

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 200, 201, 202, 203, 206, 221, 233, 234, 280 and 291**

[Docket No. FR-3977-F-01]

RIN 2501-AG61

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Single Family Miscellaneous Amendments, Clarifications, and Corrections**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.**ACTION:** Final rule.

SUMMARY: This final rule makes a variety of technical amendments, clarifications and corrections to regulations for the single family mortgage insurance programs. None of the amendments or clarifications add to the regulatory burden for mortgagors or mortgagees.

EFFECTIVE DATE: August 8, 1996.

FOR FURTHER INFORMATION CONTACT: John J. Coonts, Director, Office of Insured Single Family Housing, Department of Housing and Urban Development, Room 9266, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708-3046; TTY: (202) 4594. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: This rule is designed to make a large number of technical improvements to the regulations for single family programs. The changes will not add to the regulatory burden for mortgagors or mortgagees. Some of the changes are corrections of small errors in the current regulations that will have no substantive change on the way the rules have been applied in practice. Other changes will offer relief from unnecessary requirements.

Following is an explanation of changes made by the rule.

Part 200

A technical change is made to part 200 to remove a reference to part 267 which has been removed from the Code of Federal Regulations.

Part 201

The rule makes a typographical correction to the table of contents and to § 201.18.

Part 202

Section 202.3 is amended to revise paragraph (j) to provide that the Secretary may identify classes or groups of lenders that are exempt from one or more of these fees. This provides more

flexibility to the program by allowing additional groups to be exempted.

"Origination approval agreement" is included in the heading of § 202.11.

The rule deletes § 202.12(d). That paragraph indicates that approval of a supervised mortgagee that is a banking institution or a trust company included approval of the mortgagee when acting in a fiduciary capacity. The Department considers that the paragraph may be misleading by implying that only supervised mortgagees that are banking institutions or trust companies may hold mortgages in a trust or other fiduciary capacity. Subject to any limitations that may appear in regulations for particular programs, such as § 203.434, regarding a declaration of trust for a pool of single family mortgages, the Department does not restrict mortgagees from holding mortgages in a trust or other fiduciary capacity. The Department eliminated trusts as eligible mortgagees through a 1992 revision of part 202 but there was no intent to prevent FHA-insured mortgages from being held as trust assets by an approved mortgagee. The Department will deal only with the mortgagee, rather than others who may have interests in the mortgages, and will hold the mortgagee solely responsible for complying with obligations imposed on mortgagees.

The provisions regarding approval and recertification fees for Title I lenders and Title II mortgagees are amended by adding a new sentence permitting the Secretary to identify classes or groups of lenders or mortgagees that are exempt from one or more of the fees. The current exemption for governmental lenders and mortgagees is left intact.

Part 203

The rule eliminates the requirement in § 203.17(b) (and corresponding requirements in §§ 221.45 and 234.25(b)) that mortgages involve a principal obligation in multiples of \$50 if the mortgage does not include financing of a one-time mortgage insurance premium (MIP) payable pursuant to § 203.280. One time MIP has been replaced by the up-front segment of risk-based mortgage insurance premiums under §§ 203.284 and 203.285. Rather than substitute the up-front segment of risk-based MIP for the one time MIP, however, the Department has determined that there is no longer any reason for the general requirement that other mortgages without a financed premium be in multiples of \$50. All mortgages may now be in multiples of \$1. Corresponding changes are made to §§ 221.45 and 234.52.

Two changes are made to § 203.18 which explain how the maximum mortgage amount is calculated. A parenthetical phrase is removed from § 203.18(a)(1)(ii) to reflect the 1994 legislative change that set the maximum dollar amount for an area at 75% of the *current* Freddie Mac limit, instead of 75% of the *1992* Freddie Mac limit. A new § 203.18(i) is added to recognize that the maximum mortgage amount for an energy efficient mortgage may exceed the area dollar limit that would otherwise apply, under conditions prescribed by the Secretary in accordance with section 106 of the Energy Policy Act of 1992.

Section 203.19(c) which applied to the now-repealed section 203(m) program for mortgage insurance for seasonal homes is deleted as obsolete.

