishes a standard concerning that area or subarea. However, for earthquake loads (see Sec. 200.926a(c)(5)), ASCE 7-88 is mandatory.

(d) Code Selection.

Any materials required to be submitted under this section must be submitted by the time the lender or other interested party applies for mortgage insurance or other benefits.

(1) Jurisdictions without previously accepted building codes. The following submission requirements apply to lenders and other interested parties in jurisdictions without building codes, jurisdictions with building codes which have never been submitted for acceptance, and jurisdictions with building codes which previously have been submitted for acceptance and have not been accepted or partially accepted by the Secretary.

(i) In jurisdictions without local building codes: (A) If the State building code is acceptable, the lender or other interested party must comply with the State building code and the requirements of Sec. 200.926d; (B) If the State building code is partially acceptable, the lender or other interested party must comply with: (1) The acceptable portions of the partially acceptable code; and (2) Those portions of the CABO One and Two Family Dwelling Code designated by the HUD Field Office in accordance with Sec. 200.926c; and (3) The requirements of Sec. 200.926d.(C) If there is no State building code or if the State building code is unacceptable, the lender or other interested party must comply with: (1) The CABO One and Two Family Dwelling Code as identified in Sec. 200.926b(a); and (2) The requirements of Sec. 200.926d.

(ii) In jurisdictions with local building codes which have never been submitted for review, lenders or other interested parties must: (A) Comply with the requirements of paragraph (d)(1)(i) (A), (B) or (C) of this section, as appropriate; or (B) Request the Secretary's acceptance of the local building code in accordance with paragraph (d)(1)(iv) of this section.

(1) If the Secretary determines that the local building code is unacceptable, then the lender or other interested party must comply with the requirements of paragraph (d)(1)(i)

(A), (B) or (C) of this section as appropriate.

(2) If the Secretary determines that the local code is partially acceptable, then the lender or other interested party must comply with:

(i) The acceptable portions of the partially acceptable local code; and

(ii) Those portions of the CABO One and Two Family Dwelling Code designated by the HUD Field Office in accordance with Sec. 200.926c; and

(iii) The requirements of Sec. 200.926d.

(3) If the Secretary determines that the local code is acceptable, then the lender or other interested party must comply with the local building code and the requirements of Sec. 200.926d.

(iii) In jurisdictions with local building codes which previously have been submitted for review and which have been found unacceptable by the Secretary: (A) If the local code has not been changed since the date the code or changes thereto were submitted to the Secretary, the lender or other interested party must comply with the requirements of paragraph (d)(1)(i) (A), (B) or (C) of this section, as appropriate; or (B) If the local code has been changed since the date when the code or changes thereto were submitted to the Secretary, the lender or other interested party must submit a copy of all changes to the local building code, including all applicable service codes and appendices and a copy of the statute, ordinance, regulation or order making such changes in the code, which have been made since the date when the code or other changes thereto were last submitted to the Secretary. However, the lender or other interested party need not submit any part already in the possession of the HUD Field Office. Based upon the Secretary's determination concerning the acceptability of the local code as changed, the lender or other interested party must comply with the requirements of paragraph (d)(1)(ii)(B) (1), (2) or (3) of this section, as appropriate.

(iv) In order to obtain the Department's approval of a local code, the lender or other interested party must submit the following material to the HUD Field Office serving the jurisdiction in which the property is to be constructed: (A) A copy of the jurisdiction's local building code, including all applicable service codes and appendices; and (B) A copy of the statute, ordinance, regulation, or order establishing the code, if such statute, ordinance, regulation or order is not contained in the building code itself. However, the lender or other interested party need not submit any document already on file in the HUD Field Office.

(2) Jurisdictions with previously accepted or partially accepted building codes. The following submission requirements apply to lenders or other interested parties in any jurisdiction with a building code which has been accepted or partially accepted by the Secretary:

(i) The lender or other interested party shall submit to the HUD Field Office serving the jurisdiction in which the property is to be constructed: (A) A certificate stating that,

since the date when the code or any changes thereto were last submitted to the Secretary, the jurisdiction's local building code has not been changed; or (B)(1) A copy of all changes to the jurisdiction's building code, including all applicable service codes and appendices, which have been made since the date when the code or other changes thereto were last submitted to the Secretary. However, the lender or other interested party need not submit any part already in the possession of the HUD Field Office; and (2) A copy of the statute, ordinance, regulation, or order making such changes in the code.

(ii) If, based upon changes to the local building code, the Secretary determines that it is unacceptable, the lender or other interested party must comply with the requirements of paragraph (d)(1) (i)(A), (B) or (C) of this section, as appropriate.

(iii) If the local building code was previously found by the Secretary to be partially acceptable and there have been no changes to it or if the local building code was previously found by the Secretary to be partially acceptable and if, based upon changes to it, the Secretary determines that it is still partially acceptable or if the local building code was previously found by the Secretary to be acceptable and if, based upon changes to it, the Secretary determines that it is partially acceptable, then the lender or other interested party must comply with paragraphs (d)(1)(ii)(B)(2) (i), (ii) and (iii) of this section.

(iv) If the local building code was previously found by the Secretary to be partially acceptable and if, based upon changes to it, the Secretary determines that it is acceptable, or if the local building code was previously found by the Secretary to be acceptable and there have been no changes to the code, or if the local building code was previously found by the Secretary to be acceptable and if, based upon changes to it, the Secretary determines that it is still acceptable, then the lender or other interested party must comply with the local building code and the requirements of Sec. 200.926d.

(3) Notification of decision. (i) Fire retardant treated plywood, where approved by a State or local building code, shall not be permitted for use in roof construction unless a HUD technical suitability bulletin has been issued by the Department for that product.

(ii) The Secretary shall review the material submitted under Sec. 200.926(d). Following that review, the Secretary shall issue a written notice (except where there is a previously accepted or partially accepted code which has not been changed) to the submitting party stating whether the local building code is acceptable, partially acceptable, or not acceptable. Where the local building code is not acceptable, the notice shall also state whether the State code is acceptable, partially acceptable or not acceptable. The notice shall also contain the basis for the Secretary's decision and a notification of the submitting party's right to present its views concerning the denial of acceptance if the code is neither accepted nor partially accepted. The Secretary may, in his or her discretion, permit either an oral or written presentation of views.

(4) Department's responsibilities. (i) Each Regional and

Field Office will maintain a current list of jurisdictions with accepted local or State building codes, a current list of jurisdictions with partially accepted local or State building codes and a current list of jurisdictions with local or State building codes which have not been accepted. For local codes, the lists will state the most recent date when the code or changes thereto were submitted to the Secretary. The lists, which shall be prepared by the Field Offices and submitted to the Regional Offices, will be available to any interested party upon request. In addition, the list of jurisdictions whose codes have been partially accepted shall identify in accordance with Sec. 200.926c those portions of the codes listed at Sec. 200.926b(a) with which the property must comply.

(ii) The Department is responsible for obtaining copies of the State codes and any changes thereto.

Sec. 200.926a Residential Building Code Comparison Items

HUD will review each local and State code submitted under this subpart to determine whether it regulates all of the following areas and subareas:

(a) Fire Safety. (1) Allowable height; (2) Fire separations;

(3) Fire resistance requirements; (4) Egress doors and windows; (5) Unit smoke detectors; (6) Flame spread.

(b) Light and Ventilation. (1) Habitable rooms; (2) Bath and toilet rooms.

(c) Structural Loads and Seismic Design. (1) Design live loads; (2) Design dead loads; (3) Snow loads (for jurisdictions with snow loading conditions identified in Section 7 of ASCE-7-88 (formerly ANSI A58.1-82);

(4) Wind loads; (5) Earthquake loads (for jurisdictions in seismic zones 3 or 4, as identified in Section 9 of ASCE-7-88 (formerly ANSI A58.1-82)).

(d) Foundation Systems. (1) Foundation depths;

(2) Footings; (3) Foundation materials criteria.

(e) Materials Standards. (1) Materials standards.

(f) Construction Components. (1) Steel; (2) Masonry;

(3) Concrete; (4) Lumber; (5) Roof construction and covering; (6) Chimneys and fireplaces.

(g) Glass. (1) Thickness/area requirements; (2) Safety glazing.

(h) Mechanical. (1) Heating, cooling and ventilation systems; (2) Gas, liquid and solid fuel piping and equipment; (3) Chimneys and vents; (4) Ventilation (air changes).

(i) Plumbing. (1) Materials standards; (2) Sizing and installing drainage systems; (3) Vents and venting; (4) Traps; (5) Cleanouts; (6) Plumbing fixtures; (7) Water supply and distribution; (8) Sewage disposal systems.

(j) Electrical. (1) Branch circuits; (2) Services; (3) Grounding; (4) Wiring methods; (5) Cable; (6) Conduit; (7) Outlets, switches and junction boxes; (8) Panelboards.