Language is added in § 203.22(a) to clarify that the mortgage provision providing for payment of mortgage insurance premium installments by the mortgagor does not require payment for any longer than the period during which mortgage insurance premiums are payable by the mortgagee to HUD. Obsolete language regarding payment of annual charges on "open-end" advances is deleted.

Sections 203.24(a)(i) and 203.44, and related provisions in other parts such as 234.70, are amended by deleting references to open-end advances.

Section 203.30 is amended to add a new paragraph (d) regarding compliance, for buildings having four (4) or more units which were built for first occupancy after March 13, 1991, with the Fair Housing Act new construction requirements at 24 CFR 100.205.

Sections 203.36 and 234.67 are deleted as unnecessary. See sections 203.16 and 234.15 regarding the use of a dwelling for transient or hotel purposes.

The language in section 203.38 is amended by changing the two references to "unit" to "one or more dwellings."

In §§ 203.40, 203.251(s), and 234.1(n), "Commonwealth of the Northern Mariana Islands" is substituted for the "Trust Territory of the Pacific Islands" because the Commonwealth of the Northern Mariana Islands is the only portion of the former Trust Territory of the Pacific Islands in which FHA single family programs are currently authorized.

The "rule of seven" in § 203.42 currently prohibits mortgage insurance when a mortgagor is purchasing a property to be rented that is "part of, or adjacent or contiguous to, a project, subdivision or group of similar rental

properties" in which the mortgagor will have a financial interest in more than seven dwelling units. This rule removes "subdivision" from the quoted language. Denial of mortgage insurance simply because a mortgagor has a financial interest in eight units in a very large subdivision does not further the purpose of the "rule of seven," which is to avoid insuring single family mortgages on rental units that are in such close geographical proximity with other similar rental units that they could logically be considered part of one multifamily project rather than unrelated single family units. In practice, current departmental policy in applying the "rule of seven" has been directed to properties within a two-block radius from one another. Continued reference to a subdivision would cause confusion regarding the intent of § 203.42.

Section 203.43(c)(3) and the corresponding § 234.52(c) are amended to permit a \$50 increase in the monthly payment for refinancing to a shorter term, to reflect the prevailing policy that has been applied to date on a waiver basis.

Section 203.43b regarding mortgage insurance on seasonal occupancy homes under now-repealed section 203(m) is deleted as obsolete.

Section 203.43f(b) is amended by deleting the last sentence which refers to section 203.17(e). Section 203.17(e) was completely revised and the current cross-reference is not meaningful.

The introductory paragraph of § 203.43h is revised to clarify that a mortgage covering a one- to four-family residence located on Indian land is eligible for insurance pursuant to section 248 of the National Housing Act, if the mortgage is made (1) by an Indian Tribe or (2) on a leasehold estate, by an Indian who will occupy it as a principal residence. Tribes are already recognized as eligible non-occupant mortgagors under § 203.18(f)(3). This amendment to § 203.43h reconciles the two sections. In addition, a statement has been added to the definition of an "Indian tribe," in § 203.43h(g), to note that, for purposes of engaging in section 248 insured mortgage transactions, an Indian tribe may act through its duly authorized representative.

The reference to § 203.50 contained in § 203.43i is deleted to allow rehabilitation loan mortgages under section 203(k) on section 247 Hawaiian home lands. This would have been permitted by a proposed rule published on July 23, 1986, but the provision was omitted from a final rule on the Hawaiian home lands program published on March 16, 1987, because

of the difficulty of operating the Hawaiian home lands program for the General Insurance Fund (as required for section 203(k) loans) in addition to the Mutual Mortgage Fund. This difficulty no longer exists as a result of a subsequent statutory change that provides for all Hawaiian home land mortgages to be in the General Insurance Fund.

Section 225 of the National Housing Act authorizes FHA insurance for open-end mortgages under which the mortgagee could advance additional funds under the mortgage to finance later improvements or repairs that would substantially protect or improve the basic livability or utility of the property. Although mentioned in the regulations, FHA does not have administrative procedures for the processing of open-end mortgages; they are not provided for in HUD's instructions for mortgage forms, and GNMA has no programs for the pooling of open-end mortgages. Various provisions in parts 203 and 234, including §§ 203.44 and 234.70, are amended to make clear that FHA is not insuring open-end mortgages.