Sec. 200.926b Model Codes

(a) Incorporation by Reference.

The following model code publications are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of these publications has been approved by the Director of the Federal Register. The locations where copies of these publications are available are set forth below.

(1) CABO One and Two Family Dwelling Code, 1992 Edition, including the 1993 amendments, but excluding Chapter I--Administrative, and the phrase "or approved fire retardant wood" contained in the exception of paragraph R-218.2.2(2), but including the Appendices A, B, D, and E of the Code. (Available from the Council of American Building Officials, Suite 708, 5203 Leesburg Pike, Falls Church, VA 22041.)

(2) Electrical Code for One and Two Family Dwellings, NFPA 70A, 1990, including Tables and Examples. Available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

(b) Model code compliance requirements.

(1) When a one or two family dwelling is to comply with the model codes set forth in Sec. 200.926b(a), the following requirements of those model codes shall not apply to those properties:

(i) Those provisions of the model codes that establish energy requirements for one and two family dwellings; and

(ii) Those provisions of the model codes that require or allow the issuance of permits of any sort.

(2) Where the model codes set forth in paragraph (a) of this section designate a building, fire, mechanical, plumbing or other official, the Secretary's designee in the HUD Field Office serving the jurisdiction in which the dwelling is to be constructed shall act as such official.

(c) Designation of Model Codes.

When a one or two family dwelling or townhouse is to comply with portions of the model code or the entire model code, the dwelling shall comply with the CABO One and Two Family Dwelling Code 1992 Edition, including the 1993 amendments, or portion thereof as modified by Sec. 200.926e of this part and designated by the HUD Field Office serving a jurisdiction in which a property is located. In addition, the property shall comply with all of the standards which are referenced for any designated portions of the model code, and with the Electrical Code for One and Two Family Dwellings, NFPA 70A/1990.

Sec. 200.926c Model Code Provisions for Use in Partially Accepted Code Jurisdictions

If a lender or other interested party is notified that a State or local building code has been partially accepted, then the properties eligible for HUD benefits in that jurisdiction shall be constructed in accordance with the applicable State or local building code, plus those additional requirements identified below. Depending upon the major area identified

in Sec. 200.926a which is not adequately regulated by the State or local code, the HUD Field Office will designate, in accordance with the schedule below, those portions of one of the model codes with which the property must comply.

Schedule for Model Code Supplements to Local or State Codes

Deficient major from Sec.200.926a as determined by Field Office Review

Portions of the CABO One and Two Family Dwelling Code, 1982 Edition incl. 1993 amendments with which a property must comply and Electrical

Code

for One and Two Family Dwellings (NFPA 70A-1990)

- (a) Fire safety Chapters 2, 9; Section R-402
- (b) Light and ventilation Chapter 2; Section R-309
- (c) Structural loads and seismic design Chapter 2
- (d) Foundation systems Chapter 3
- (e) Materials standards Chapter 26
- (f) Construction components Part III
- (g) Glass Chapter 2
- (h) Mechanical Part IV
- (i) Plumbing Part V
- (j) Electrical (NFPA 70A-1990)

Sec. 200.926d Construction Requirements

(a) Application

(1) General. These standards cover the agency requirements for accessibility to physically handicapped people, variations to standards, real estate entity, trespass and utilities, site conditions, access, site design, streets, dedication of utilities, drainage and flood hazard exposure, special construction and product acceptance, thermal requirements, and water supply systems.

2) Requirements for accessibility to physically handicapped people. The HUD Field Office will advise project sponsors as to the extent accessibility will be required for new construction of one- and two-family dwellings on a project-by-project basis.

(i) Technical standards. See HUD Handbook, 4910.1, Sections 100-1.3b and 100-1.3c.

[NOTE: SECTIONS 100-13.b AND 100-1.3c DO NOT EXIST IN THE ON-LINE VERSION OF 4910.1. IN THE PRINTED VERSION, THE WORDING IS “See 24 CFR Part 40.” PART 40 REFERENCES THE UNIFORM FEDERAL ACCESSIBILITY STANDARDS (UFAS).]

(3) Variations to standards.

(i) New materials and technologies. See paragraph (d) of this section. Alternatives, nonconventional or innovative methods and materials shall be equivalent to these standards in the areas of structural soundness, durability, economy of maintenance or operation and usability.

(ii) Variation procedures. Variations from the requirements of any standard with which the Department requires compliance shall be made in the following ways: (A) For a particular design or construction method to be used on a single case or project, the decision is the responsibility of the Field Office. Headquarters concurrence is not required. (B) Where a variation is intended to be on a repetitive basis, a recommendation for a Local Acceptable Standard, substantiating data, and background information shall be submitted by the Field Office to the Director, Office of Manufactured Housing and Regulatory Functions.

(iii) Variances which require individual analysis and decision in each instance are not considered as repetitive variances even though one particular standard is repeatedly the subject of variation. Such variances are covered by paragraph (a)(3)(ii)(A) of this section.

(b) General Acceptability Criteria

(1) Real estate entity. The property shall comprise a single plot except that a primary plot with a secondary plot for an appurtenant garage or for other use contributing to the marketability of the property will be acceptable provided the two plots are in such proximity as to comprise a readily marketable real estate entity.

(2) Service and facilities

(i) Trespass. Each living unit shall be one that can be used and maintained individually without trespass upon adjoining properties, except when the windowless wall of a detached dwelling is located on a side lot line. A detached dwelling may be located on a side lot line if: (A) legal provision is made for permanent access for the maintenance of the exterior portion of the lot line wall, and (B) the minimum distances from the dwelling to the dwellings on the abutting properties are not less than the sum of the side yard distances computed as appropriate for the type of opposing walls (minimum distance 10 ft).

(ii) Utilities. Utility services shall be independent for each living unit, except that common services such as water, sewer, gas and electricity may be provided for living units under a single mortgage or ownership. Separate utility service shut-off for each unit shall be provided. For living units under separate ownership, common utility services may be provided from the main to the building line when protected by an easement or convenient and maintenance agreement acceptable to HUD, but shall not pass over, under or through any other living unit. Individual utilities serving a living unit may not pass over, under or through another living unit under the same mortgage unless provision is made for repair and maintenance of utilities without trespass or when protected by an easement or covenant providing permanent access for maintenance and repair of the utilities. Building drain cleanouts shall be accessible from the exterior where a single drain line within the building serves more than one unit.

(3) Site conditions.

(i) The property shall be free of those foreseeable hazards and adverse conditions which may affect the health and safety of occupants or the structural soundness of the improvements, or which may impair the customary use and

enjoyment of the property. The hazards include toxic chemicals, radioactive materials, other pollution, hazardous activities, potential damage from soil or other differential ground movements, ground water, inadequate surface drainage, flood, erosion, or other hazards located on or off site. The site must meet the standards set forth in 24 CFR part 51, and HUD Handbook 4910.1, section 606 for termite and decay protection.

[NOTE: 24 CFR PART 51 CONCERNS HOUSING IN HIGH-NOISE ENVIRONMENTS, SUCH AS NEAR AIRCRAFT RUNWAYS, AND IN AREAS CONTAINING HAZARDOUS SUBSTANCES; THESE SUBJECTS ARE ALSO ADDRESSED IN FORM HUD-92541. SECTION 606 OF 4910.1 REFERENCES USDA HOME AND GARDEN BULLETIN NO. 73-1986, AN OUT-OF-PRINT PUBLICATION.]

(ii) When special conditions exist or arise during construction which were unforeseen and which necessitate precautionary or hazard mitigation measures, the HUD Field Office shall require corrective work to mitigate potential adverse effects from the special conditions as necessary. Special conditions include rock formations, unstable soils or slopes, high ground water levels, springs, or other conditions which may adversely affect a property. It shall be the builder's responsibility to ensure proper design, construction and satisfactory performance where these conditions are present.

(4) Access.

(i) Each property shall be provided with vehicular or pedestrian access by a public or private street. Private streets shall be protected by permanent easement.

(ii) Each living unit shall have a means of access such that it is unnecessary to pass through any other living unit.

(iii) The rear yard shall be accessible without passing through any other living unit.

(iv) For a townhouse type dwelling, access to the rear yard may be by means of alley, easement, passage through the dwelling, or other means acceptable to the HUD Field Office.

(c) Site Design

(1) General.

(i) A site design shall be provided which includes an arrangement of all site facilities necessary to create a safe, functional, healthful, durable and energy efficient living environment.

(ii) With the exception of paragraph (c)(4) of this section, these site design standards apply only in communities that have not adopted criteria for site development applicable to one and two family dwellings.

(iii) Single family detached houses situated on individual lots located on existing streets with utilities need not comply with the requirements of paragraphs (c)(2) and (c)(3) of this section.

(2) Streets.

(i) Existing or proposed streets on the site shall connect to private or public streets and shall provide all-weather access to all buildings for essential and emergency use, including access needed for deliveries, service, maintenance and fire equipment.

(ii) Streets shall be designed for dedication for public use and maintenance or, when approved by the HUD Field Office, may be retained as private streets where protected by permanent easements.

(3) Dedication. Utilities shall be located to permit dedication to the local government or appropriate public body.

(4) Drainage and flood hazard exposure

(i) Residential structures with basements located in FEMA-designated areas of special flood hazard. The elevation of the lowest floor in structures with basements shall be at or above the base flood level (100-year flood level) required for new construction or substantial improvement of residential structures under regulations for the National Flood Insurance Program (NFIP) (see 44 CFR 60.3 through 60.6), except where variances from this standard are granted by communities under the procedures of the Federal Emergency Management Agency (FEMA) at 44 CFR 60.6(a) or exceptions from this NFIP standard for basements are approved by FEMA in accordance with procedures at 44 CFR 60.6(c).

(ii) Residential structures without basements located in FEMA-designated areas of special flood hazard. The elevation of the lowest floor in structures without basements shall be at or above the FEMA-designated base flood elevation (100-year flood level).

(iii) Residential structures located in FEMA-designated "coastal high hazard areas." (A) Basements or any permanent enclosure of space below the lowest floor of a structure are prohibited. (B) Where FEMA has determined the base flood level without establishing stillwater elevations, the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) and its horizontal supports shall be at or above the base flood level.

(iv) (A) In all cases in which a Direct Endorsement (DE) mortgagee or a Lender Insurance (LI) mortgagee seek to insure a mortgage on a newly constructed one-to four-family dwelling (including a newly erected manufactured home) that was

processed by the DE or LI mortgagee, the DE or LI mortgagee must determine whether the property improvements (dwelling and related structures/equipment essential to the value of the property and subject to flood damage) are located in a 100-year floodplain, as designated on maps of the Federal Emergency Management Agency. If so, the DE mortgagee, before submitting the application for insurance to HUD, or the LI mortgagee, before submitting all the required data regarding the mortgage to HUD, must obtain: (1) A final Letter of Map Amendment (LOMA); (2) A final Letter of Map Revision (LOMR); or (3) A signed Elevation Certificate documenting that the lowest floor (including basement) of the property improvements is built at or above the 100-year flood elevation in compliance with National Flood Insurance program criteria 44 CFR 60.3 through 60.6. (B) Under the DE program, these mortgages are not eligible for insurance unless the DE mortgagee submits the LOMA, LOMR, or Elevation Certificate to HUD with the mortgagee's request for endorsement.

(v) Streets. Streets must be usable during runoff equivalent to a 10-year return frequency. Where drainage outfall is inadequate to prevent runoff equivalent to a 10-year return frequency from ponding over 6 inches deep, streets must be made passable for commonly used emergency vehicles during runoff equivalent to a 25-year return frequency, except where an alternative access street not subject to such ponding is available.

(vi) Crawl spaces. Crawl spaces must not pond water or be subject to prolonged dampness.

(d) Special Construction and Product Acceptance.

[NOTE: PARAGRAPHS 1 AND 2 BELOW REFER TO THE TSP PROGRAM]

(1) *Structural features of factory produced (modular or panelized) housing or components.*

(i) *For factory fabricated systems or components, HUD Handbook 4950.1, "Technical Suitability of Products Program Technical and Processing Procedures" shall apply.*

(ii) *The requirements of this part shall apply to structural features, consisting of factory fabricated systems or components assembled either at the factory or at the construction site, if the total construction is covered by these standards and can be inspected on-site for determination of compliance.*

(2) *Non-structural or non-standard features. These features include methods of construction, systems, sub-systems, components, materials and processes which are not covered by these requirements. See*

HUD Handbook 4950.1 for procedures to be followed in order to obtain acceptance of non-structural components or materials. See HUD Handbook 4910.1, appendix F for a list of Use of Materials Bulletins. Products and methods shall conform to the appropriate Use of Materials Bulletin.

(3) Standard Features. These features include methods of construction, systems, sub-systems, components, materials and processes which are covered by national society or industry standards. For a list of standards and practices to which compliance is required, see HUD Handbook 4910.1, Appendix C and Appendices E and F, available from HUD, 451 Seventh Street, SW., Attention: Mailroom B-133, Washington, DC 20410.

(e) Energy efficiency.

All detached one- and two-family dwellings and one-family townhouses not more than three stories in height shall comply with the CABO Model Energy Code, 1992 Edition, Residential Buildings, except for Sections 101.3.1, 101.3.2, 104, and 105, but Section 101.3.2.2, Historic Buildings, shall remain, and including the Appendix, and HUD intermediate MPS Supplement 4930.2 Solar Heating and Domestic Hot Water Systems, 1989 edition.

[NOTE: 4930.2 IS NOT IN PRINT]

(f) Water Supply Systems

(1) General.

(i) Each living unit shall be provided with a continuing and sufficient supply of safe water under adequate pressure and of appropriate quality for all household uses. Newly constructed residential property for which a building permit has been applied for on or after June 19, 1988 from the competent authority with jurisdiction in this matter shall have lead-free water piping. For purposes of these standards, water piping is "lead free" if it uses solders and flux containing not more than 0.2 percent lead and pipes and pipe fittings containing not more than 8.0 percent lead. This system shall not impair the function or durability of the plumbing system or attachments.

(ii) The chemical and bacteriological standards of the local health authority shall apply. In the absence of such standards, those of the appropriate State agency shall apply. A water analysis may be required by either the health authority or the HUD Field Office.

(iii) Whenever feasible, connection shall be made to a public water system. When a public system is not available, connection shall be made to a community system which complies with HUD Handbook 4940.2, if feasible.

[NOTE: HANDBOOK 4940.2, MINIMUM DESIGN STANDARDS FOR COMMUNITY WATER SUPPLY SYSTEMS, IS NOT IN PRINT]

(2) Individual water systems.

(i) The system should be capable of delivering a flow of 5 gpm over at least a 4 hour period.

(ii) The chemical and bacteriological standards of the local health authority shall apply. In the absence of such standards, those of the appropriate State agency shall apply. A water analysis may be required by either the health authority or the HUD Field Office.

(iii) After installation, the system shall be disinfected in accordance with the recommendations or requirements of the local health authority. In the absence of a health authority, system cleaning and disinfection shall conform to the current EPA Manual of Individual Water Supply Systems.

[NOTE: THE PROPER TITLE IS MANUAL OF INDIVIDUAL AND PRIVATE WATER SUPPLY SYSTEMS. IT IS NOT IN PRINT]

(iv) Bacteriological or chemical examination of a water sample collected by a representative of the local or state health authority shall be made when required by that authority or the HUD Field Office.

(3) Location of wells.

(i) A well located within the foundation walls of a dwelling is not acceptable except in arctic or subarctic regions.

(ii) Water which comes from any soil formation which may be polluted, contaminated, fissured, creviced or less than 20 ft. below the natural ground surface is not acceptable, unless acceptable to the local health authority.

(iii) Individual water supply systems are not acceptable for individual lots in areas where chemical soil poisoning has been or is practiced if the overburden of soil between the ground surface and the water bearing strata is coarse grained sand, gravel, or porous rock, or is creviced in a manner which will permit the recharge water to carry the toxicants into the zone of saturation.

(iv) The following table shall be used in establishing the minimum acceptable distances between wells and sources of pollution located on either the same or adjoining lots. These distances may be increased by either the health authority having jurisdiction or the HUD Field Office.

Distance From Source of Pollution
-

Source of Pollution distance	Minimum horizontal (feet)
-	-
Property Line	10
Septic Tank	50
Absorption Field [1]	100
Seepage Pit [1]	100
Absorption Bed [1]	100
Sewer Lines w/Permanent Watertight Joints	10
Other Sewer Lines	50
Chemically Poisoned Soil [3]	25
Dry Well	50
Other [2]	-
-	-

[1] This clearance may be increased or decreased depending upon soil and rock penetrated by the well and aquifer conditions. The clearance may be increased in creviced limestone and permeable strata of gravel and sand. The clearance may be reduced to 50 ft. only where the ground surface is effectively separated from the water bearing formation by an extensive, continuous and impervious strata of clay, hardpan, or rock. The well shall be constructed so as to prevent the entrance of surface water and contaminants.

[2] The recommendations or requirements of the local health authority shall apply.

[3] This clearance may be reduced to 15 feet only where the ground surface is effectively separated from the water bearing formation by an extensive, continuous and impervious strata of clay, hardpan, or rock.

(4) Well construction.

(i) The well shall be constructed so as to allow the pump to be easily placed and to function properly.