The introductory paragraph of § 203.49 is amended by including a reference to section 203(h) in the second sentence to permit adjustable rate mortgages (ARMs) in disaster situations. Section 203(h) mortgages generally meet all requirements of section 203(b) mortgages except that a higher loan-to-value ratio is permitted. The Department has determined that ARMs should be available on the same terms as for section 203(b) mortgages.

Some issuers of 10-year warranty plans that have been approved by HUD and used to support high-ratio mortgages for new construction have read HUD's warranty plan requirements as permitting plans that impose the requirement that homeowners submit warranty claims to arbitration. This has never been HUD's intention under the warranty plan final rule. Although arbitration must be available to a dissatisfied homeowner, judicial resolution of disputes must also be available to homeowners. HUD has modified the wording of § 203.204(g) to make this clear.

Section 203.255(b)(2) is amended by replacing "upon a form" with "in a form" since application information may now be collected electronically through CHUMS.

Section 203.281(b)(1) is amended by deleting the language following the first comma to simplify the procedures for calculating the MIP amount for the small number of cases for which one-time MIP is still used.

Sections 203.356 and 203.402 regarding the notice of foreclosure are amended to provide a more consistent application of the rules for curtailment of debenture interest included in insurance benefits paid to mortgagees. Section 203.356 is divided into subsection (a) for the requirements to provide the notice of foreclosure, and subsection (b) for exercising reasonable diligence in prosecuting the foreclosure. Section 203.402(k)(1) is also subdivided. New subsection 203.402(k)(1)(ii) limits the amount of debenture interest that the Secretary may curtail if the mortgagee does not provide the Secretary the notice of foreclosure. This change will reduce the debenture interest curtailment when the mortgagee proceeded to foreclose with reasonable diligence, despite its failure to forward the initial notice of foreclosure. The specific cap on debenture interest curtailment will be set by administrative issuances, but the curtailment will not exceed what is currently being assessed.

Sections 203.378, 203.379, and 203.380 regarding property condition and adjustments for damage are amended to clarify that tornado damage includes damage by hurricanes. Both storm systems are defined as violent whirlwinds and historically have been treated the same by the Department in this regard.

Section 203.502(b) regarding notification of transfer of servicing is amended to change the responsibility for notifying the Secretary from the transferor mortgagee to the transferee. This change will enhance HUD's ability to coordinate the change in servicer with the collection of mortgage insurance premiums from the new servicer.

Section 203.670 addresses conveyance of occupied property. Paragraph (a) states HUD's property disposition policy, which is also stated in § 291.1 in part 291, Disposition of HUD-Acquired Single Family Property. However, § 291.1 was amended to reflect a revised policy in a September 20, 1993 Interim Rule, made final on September 22, 1994. Therefore, § 203.670(a) is being amended to reflect the revised policy.

Section 203.685 is removed. It authorized waivers of single family servicing regulations, but such waivers are now authorized by the Department-wide waiver authority in 24 CFR 5.100.

Part 206

Section 206.13 is removed because it addresses the terminated single family co-insurance program. Section 206.17 is amended to recognize that the basic payment term and tenure payment

options for HECMs can be combined with lines of credit.

Part 234

Sections 234.11 and 234.54 are added to conform to corresponding provisions in part 203.

Section 234.16 is amended to add a new paragraph (d) regarding compliance, for buildings having four (4) or more units which were built for first occupancy after March 13, 1991, with the Fair Housing Act new construction requirements at 24 CFR 100.205.

Part 280

Section 280.330(c)(2) is amended by adding the following language: “. . . remaining balance of the . . .”. The way this section is currently written, it appears that the entire original mortgage amount is cancelled. In addition, the spelling of “cancelled” is corrected.