(ii) (A) All drilled wells shall be provided with a sound, durable and watertight casing capable of sustaining the loads imposed. (B) The casing shall extend from a point several feet below the water level at drawdown or from an impervious strata above the water level to 12 in. above either the ground surface or the pump room floor. The casing shall be sealed at the upper opening to a depth of at least 15 feet.

(iii) Bored wells shall be lined with concrete, vitrified clay or equivalent materials.

- (iv) The space between the casing or liner and the wall of the well hole shall be sealed with cement grout.
 - (v) The well casing shall not be used to convey water except under positive pressure. A separate drop pipe shall be used for the suction line.
 - (vi) When sand or silt is encountered in the water-bearing formation, the well shall either be compacted and gravel packed, or a removable strainer or screen shall be installed.
 - (vii) The surface of the ground above and around the well shall be compacted and graded to drain surface water away from the well.
 - (viii) Openings in the casing, cap, or concrete cover for the entrance of pipes, pumps or manholes shall be watertight.
 - (ix) If a breather is provided, it shall extend above the highest level to which surface water may rise. The breather shall be watertight, and the open end shall be screened and positioned to prevent entry of dust, insects and foreign objects.
- (5) Pump and equipment.
- (i) Pumps shall be capable of delivering the volume of water required under normal operating pressure within the living unit. Pump capacity shall not exceed the output of the well.
 - (ii) Pumps and equipment shall be mounted to be free of objectionable noises, vibrations, flooding, pollution, and freezing.
 - (iii) Suction lines shall terminate below maximum drawdown of the water level in the well.
 - (iv) Horizontal segments of suction line shall be placed below the frost line in a sealed casing pipe or in at least 4 in. of concrete. The distance from suction line to sources of pollution shall be not less than shown in the table at paragraph (f)(3)(iv) of this section.
- (6) Storage tanks.
- (i) A pressure tank having a minimum capacity of 42 gallons shall be provided. However, prepressured tanks and other pressurizing devices are acceptable provided that delivery between pump cycles equals or exceeds that of a 42 gallon tank.
 - (ii) Tanks shall be equipped with a clean-out plug at the lowest point, and a suitable pressure relief valve.

Sec. 2009.926e Supplemental Information for Use with CABO One and Two Family Dwelling Code

The following shall be used in Table No. R-202, Climatic and Geographic Design Criteria of the CABO One and Two Family Dwelling Code.

(a) Roof live loads.

Roof slope 3 in 12 or less: 20 psf; roof slope over 3 in 12: 15 psf; roof used as deck: 40 psf

(b) Roof snow load.

The roof snow load shall be in accordance with section 7 of ASCE 7-88.

(c) Wind pressures.

The minimum Design Wind Pressures (net pressures) set forth below apply to areas designated as experiencing basic wind speeds up to and including 80 mph, as shown in ASCE 7-88, Figure 1, Basic Wind Speed Map. These pressures also apply to buildings not over 30 ft. in height above finish grade, assuming exposure C or defined in ASCE 7-88.

(1) Minimum design wind pressure criteria.

(i) Buildings (for overturning racking or sliding); p=20 psf.

(ii) Chimneys, p=30 psf.

(iii) Exterior walls, p=15 psf inward or outward. Local pressure at corners of walls shall be not less than p=30 psf outward. These local pressures shall not be included with the design pressure when computing overall loads. The pressures shall be applied perpendicularly outward on strips of width equal to 10 percent of the least width of building.

(iv) Partitions, p=10 psf.

(v) Windows, p=20 psf inward or outward.

(vi) Roof, p=20 psf inward or outward. Roofs with slopes greater than 6 in 12 shall be designed to withstand pressures acting inward normal to the surface, equal to the design wind pressure for exterior walls. Overhanging eaves, cornices, and ridges, 40 psf upward normal to roof surface. These local pressures shall not be included with the design pressure when computing overall loads. The pressures shall be applied perpendicularly outward on strips of width equal to 10 percent of the least width of building. Net uplift on horizontal projection of roof shall not be less than 12 psf.

(2) Severe wind design pressures. If the construction is higher than 30 ft., or if it is located in an area experiencing wind speeds greater than 80 mph, higher design wind pressures than shown above are required. Use Section 6 of ASCE 7-88 for higher criteria and for determining where wind speeds greater than 80 mph occur. Pressures are assumed to act horizontally

on the gross area of the vertical projection of the structure except as noted for roof design.

(d) Seismic conditions shall be in accordance with Section 9 of ASCE 7-88.

(e) Subject to damage from weathering.

A jurisdiction's weathering region shall be as established by the map in ASTM C 62-83.

(f) Subject to damage from frost line depth.

Exterior wall footings or foundation walls including those of accessory buildings shall extend a minimum of 6 in. below the finished grade and, where applicable, the prevailing frost line.

(g) Subject to damage from termites.

“Yes” shall be used in locations designated as Regions I, II or III. “No” shall be used in locations designated as Region IV. The map for Termite Infestation Probability in appendix A of CABO, One and Two Family Dwelling Code shall be used to determine the jurisdiction's region.

(h) Subject to damage from: decay.

“Yes” shall be used in locations designated as moderate to severe and slight to moderate. “No” shall be used in locations designated as none to slight. The Decay Probability map in appendix A of CABO, One and Two Family Dwelling Code, shall be used to determine the jurisdiction's decay designation.

Appendix D
MORTGAGEE LETTER 2001-27

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-0001

October 23, 2001

MORTGAGEE LETTER 2001- 27

TO: ALL APPROVED MORTGAGEES

SUBJECT: Pre-approval Requirements for New Construction and an Alternative to the Inspection Requirements - Single Family Loan Production

This Mortgagee Letter announces that the Department is expanding the definition of "Pre-approval" to satisfy the requirements for obtaining a high ratio loan on construction which is one year old or less and allowing an alternative to the inspection requirements. The definition of pre-approval is now expanded to include the issuance of a building permit by a local jurisdiction prior to construction as acceptable evidence of "pre-approval." In those jurisdictions that perform the local inspections and issue Certificates of Occupancy (or equivalent), this certificate is evidence of the local inspections. Finally, FHA will no longer "approve" local jurisdictions to perform these inspections since the Certificate of Occupancy (or equivalent) will be accepted as verification of these inspections. These changes are effective for case numbers ordered on or after the date of this Mortgagee Letter.

I. Background

In accordance with the National Housing Act, a property one year old **OR** less must be "Pre-approved" OR be covered by a warranty plan acceptable to the Secretary to be eligible for a high-ratio insured mortgage, defined as exceeding 90% loan to value (LTV). An Early Start Letter issued by the lender before construction starts has long been considered "Pre-approved" and satisfactory evidence for eligibility for high LTV financing. (See HUD Handbook 4145.1 REV-2, Appendix 6.). Three inspections are required if the property is "pre-approved".

Mortgagee Letter 96-18 stated that in those jurisdictions that FHA has determined provide adequate code enforcement and inspection services, the first two inspections may be performed by the local jurisdiction, but the third inspection must be performed by an FHA fee panel inspector. Mortgagee Letter 97-22, took this a step further by announcing that the Department permits the final inspection by the local authority to be accepted in lieu of FHA's third inspection in those jurisdictions where FHA accepts the first two inspections by the local authority.

II. Expanded Definition of Pre-approval, an Alternate to Local Inspections and FHA's Approval of Local Jurisdictions to End

Because the Department allows the local jurisdictions to perform the inspections as mentioned above, we are accepting a Certificate of Occupancy as evidence of these local inspections. Additionally, if a local jurisdiction issues a building permit (or its equivalent), prior to construction, the Department will accept that as evidence of "Pre-approval". Thus, in such cases where both a building permit and a certificate of

occupancy are issued by a local jurisdiction, neither an Early Start Letter nor a HUD approved 10-year warranty plan is required. This new definition of Pre-approval does not apply to condominiums or to manufactured housing due to special requirements applicable to these housing types.

The Department will no longer approve local jurisdictions that perform inspections acceptable to FHA. Now, when a builder uses local jurisdictions to perform inspections, a copy of the Certificate of Occupancy (or its equivalent) is considered to be evidence of the local jurisdiction inspections. Form HUD 92900-A, page 3, "Direct Endorsement Approval for a HUD/FHA Insured Mortgage", has been revised to include a check box for the lender to certify that the property is 100% complete (both on site and off site improvements) and that the property meets HUD's Minimum Property Standards". This form can be downloaded via HUDCLIPS at www.hudclips.org.

For those local jurisdictions that do not issue a Building Permit prior to construction (or its equivalent) and a Certificate of Occupancy (or its equivalent), a property one year old or less must have an Early Start Letter OR be covered by a warranty plan acceptable to the Secretary to be eligible for a high-ratio insured mortgage. Regardless of the process used, the lender must certify by using Form HUD 92900-A, page 3, that the property is 100% complete (both on site and off site improvements) and that the property meets HUD's minimum property standards. This information collection is covered under the Office of Management and Budget's (OMB) Control Number 2502-0059.

III. Documentation Requirements

In lieu of providing the Early Start Letter or proof of coverage by an acceptable warranty plan, Mortgagees must include a copy of the building permit (or equivalent) and a copy of the Certificate of Occupancy (or equivalent) in the endorsement binder. The alternative to local inspections described in this letter does not eliminate the requirement for a one-year builder warranty as required by Section 801 of the National Housing Act. Mortgagees are reminded that in addition to the one-year builder's warranty and Form HUD 92541, the Builder's Certification of Plans, Specifications and Site, they are still responsible for obtaining all the applicable construction documents from the builder.

If you have any questions about this Mortgagee Letter, please contact your local Homeownership Center in Atlanta (1-888-696-4687), Philadelphia (1-800-440-8647), Santa Ana (1-888-827-5605), or Denver (1-800-543-9378).

Sincerely,

John C. Weicher
Assistant Secretary for Housing-Federal Housing Commissioner

Appendix E
FORM HUD-92541,
“BUILDERS CERTIFICATION OF PLANS, SPECIFICATIONS, AND SITE

http://www.hudclips.org/sub_nonhud/html/pdfforms/92541.pdf

(pages 45, 46, 47)

Appendix F
PARTS OF THE U.S. CODE CONTAINING THE PHRASE
“MINIMUM PROPERTY STANDARDS”

1) Parts of the U.S. Code containing the phrase “minimum property standards” that are applicable to the MPS:

12 USC 1701z-15. Approval of individual residential water purification or treatment units

(a) In general: When the existing water supply does not meet the **minimum property standards** established by the Department of Housing and Urban Development and a permanent alternative acceptable water supply is not available, a continuous supply of water may be provided through the use of approved residential water treatment equipment or a water purification unit that provides bacterially and chemically safe drinking water.

[Origin: Pub. L 100-242 of 1988, title IV, Section 424]

Comment: The 1994 MPS (including Appendix K) refers to HUD Handbook 4940.2, Minimum Design Standards for Community Water Supply, but this handbook is no longer published.

12 USC 1715k. Rehabilitation and neighborhood conservation housing insurance

(d) Eligibility for insurance; conditions; limits. To be eligible for insurance under this section a mortgage shall meet the following conditions....(3)(B) (iii).... And provided further, That the Secretary may further increase any of the dollar amount limitations which would otherwise apply for the purpose of this clause by an amount not to exceed 20 per centum if such increase is necessary to account for the increased cost of the project due to the installation therein of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) or residential energy conservation measures (as defined in section 8211(11)(A) through (G) and (I) of title 42) in cases where the Secretary determines that such measures are in addition to those required under the **minimum property standards** and will be cost-effective over the life of the measure.

[Origin: Pub. L. 96-399 of 1980]

Comment: Increases allowable loan amounts for the installation of solar systems and energy conservation measures.

Note 1: Sec. 1703(a)(3) referenced above states: “the term ‘solar energy system’ means any addition, alteration, or

improvement to an existing or new structure which is designed to utilize wind energy or solar energy either of the active type based on mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination of these types to reduce the energy requirements of that structure from other energy sources, and which is in conformity with such criteria and standards as shall be prescribed by the Secretary in consultation with the Secretary of Energy.”

Note 2: Section 8211 of title 42 was added June 30, 1980 and deleted June 30, 1989.

12 USC 1715l. Housing for moderate income and displaced families

(a) Purpose. This section is designed to assist private industry in providing housing for low and moderate income families and displaced families.

(k) Increase in maximum insurance amounts for costs incurred from solar energy systems and energy conservation measures. With respect to any project insured under subsection (d)(3) or (d)(4) of this section, the Secretary may further increase the dollar amount limitations which would otherwise apply for the purpose of those subsections by up to 20 per centum if such increase is necessary to account for the increased cost of the project due to the installation therein of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) or residential energy conservation measures (as defined in section 8211(11)(A) through (G) and (I) of title 42) in cases where the Secretary determines that such measures are in addition to those required under the **minimum property standards** and will be cost-effective over the life of the measure.

[Origin: Pub. L.96-399 of 1980]

Comment: Increases allowable loan amounts for the installation of solar systems and energy conservation measures.

12 USC 1735f-4. Minimum property standards

(a) To the maximum extent feasible, the Secretary of Housing and Urban Development shall promote the use of energy saving techniques through **minimum property standards** established by him for newly constructed residential housing, other than manufactured homes, subject to mortgages insured under this chapter. Such standards shall establish

energy performance requirements that will achieve a significant increase in the energy efficiency of new construction. Such requirements shall be implemented as soon as practicable after November 9, 1978. Following November 30, 1983, the energy performance requirements developed and established by the Secretary under this subsection for newly constructed residential housing, other than manufactured homes, shall be at least as effective in performance as the energy performance requirements incorporated in the **minimum property standards** that were in effect under this subsection on September 30, 1982.

[Origin: This subsection was added by Pub. L. 95-619 of 1978; it was amended by Pub. L. 98-181 of 1983, which designated the provision as subsection (a), inserted ", other than manufactured homes," after "housing", inserted provision that the energy performance requirements developed for newly constructed residential housing, other than manufactured homes, be at least as effective in performance as the energy performance requirements incorporated in the minimum property standards in effect Sept. 30, 1982, and added subsection (b)]

Comment: Section (a) requires that energy conservation measures for HUD-insured housing be at least as stringent as those in force on September 30, 1982. This applies to any energy conservation requirements cited in MPS Appendix K.

(b) The Secretary may require that each property, other than a manufactured home, subject to a mortgage insured under this chapter shall, with respect to health and safety, comply with one of the nationally recognized model building codes, or with a State or local building code based on one of the nationally recognized model building codes or their equivalent. The Secretary shall be responsible for determining the comparability of the State and local codes to such model codes and for selecting for compliance purposes an appropriate nationally recognized model building code where no such model code has been duly adopted or where the Secretary determines the adopted code is not comparable.

[Origin: Subsection (b) added by Pub. L. 98-181 of 1983]

Comment: Section (b) allows HUD to require that HUD-insured housing comply with model or local codes. This effectively allowed the elimination of the MPS for One- and Two-Family Housing as it existed prior to 1983.

Full amendment history:

1984 - Pub. L. 98-479 substituted "**minimum property standards**" for "Promotion of energy saving techniques by Secretary of Housing and Urban Development of insured housing" in section catchline.

1983 - Subsec. (a). Pub. L. 98-181 designated existing

provision as subsec. (a), inserted ", other than manufactured homes," after "housing", inserted provision that the energy performance requirements developed for newly constructed residential housing, other than manufactured homes, be at least as effective in performance as the energy performance requirements incorporated in the minimum property standards in effect Sept. 30, 1982, and added subsec. (b).

1980 - Pub. L. 96-399 struck out ", until such time as the energy conservation performance standards required under the Energy Conservation Standards for New Buildings Act of 1976 become effective" in second sentence.

1978 - Pub. L. 95-619 inserted provision requiring that the minimum property standards established by the Secretary under this section were to contain energy performance requirements to achieve a significant increase in the energy efficiency of new construction.

2) Parts of the U.S. Code containing the phrase "minimum property standards" that are not applicable to the MPS:

1490i Department of Agriculture (repealed)

1479 (a)(2) Department of Agriculture

1710 (h)(5)(A)(iii) and (B)(iii) Disposition of HUD properties

1703 (a)(2)(i) Manufactured housing

1713 (c)(3) Rental housing

1715e (p) Cooperative housing

1715v (c)(2) Elderly housing

1715w (d)(2)(B) Care facilities

1715y (j) Multifamily

1715z-6 (e)(1) Multifamily

1715z-7 (d)(2)(B) Hospitals

1749aaa (c)(2) Medical practice facilities

5403 (h)(3) Manufactured housing

Appendix G
SECTIONS OF THE CODE OF FEDERAL REGULATIONS CONTAINING THE PHRASE
“MINIMUM PROPERTY STANDARDS”
(not including 24CFR 200.926 and 24CFR200.926 a-e, which constitute MPS Appendix K)

Note: Underlining added for emphasis.