Part 291

Section 291.105(h)(2) is amended to give the Secretary more flexibility in determining what form of cash equivalents will be acceptable for earnest money deposits in the sale of HUD-acquired single family properties, given rapidly changing banking industry practices. For example, the amendment permits HUD to accept teller's checks that are currently excluded.

Section 291.115(b)(2) of the regulations on HUD property disposition is amended to clarify that section 203(k) insured financing for investors is available for eligible properties without increased down-payment requirements. Section 291.110(e) already provides for section 203(k) financing in property disposition sales. As a general rule, investors are precluded from obtaining FHA-insured mortgage financing. HUD-acquired properties may be sold to investors with FHA-insured financing but, in order to protect the insurance funds, based upon past experiences, the property disposition regulations were drafted to require higher down-payments for investors. A 25 percent down-payment is required for investors who purchase a one-unit single family dwelling with insured mortgage financing.

The section 203(k) program specifically makes investors eligible to obtain mortgage financing with a 15 percent down-payment based upon the lesser of the estimated value of the property plus the cost of rehabilitation, or 110 percent of the estimate of value after rehabilitation. The availability of the section 203(k) program for property disposition sales, as provided by § 291.110(e), incorporates the 15 percent

down-payment requirement for investors through the regulations that implement section 203(k). In order to make it clear that the 25 percent down-payment provision of § 291.115(b)(2) does not apply to section 203(k) investor mortgages, a technical amendment is being made to that section.

Typographical and Technical Errors, and Cross Reference Corrections

This rule corrects several typographical and technical errors and also corrects and adds cross references and removes cross references that are no longer applicable. Also, § 203.390 is amended to insert language inadvertently omitted when that section was last amended on July 1, 1993, at 58 FR 35369.

Other Matters

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is “impracticable, unnecessary, or contrary to the public interest.” (24 CFR 10.1) The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary and contrary to public interest because the amendments made by this rule give greater clarity and accuracy to the provisions. They do not substantively affect the rights and duties of participants in the programs.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies

that this rule does not have a significant economic impact on a substantial number of small entities. This final rule makes a variety of technical amendments, clarifications and corrections to regulations for the single family mortgage insurance programs. None of the amendments or clarifications add to the regulatory burden for mortgagors or mortgagees.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage

insurance, Reporting and recordkeeping requirements.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 233

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 280

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

Accordingly, in title 24 of the Code of Federal Regulations, parts 200, 201, 202, 203, 206, 221, 233, 234, 280, and 291 are amended as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

§ 200.810 [Amended]

2. Section 200.810(b) is amended to remove the phrase “, who shall be listed on the HUD Appraiser Roster under § 267.8(d)(2) of the chapter,”.

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

3. The authority citation for 24 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 1703; 42 U.S.C. 1436a and 3535(d).

§ 201.18 [Amended]

4. Section 201.18 is amended by revising the section heading to read, “Modification agreement or repayment plan.”

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

5. The authority citation for 24 CFR part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

6. Section 202.3(j) is amended to add at the end the following sentence:

§ 202.3 General approval requirements.

* * * * *

(j) * * * The Secretary may identify classes or groups of lenders that are exempt from one or more of these fees.

* * * * *

7. Section 202.11 is amended by revising the section heading to read as follows:

§ 202.11 Approval, origination approval agreement, recertification, withdrawal of approval and termination of approval agreement.

* * * * *

8. Section 202.12(k) is amended to add at the end the following sentence:

§ 202.12 General approval requirements.

* * * * *

(k) * * * The Secretary may identify classes or groups of mortgagees that are exempt from one or more of these fees.

* * * * *

§ 202.13 [Amended]

9. Section 202.13 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

10. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

11. Section 203.5 is amended by revising paragraph (e) to read as follows:

§ 203.5 Direct Endorsement process.

* * * * *

(e) *Appraisal.* (1) A mortgagee shall have the property appraised in

accordance with such standards and requirements as the Secretary may prescribe.

(2) The mortgagee shall not discriminate on the basis of race, color, religion, national origin, sex, age, or disability in the selection of an appraiser.

12. Section 203.17 is amended by revising paragraph (b) to read as follows:

§ 203.17 Mortgage provisions.

* * * * *

(b) *Mortgage multiples.* A mortgage shall involve a principal obligation in a multiple of \$1.

* * * * *

13. Section 203.18 is amended to remove the parenthetical phrase “(as in effect on September 30, 1992)” in paragraph (a)(1)(ii) and to add a new paragraph (i) to read as follows:

§ 203.18 Maximum mortgage amounts.

* * * * *

(i) *Energy efficient mortgages.* The principal amount of energy efficient mortgages may exceed the maximum amounts determined under paragraph (a)(1) of this section under conditions prescribed by the Secretary in accordance with section 106 of the Energy Policy Act of 1992.

§ 203.19 [Amended]

§ 203.19 [Amended]

14. Section 203.19 is amended by removing paragraph (c).

15. Section 203.22 is amended by revising paragraph (a) to read as follows:

§ 203.22 Payment of insurance premiums or charges; prepayment privileges.

(a) *Payment of periodic insurance premiums or charges.* Except with respect to mortgages for which a one-time mortgage insurance premium is paid pursuant to § 203.280, the mortgage may provide for monthly payments by the mortgagor to the mortgagee of an amount equal to one-twelfth of the annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments continue only so long as the contract of insurance shall remain in effect or for such shorter period as mortgage insurance premiums are payable by the mortgagee to the Commissioner.

* * * * *

16. Section 203.24 is amended by revising paragraph (a)(1) to read as follows:

§ 203.24 Application of payments.

(a) * * *

(1) Premium charges under the contract of insurance (other than a one-time or up-front mortgage insurance

premium paid in accordance with §§ 203.280, 203.284 and 203.285), charges for ground rents, taxes, special assessments, flood insurance premiums, if required, and fire and other hazard insurance premiums;

* * * * *

17. Section 203.30 is amended by adding a new paragraph (d) to read as follows:

§ 203.30 Certificate of nondiscrimination by the mortgagor.

* * * * *

(d) That buildings having four (4) or more units, which were built for first occupancy after March 13, 1991, were constructed in compliance with the Fair Housing Act new construction requirements in 24 CFR 100.205.

§ 203.36 [Removed and reserved]

18. Section 203.36 is removed and reserved.

19. Section 203.38 is revised to read as follows:

§ 203.38 Location of dwelling.

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

20. Section 203.40 is amended by revising the first sentence to read as follows:

§ 203.40 Location of property.

The mortgaged property shall be located within the United States, Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa. * * *

21. Section 203.42 is amended by revising paragraph (a) to read as follows:

§ 203.42 Rental properties.

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

* * * * *

22. Section 203.43 is amended by revising paragraph (c)(3) to read as follows:

§ 203.43 Eligibility of miscellaneous type mortgages.

* * * * *

(c) * * *

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

(i) When a fixed rate mortgage is given to refinance an adjustable rate mortgage held by a mortgagor who is to occupy

the dwelling as a principal residence or secondary residence, as these terms are defined in § 203.18(f); or

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

* * * * *

§ 203.43b [Removed and reserved]

23. Section 203.43b is removed and reserved.

§ 203.43f [Amended]

24. Section 203.43f(b) is amended to remove the last sentence.

25. Section 203.43h is amended by revising the introductory text, revising paragraph (b), and revising paragraph (g)(3), to read as follows:

§ 203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

A mortgage covering a one- to four-family residence located on Indian land shall be eligible for insurance pursuant to section 248 of the National Housing Act (12 U.S.C. 1715z-13), notwithstanding otherwise applicable requirements related to marketability of title, if the mortgage meets the requirements of this subpart as modified by this section and is made by an Indian Tribe or on a leasehold estate, by an Indian who will occupy it as a principal residence. Mortgage insurance on cooperative shares is not authorized under this section.

* * * * *

(b) *Eviction procedures.* Before HUD will insure a mortgage on Indian land, the tribe having jurisdiction over such property must certify to the HUD Field Office that it has adopted and will enforce procedures for eviction of defaulted mortgagors where the insured mortgage has been foreclosed.