Sec. 55.1.(a) This part implements the requirements of Executive Order 11988, Flood-plain Management, and employs the principles of the Unified National Program for Flood-plain Management. It covers the proposed acquisition, construction, improvement, disposition, financing and use of properties located in a flood plain for which approval is required either from HUD under any applicable HUD program or from a grant recipient subject to 24 CFR part 58.....(c) Except with respect to actions listed in Sec. 55.12(c), no HUD financial assistance (including mortgage insurance) may be approved after May 23, 1994 with respect to: (1) Any action, other than a functionally dependent use, located in a flood way; (2) Any critical action located in a coastal high hazard area; or (3) Any non-critical action located in a coastal high hazard area, unless the action is designed for location in a coastal high hazard area or is a functionally dependent use. An action will be considered to be designed for location in a coastal high hazard area if: (i) In the case of new construction or substantial improvement, the work meets the current standards for V zones in FEMA regulations (44 CFR60.3(e)) and, if applicable, the **Minimum Property Standards** for such construction in 24 CFR 200.926d(c)(4)(iii); or (ii) In the case of existing construction (including any minor improvements): (A) The work met FEMA elevation and construction standards for a coastal high hazard area (or if such a zone or such standards were not designated, the 100-year flood plain) applicable at the time the original improvements were constructed; or (B) If the original improvements were constructed before FEMA standards for the 100-year flood plain became effective or before FEMA-designated the location of the action as within the 100-year flood plain, the work would meet at least the earliest FEMA standards for construction in the 100-year flood plain.

Sec. 92.251. (a) (1) Housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion, except as provided in paragraph (b) of this section. The participating jurisdiction must have written standards for rehabilitation that ensure that HOME-assisted housing is decent, safe, and sanitary. In the absence of a local code for new construction or rehabilitation, HOME-assisted new

construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the **Minimum Property Standards (MPS)** in 24 CFR 200.925 or 200.926. To avoid duplicative inspections when FHA financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a **Minimum Property Standards (MPS)** inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials. (2) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401. (3) The housing must meet the accessibility requirements at 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619).

Sec. 200.925 Applicability of **minimum property standards**. All housing constructed under HUD mortgage insurance and low-rent public housing programs shall meet or exceed HUD **Minimum Property Standards**, except that this requirement shall be applicable to manufactured homes eligible for insurance pursuant to Sec. 203.43f of this chapter only to the extent provided therein. The **Minimum Property Standards** may be waived to the same extent as the other regulatory requirements for eligibility for insurance under the specific mortgage insurance program involved.

Sec. 200.927 Incorporation by reference of **minimum property standards**. The **Minimum Property Standards** as contained in the handbooks identified in Sec. 200.929(b) are incorporated by reference into this section as though set forth in full in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Sec. 200.929 Description and identification of **minimum property standards**. (a) Description. The **Minimum Property Standards** describe physical standards for housing. They are intended to provide a sound basis for determining the acceptability of housing built under the HUD mortgage insurance and low-rent public housing programs. The **Minimum Property Standards** refer to material standards developed by industry and accepted by HUD. In addition, under Section 521 of the National Housing Act, HUD adopts its own technical suitability standards for materials and products for which there are no industry standards acceptable to HUD. These standards are contained in Use of Materials Bulletins that apply to products and methods and Materials Releases that apply to specific materials. Use of Materials Bulletins and Materials Releases are addenda to the **Minimum Property Standards**. Unless otherwise stated, the current edition, issue, or version of each of these documents, as available from its source, is applicable to this subpart S. A list of the Use of Materials Bulletins, Materials Releases, and MPS Appendix listing the applicable referenced Standards may be obtained from the Construction Standards Division, Office of Manufactured Housing and Construction Standards, room 6170 Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410. (b) Identification. The **Minimum Property Standards** have been published as described below: (1) MPS for One and Two Family Dwellings. See Secs. 200.926, 200.926 (a) through (e). (2) MPS for Housing 4910.1, 1994 edition. This volume applies to buildings and sites designed and used for normal multifamily occupancy, including both unsubsidized and subsidized insured housing, and to care- type housing insured under the National Housing Act. It also includes, in Appendix K, a reprint of the MPS for One and Two Family Dwellings identified in paragraph (b)(1) of this section.

Sec. 200.931 Statement of availability. (a) Updated copies of the **Minimum Property Standards** and Use of Materials Bulletins are available for public examination in the Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, room 9156, 451 Seventh St. SW., Washington, D.C. 20410-8000. In addition, copies of volumes 1, 2, and 3 of the **Minimum Property Standards** may be purchased from the U.S. Government Printing Office, Washington, D.C. 20402. (b) Publications approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1CFR part 51.

Sec. 200.933 Changes in **minimum property standards**. Changes in the **Minimum Property Standards** will generally be made every three years. Changes will be made in accordance with HUD policy for the adoption of rules and regulations set forth in part 10 of this title. Notice of such changes will be published in the Federal Register. As the changes are made, they will be incorporated into the volumes of the **Minimum Property Standards** to which they apply. The volumes available for public examination and for purchase will contain all changes up to the date of examination or purchase. An official, historic file of such changes will be available in the office of the Rules Docket Clerk in the HUD Central Office in Washington, DC, and in each HUD Regional, Area, and Insuring Office. A similar copy of the standards will also be maintained in the Office of the Federal Register, Washington, DC.

Sec. 200.935 Administrator qualifications and procedures for HUD building products certification programs. (a) General. This section establishes administrator qualifications and procedures for the HUD Building Products Certification Programs under section 521 of the National Housing Act and the **HUD Minimum Property Standards**. Under these programs organizations acceptable to HUD validate manufacturers' certifications that certain building products or materials meet applicable standards. HUD may decide to implement a certification program for a particular building product or material for a variety of reasons, such as when deemed necessary by HUD to facilitate the introduction of new and innovative products or materials; or in response to reports of fraud or misrepresentation by manufacturers in advertising that their product or materials comply with a standard.

Sec. 200.1303 Annual income exclusions for the Rent Supplement Program. (a) The exclusions to annual income described in 24 CFR 5.609(c) apply to those rent supplement contracts governed by the regulations at 24 CFR part 215 in effect immediately before May 1, 1996 (contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219), in lieu of the annual income exclusions described in 24 CFR 215.21(c) (contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219). (b) The mandatory deductions described in 24 CFR 5.611(a) also apply to the rent supplement contracts described in paragraph (a) of this section in lieu of the deductions provided in the definition of "adjusted income" in 24 CFR 215.1 (as contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219). (c) The definition of "persons with disabilities" in paragraph (c) of this section replaces the terms "disabled person" and "handicapped person" used in the regulations in 24 CFR part 215, subpart A (as

contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219). Person with disabilities, as used in this part, has the same meaning as provided in 24 CFR 891.305. [66 FR 6224, Jan. 19, 2001] Appendix A to Part 200--Standards incorporated by reference in the **Minimum Property Standards** for Housing (HUD Handbook 4910.1). The following publications are incorporated by reference in the **HUD Minimum Property Standards (MPS)** in 24 CFR part 200. The MPS are available for public inspection and can be obtained for appropriate use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capital Street, NW., Suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024. Air Conditioning Contractors of America 1513 16th Street, NW., Washington, DC 20036, (202) 483-9370.

Sec. 291.100 General policy. For all sales, except as otherwise specifically indicated, those sales conducted in accordance with Secs. 291.90(a) and 291.200 or with subpart D of this part, the following general policies apply: (a) Qualified purchaser. (1) Anyone, including a purchaser from a transferor of a property pursuant to Secs. 291.90(a) and 291.200, regardless of race, color, religion, sex, national origin, familial status, age, or disability may offer to buy a HUD-owned property, except that: (i) No member of or delegate to Congress is eligible to buy or benefit from a purchase of a HUD-owned property; and (ii) No non-occupant mortgagor (whether an original mortgagor, assumptor, or a person who purchased "subject to") of an insured mortgage who has defaulted, thereby causing HUD to pay an insurance claim on the mortgage, is eligible to repurchase the same property. (2) Neither HUD nor any transferor pursuant to Secs. 291.90(a) or 291.200 will offer former mortgagors in occupancy who have defaulted on the mortgage the right of first refusal to repurchase the same property. (3) HUD will offer tenants accepted under the occupied conveyance procedures outlined in 24 CFR 203.670 through 203.685 the right of first refusal to purchase the property only if: (i) The tenant has a recognized ability to acquire financing and a good [[Page 494]] rent-paying history, and has made a request to HUD to be offered the right of first refusal; or (ii) State or local law requires that tenants be offered the right of first refusal. (b) List price. The list price, or "asking price," assigned to the property is based upon an appraisal conducted by an independent real estate

appraiser using nationally recognized industry standards for the appraisal of residential property. (c) Insurance. Properties may be sold under the following programs: (1) Insured. A property that meets the **Minimum Property Standards(MPS)**, as determined by the Secretary, for existing dwellings (Requirements for Existing Housing, One to Four Family Living Units, HUD Handbook 4905.1, which is available at the Department of Housing and Urban Development, HUD Customer Service Center, 451 7th Street, SW, Room B-100, Washington, DC 20410; by calling (202) 708-3151; or via the Internet at www.hud.gov) will be offered for sale in "as-is" condition with FHA mortgage insurance available. Flood insurance must be obtained and maintained as provided in 24 CFR 203.16a. (2) Insured with repair escrow. A property that requires no more than \$5,000 for repairs to meet the MPS, as determined by the Secretary, will be offered for sale in "as-is" condition with FHA mortgage insurance available.

Sec. 941.203 Design and construction standards. (a) Physical structures shall be designed, constructed and equipped so as to improve or harmonize with the neighborhoods they occupy, meet contemporary standards of modest comfort and livability, promote security, and be attractive and marketable to the people they are intended to serve. Building design and construction shall strive to encourage in residents a proprietary sense, whether or not home ownership is intended or contemplated. (b) Projects must comply with: (1) A national building code, such as Uniform Building Code, Council of American Building Officials Code, or Building Officials Conference of America Code; (2) Applicable State and local laws, codes, ordinances, and regulations; and (3) Other Federal requirements, including any Federal fire-safety requirements and HUD **minimum property standards** (e.g., 24 CFR part 200, subpart S, and Sec. 941.208). (c) Projects for families with children shall consist to the maximum extent practicable of low-density housing (e.g., non-elevator structures, scattered sites or other types of low-density developments appropriate in the community). (d) High-rise elevator structures shall not be provided for families with children regardless of density, unless the PHA demonstrates and HUD determines that there is no practical alternative. High-rise buildings for the elderly may be used if the PHA demonstrates and HUD determines that such construction is appropriate, taking into consideration land costs, the safety and security of the prospective occupants, and the availability of community services.

Appendix H
SECTION 801 (12 USC SEC. 1701j-1)
Builder's Certification as to Construction

Note: Shading added for emphasis.

(a) Warranty requirements. The Secretary of Housing and Urban Development is authorized and directed to require that, in connection with any property upon which there is located a dwelling designed principally for not more than a four-family residence and which is approved for mortgage insurance prior to the beginning of construction, **the seller or builder**, and such other person as may be required by the said Secretary to become warrantor, **shall deliver to the purchaser or owner of such property a warranty that the dwelling is constructed in substantial conformity with the plans and specifications** (including any amendments thereof, or changes and variations therein, which have been approved in writing by the Secretary of Housing and Urban Development) **on which the Secretary of Housing and Urban Development based his valuation of the dwelling:** Provided, That the Secretary of Housing and Urban Development shall deliver to the builder, seller, or other warrantor his written approval (which shall be conclusive evidence of such approval) of any amendment of, or change or variation in, such plans and specifications which the Secretary deems to be a substantial amendment thereof, or change or variation therein, and shall file a copy of such written approval with such plans and specifications: Provided further, That **such warranty shall apply only with respect to such instances of substantial nonconformity to such approved plans and specifications** (including any amendments thereof, or changes or variations therein, which have been approved in writing, as provided herein, by the Secretary of Housing and Urban Development) as to which the purchaser or homeowner has given written notice to the warrantor within one year from the date of conveyance of title to, or initial occupancy of, the dwelling, whichever first occurs: Provided further, That **such warranty shall be in addition to, and not in derogation of, all other rights and privileges** which such purchaser or owner may have under any other law or instrument: And provided further, That the provisions of this section shall apply to any such property covered by a mortgage insured by the Secretary of Housing and Urban Development on and after October 1, 1954, unless such mortgage is insured pursuant to a commitment therefor made prior to October 1, 1954.

(b) Availability of plans and specifications. The Secretary of Housing and Urban Development is further directed to permit copies of the plans and

specifications (including written approvals of any amendments thereof, or changes or variations therein, as provided herein) for dwellings in connection with which warranties are required by subsection (a) of this section to be made available in their appropriate local offices for inspection or for copying by any purchaser, homeowner, or warrantor during such hours or periods of time as the said Secretary may determine to be reasonable.

SOURCE (Aug. 2, 1954, ch. 649, title VIII, **Sec. 801**, 68 Stat. 642; Pub. L. 85-857, Sec. 13(s)(2), Sept. 2, 1958, 72 Stat. 1266; Pub. L. 90-19, Sec. 10(e), May 25, 1967, 81 Stat. 22.)

CODIFICATION Section was enacted as part of the Housing Act of 1954, and not as part of the National Housing Act which comprises this chapter.

Appendix I STUDY METHODOLOGY

This study of the MPS and its companion study of the TSP Program consisted of completing the following tasks:

Task 1. Assess MPS program statutes, regulations, documents, processes, and procedures

- Assess relevant HUD laws and regulations. Review HUD statutes and regulations that regulate the construction of single family homes. Review the Code of Federal Regulations and cite relevant rules pertaining to single-family construction. Identify all major components of the program required by statutes and regulations.
- Assess HUD documents. Identify and review all program manuals, handbooks, forms, and related documents within the total MPS system for new single-family (1 to 4 units) construction. Identify all related HUD documents that are still active and relevant. Identify all programs elements and components, both fully operations and dormant, that comprise the overall MPS system.
- Review processes, programs, and administration. Undertake a comprehensive review of the procedures, processes, and administration, including staffing, of the MPS standards and the total systems in place for its administration and enforcement including the TSP and the Category III state program for factory-built housing. Interview present and retired MPS and related HUD staff as well as outside user and interest groups, as appropriate.

Task 2. Ongoing communication with HUD staff.

Provide a series of briefings to HUD staff as the work progresses on our assessment of the current MPS system, including the identification of any under performing program components, program gaps, and failures. Undertake the assessment within the context of current usage by FHA for new construction; the availability of competing programs; and the changing needs in the housing industry. Include a discussion of elements of the total system with continued or potential importance to the housing industry or to public policy independent of the need to insure single-family mortgages for new construction. Include recommendations for reform, including replacement of program elements or recommendations for legislative change. Recommendations for alternative processes or procedures will provide comparable levels of quality or durability achieved under the present program.

For the MPS study, interviews were conducted with

the following individuals and organizations:

- HUD headquarters: Mark Holman (now retired), Vince Tang, and Jason McJury, and retirees Bob Fuller, Sam Hakopian, and Les Breden.
 - Atlanta HOC: Debra Robinson
 - Denver HOC: Jane Hall, Jerry Keeton, and Ron Collins
 - Philadelphia HOC: Gerry Glavey
 - Santa Ana HOC: Karen Birdsong
 - Merrill-Lynch: Charles Gueli
 - Mortgage Insurance Companies of America (MICA): Jeff Lubar,
 - National Evaluation Service: David Conover and Siavash Farvardin
 - Bill Remmer, National Association of Home Builders
- Follow-up interviews to assess the implications of MPS program changes included the following organizations and individuals.
- Gerry Eid, builder
 - Ron Burton, National Association of Home Builders
 - Sam Hodges, Farmers Home Loan Administration
 - Jerry Kifer, Department of Veterans Affairs
 - Roger Kramer, HUD Multifamily Housing
 - Bob Sahadi, FHMA
 - Alexander Salenikovich, Mississippi Forest Products Lab
 - Joe Sherman, home inspector
 - Jim Poulson, Insurance Services Organization
 - John Stevens, HUD Manufactured Housing Division

Appendix J BIBLIOGRAPHY/RELATED HUD DOCUMENTS

The MPS program is set forth in HUD Handbook 4910.1, *Minimum Property Standards for Housing*, dated July 29, 1994.

Related MPS Program publications are:

HUD Handbook 4950.1, Rev. 3, *Technical Suitability of Products Program Procedures*, dated August 11, 1997.

HUD Handbook 4145.1, *HUD Architectural Processing and Inspections for Home Mortgage Insurance*, dated February 4, 1992.

HUD Handbook 4930.3, *Permanent Foundations Guide for Manufactured Housing*, dated September 1996.

HUD Handbook 4940.2, *Minimum Design Standards for Community Sewage Systems*, dated October 1992.

These publications are available online at www.hudclips.org

Form HUD-92900-A, "HUD/VA Addendum to Uniform Residential Loan Application" is a lender's certification that a property meets the MPS. Form HUD-92541, "Builder's Certification of Plans, Specifications, and Site," and Form HUD-92544, "Warranty of Completion of Construction," are builder certification forms. Form HUD-92544, "Agreement to Execute a Builder's Warranty of Completion of Construction," is a builder's warranty form. These forms are available online at www.hudclips.org

Mortgagee Letter 2001-27 of October 23, 2001, provides the most recent pre-approval requirements for new single family housing construction. HUD issues about 50 mortgagee letters a year, some of which apply to one- and two-family dwellings. All mortgagee letters are available online at www.hudclips.org

Recommended Minimum Requirements for Small Dwellings Construction, published by the Department of Commerce in 1922 and revised in 1932, is no out of print, but a copy is available in the HUD Library in Washington, D.C.