* * * * *

(g) * * *

(3) "Indian tribe" means any Indian or Alaska native tribe, band, nation, or other organized group or community of Indians or Alaskan natives recognized as eligible for the services provided to Indians or Alaska natives by the Secretary of the Interior because of its status as such an entity, or that is an eligible recipient under chapter 67 of title 31, United States Code. For purposes of engaging in section 248 insured mortgage transactions under this section, an Indian tribe may act

through its duly authorized representative.

* * * * *

26. Section 203.43i is amended by revising paragraph (a) to read as follows:

§ 203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act.

(a) *Eligibility.* A mortgage on a homestead lease granted by the Department of Hawaiian Home Lands covering a one- to four-family residence located on Hawaiian home lands is eligible for insurance pursuant to section 247 of the National Housing Act (12 U.S.C. 1715z-12) if the mortgagor is a native Hawaiian who will occupy it as a principal residence, and if the mortgage meets the requirements of this subpart as modified by this section. Mortgage insurance on cooperative shares under § 203.43c on homes in federally impacted areas under § 203.43e is not authorized under this section.

* * * * *

27. Section 203.44 is revised to read as follows:

§ 203.44 Eligibility of advances.

Mortgagees may not make open-end advances under section 225 of the National Housing Act (12 U.S.C. 1715p) in connection with the mortgages insured under this chapter.

28. Section 203.49 is amended by revising the second sentence of the introductory text and by removing the second sentence of paragraph (a) beginning with "The weekly average * * *", to read as follows:

§ 203.49 Eligibility of adjustable rate mortgages.

* * * This section shall apply only to mortgage loans described under sections 203(b), 203(h) and 203(k) of the National Housing Act.

* * * * *

29. Section 203.204 is amended by revising paragraph (a) and by revising the third sentence of paragraph (g), to read as follows:

§ 203.204 Requirements and limitations of a plan.

(a) A Plan must assure timely resolution of homeowners' complaints or claims covered under § 203.205. Warranties set forth in a Plan must comply with section 2301(a)(1)-(13) of the Magnuson-Mass Warranty-Federal Trade Commission Improvement Act (15 U.S.C. 2301-2312) along with the requirements and criteria set out in this section.

* * * * *

(g) * * * A Plan must contain pre-arbitration conciliation provisions at no cost to the homeowner, and provision for judicial resolution of disputes, but arbitration, which must be available to a homeowner during the entire term of the coverage contract, must be an assured recourse for a dissatisfied homeowner.

30. Section 203.251 is amended by revising paragraph (s) to read as follows:

§ 203.251 Definitions.

(s) *State* includes the several States, Puerto Rico, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Virgin Islands.

31. Section 203.255 is amended by revising paragraph (b)(2) to read as follows:

§ 203.255 Insurance of mortgage.

(b) * * *

(2) An application for insurance of the mortgage in a form prescribed by the Secretary;

§ 203.265 [Amended]

32. Section 203.265(b) is amended in the last sentence to remove the phrase "Treasury Fiscal Requirements Manual" and add in its place the phrase "Treasury Financial Manual."

33. Section 203.281 is amended by revising paragraph (b)(1) to read as follows:

§ 203.281 Calculation of one-time MIP.

(b)(1) The Commissioner shall determine the applicable premium percentage in accordance with sound financial and actuarial practice.

§ 203.284 [Amended]

34. Section 203.284 is amended by:

- Removing the second sentence in paragraph (a)(1);

- Removing the phrase "pursuant to paragraph (b)(1)(i) or (b)(2)(i) of this section," in paragraph (c); and

- Removing the phrase "Treasury Fiscal Requirements Manual" in the last sentence of paragraph (e), and adding in its place the phrase "Treasury Financial Manual."

35. Section 203.285 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 203.285 Fifteen-year mortgages: Calculation of up-front and annual MIP on or after December 26, 1992.

(c) *Applicability of certain provisions.*
* * * The provisions of paragraphs (c), (d), (e), and (g) of § 203.284 also shall be applicable to mortgages subject to premiums under this section.

36. Section 203.346 is amended by revising the first sentence to read as follows:

§ 203.346 Postponement of foreclosure—mortgagors in military service.