"Issue Paper on the Minimum Property Standards," from "Selected Background Papers: Housing Construction Codes and Standards," HUD-2451 of November 1981, is out of print but is reprinted in full herein.

Federal Regulations Impacting Housing and Land Development: Recommendations for Change. National Institute of Building Sciences, Washington, D.C. April 15, 1981.

Appendix L ACRONYMS

ANSI. American National Standards Institute. The official U.S. standards organization.

ASTM. A major standards-writing organization that publishes thousands of technical standards, including over 600 construction standards.

BOCA. Building Officials and Code Administrators International, one of the three model code organizations that recently merged to create the ICC.

CABO. Council of American Building Officials, formerly publisher the *Model Energy Code* and the *One and Two Family Dwelling Code*. The requirements of both codes are now included in the *International Residential Code*. CABO has been merged into the ICC.

CFR. United States Code of Federal Regulations.

FHA. Federal Housing Administration, formed in 1934 by the National Housing Act and consolidated into HUD in 1965.

HOC. Home Ownership Corporation. HUD has four regional HOCs: Denver, Santa Ana, Atlanta, and Philadelphia.

HUD. U.S. Department of Housing and Urban Development, a cabinet-level federal agency created in 1965.

ICBO. International Council of Building Officials, one of the three model code organizations that recently merged to create the ICC.

ICC. International Code Council, recently created by the country's three model code organizations—BOCA, ICBO, and SBCCI. The ICC publishes the International Codes, including the *International Residential Code*.

IRC. *International Residential Code*, published by the ICC.

ISO. International Standards Organization, a multinational standards-making body.

MPR. *Minimum Property Requirements*, an earlier version of the MPS.

MPS. *Minimum Property Standards*. The subject of this study.

NAHB. National Association of Home Builders.

NCSBCS. National Conference of States on Building Codes and Standards, formerly third-party inspector for HUD under the TSP Program.

NEC. National Electrical Code, published by NFPA.

NFPA. National Fire Protection Association, a major standards-writing organization. It produces the National Electrical Code, Life Safety Code, NFPA 5000, among many others.

NIBS. National Institute of Building Sciences, a nonprofit, nongovernmental organization authorized by Congress to serve as an authoritative source on issues of building science and technology.

PATH. Partnership for Advanced Technology in Housing, a private/public effort to improve the quality, durability, environmental efficiency, and affordability of the nation's homes. PATH is managed by HUD.

SBCCI. Southern Building Code Congress International, one of the three model code organizations that recently merged to create the ICC.

SLA. State Letters of Acceptance, a discontinued element of the TSP Program.

USC. United States Code, a compilation of all federal laws.

Chapter 2 - GENERAL ACCEPTABILITY CRITERIA

- 2-1 GENERAL. The requirements in this Handbook together with appropriate administrative rules and regulations constitute the minimum acceptable criteria for eligibility of existing properties.
- 2-2 REAL ESTATE ENTITY. The property must comprise a single readily marketable real estate entity.
- 2-3 PARTY OR LOT LINE WALL. A building constructed on or to a property line must be separated from the adjoining building, by a wall extending the full height of the building from the foundation to the ridge of the roof. The wall can separate row type townhouses or semi-detached units,

There must be Adequate space between buildings to permit maintenance of the exterior walls.

- 2-4 SERVICE AND FACILITIES.
 - A. Trespass. Each living unit must be able to be used and maintained individually without trespass upon adjoining properties. Any easement required must run with the land.
 - B. Utilities must be independent for each living unit except that common services, such as water, sewer, gas and electricity, may be provided for living units under a single mortgage or ownership. Separate utility service shut-offs for each unit shall be provided. For living units under separate ownership, common utility services may be provided from the main to the building line when protected by easement or covenant and maintenance agreement acceptable to HUD. Individual utilities serving a living unit shall not pass over, under, or through another living unit, unless provision is made for repair and maintenance of utilities without trespass on adjoining properties or legal provision is made for permanent right of access for maintenance and repair of utilities.
 - C. Other Facilities must be independent for each living unit, except that common services, such as laundry and storage space or heating, may be provided for in two-to-four living unit buildings under a single mortgage.

2-5 REQUIRED PROVISIONS:

- A. Each living unit must contain the following:
- 1) A continuing supply of safe and potable water.
 - 2) Sanitary facilities and a safe method of sewage disposal.
 - 3) Heating adequate for healthful and comfortable living conditions. The Field Office may determine that climatic conditions are such that mechanical heating is not required.

Dwellings with wood burning stoves or solar systems used as a primary heat source must have permanently installed conventional heating systems that maintain at least 50 degrees fahrenheit in areas containing plumbing systems.

- 4) Domestic hot water.
 - 5) Electricity for lighting and for equipment used in the living unit.
- B. When individual water supply and sewage disposal systems apply, the following shall be required:
- 1) Water quality must meet the requirements of the health authority having jurisdiction. If the local authority does not have specific requirements, the maximum contaminant levels established by the Environmental Protection Agency (EPA) shall apply.

For location of wells for HUD-insured properties refer to 24 CFR 200.926d(f)(3) or HUD Handbook 4910.1, Appendix K.

If the authority is unable to perform the water quality analysis in a timely manner, a private, commercial testing laboratory or a licensed sanitary engineer acceptable to the authority may take and test water samples.

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- 2) Each living unit must be provided with a sewage

disposal system adequate to dispose of all domestic wastes in a manner which will not create a nuisance, or in any way endanger the public health.

Individual pit privies are permitted where such facilities are customary and are the only feasible means of waste disposal, provided they are installed in accordance with the recommendations of the local Department of Health or, in the absence of such recommendations, with the requirements of the U.S. Public Health publication, "Individual Sewage-Disposal Systems."

- 3) Connection must be made to a public or community water/sewage disposal system whenever feasible.

2-6 NONRESIDENTIAL USE.

A. Design Limitations.

- 1) Any nonresidential use of the property shall be subordinate to its residential use and character. A property, any portion of which is designed or used for nonresidential purposes, is eligible only if the type or extent of the nonresidential use does not impair the residential character of the property.
- 2) Areas designed or used for nonresidential purposes shall not exceed 25 percent of the total floor area. Storage areas or similar spaces which are integral parts of the nonresidential portion shall be included in the total nonresidential area.

2-7 ACCESS.

A. Streets.

- 1) Each property must be provided with a safe and adequate pedestrian or vehicular access from a public or private street.
- 2) All streets must have an all-weather surface.

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- 3) Private streets must be protected by permanent easements and maintained by a Homeowners

Association or joint maintenance agreement.

- B. Access to the living unit must be provided without passing through any other living unit.

Access to the rear yard must be provided without passing through any other living unit. For a row-type dwelling, the access may be by means of alley, easement, passage through the dwelling, or other acceptable means.

- 2-8 DEFECTIVE CONDITIONS. Defective construction, poor workmanship, evidence of continuing settlement, excessive dampness, leakage, decay, termites, or other conditions impairing the safety, sanitation or structural soundness of the dwelling shall render the property unacceptable until the defects or conditions have been remedied and the probability of further damage eliminated.
- 2-9 SPACE REQUIREMENTS. Each living unit must be provided with space necessary to assure suitable living, sleeping, cooking and dining accommodations and sanitary facilities.
- 2-10 MECHANICAL SYSTEMS must be safe to operate, be protected from destructive elements, have reasonable future utility, durability and economy, and have adequate capacity and quality.
- 2-11 VENTILATION. Natural ventilation of structural space such as attics and crawl spaces, must be provided to reduce the effect of conditions of excess heat and moisture which are conducive to decay and deterioration of the structure.
- 2-12 ROOF COVERING must prevent entrance of moisture and provide reasonable future utility, durability and economy of maintenance. When reroofing is needed for a defective roof, already consisting of three layers of shingles, all old shingles must be removed prior to re-roofing.
- 2-13 HAZARDS. The property must be free of hazards which may adversely affect the health and safety of the occupants or the structural soundness of the improvements, or which may impair the customary use and enjoyment of the property by the occupants. The hazards can be subsidence, flood, erosion, defective lead base paint (24 CFR Part 35) or the like.

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- 2-14 CRAWL SPACE. In order to insure against conditions which

could cause deterioration to the building and seriously affect the marketability of the property, it is required that:

- A. There must be adequate access to the crawl space.
- B. The floor joists must be sufficiently above the highest level of the ground to provide access for maintenance and repair of ductwork and plumbing.
- C. The crawl space must be clear of all debris and properly vented.
- D. Any excessive dampness or ponding of water in the crawl space must be corrected.

2-15 DRAINAGE. The site must be graded so as to provide positive, rapid drainage away from the perimeter walls of the dwelling and prevent ponding of water on the site.