If at any time during default the mortgagor is a "Person in military service," as such term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940, the period during which the mortgagor is in such service shall be excluded in computing the period within which the mortgagee shall commence foreclosure or acquire the property by other means as provided in § 203.355 of this subpart. * * *

37. Section 203.356 is revised to read as follows:

§ 203.356 Notice of foreclosure and pre-foreclosure sale; reasonable diligence requirements.

(a) *Notice of foreclosure and pre-foreclosure sale.* The mortgagee must give notice to the Secretary, in a format prescribed by the Secretary, within 30 days after the institution of foreclosure proceedings. The mortgagee must give notice to the Secretary, in a format prescribed by the Secretary, within the time-frame prescribed by the Secretary, of the acceptance of any mortgagor into the pre-foreclosure sale procedure.

(b) *Reasonable diligence.* The mortgagee must exercise reasonable diligence in prosecuting the foreclosure proceedings to completion and in acquiring title to and possession of the property. A time frame that is determined by the Secretary to constitute "reasonable diligence" for each State is made available to mortgagees.

38. Section 203.378 is amended by revising paragraph (c)(1) to read as follows:

§ 203.378 Property condition.

(c) * * *
(1) Damage by fire, flood, earthquake, hurricane, or tornado;

39. Section 203.379 is amended by revising paragraph (a), introductory text, and paragraph (b), introductory text, to read as follows:

§ 203.379 Adjustment for damage or neglect.

(a) If the property has been damaged by fire, flood, earthquake, hurricane, or

tornado, or, for mortgages insured on or after January 1, 1977, the property has suffered damage because of the mortgagee's failure to take action as required by § 203.377, the damage must be repaired before conveyance of the property or assignment of the mortgage to the Secretary, except under the following conditions:

(b) For mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's underwriter on or after November 19, 1992, the provisions of paragraph (a) of this section apply and, in addition, if the property has been damaged during the time of the mortgagee's possession by events other than fire, flood, earthquake, hurricane, or tornado, or if it was damaged notwithstanding reasonable action by the mortgagee as required by § 203.377 of this part, the mortgagee must provide notice of such damage to the Secretary and may not convey until directed to do so by the Secretary. The Secretary will either:

40. Section 203.380 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 203.380 Certificate of property condition.

(a) * * *

(1) * * *

(i) Undamaged by fire, flood, earthquake, hurricane or tornado; and

41. Section 203.390 is amended by revising paragraph (b)(1) to read as follows:

§ 203.390 Waiver of title—mortgages or property formerly held by the Secretary.

(b) * * *

(1) If a property held by the Secretary is sold by the Secretary who also insures a mortgage financing the sale, and the mortgage is later reassigned to the Secretary or the property covered by the mortgage is later conveyed to the Secretary, the Secretary will not object to title by reason of any lien or other adverse interest that was senior to the mortgage on the date the mortgage was filed for record, except where the lien or other adverse interest arose from a lien or interest that had already been recorded against the mortgagor.

42. Section 203.402 is amended by revising paragraphs (b), (c) and (k)(1) to read as follows:

§ 203.402 Items included in payment—conveyed and non-conveyed properties.

* * * * *

(b) Special assessments, which are noted on the application for insurance or which become liens after the insurance of the mortgage.

(c) Hazard insurance premiums on the mortgaged property not in excess of a *reasonable rate* as defined in § 203.379(a)(4).

* * * * *

(k)(1) For properties conveyed to the Secretary, an amount equivalent to the debenture interest which would have been earned, as of the date such payment is made, on the portion of the insurance benefits paid in cash, if such portion had been paid in debentures, except that:

(i) When the mortgagee fails to meet any one of the applicable requirements of §§ 203.355, 203.356(b), 203.359, 203.360, 203.365, 203.606(b)(1), or 203.366 within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended;

(ii) When the mortgagee fails to meet the requirements of § 203.356(a) of this part within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in such cash payment shall be computed to a date set administratively by the Secretary.

* * * * *

43. An undesignated center heading "GRADUATED PAYMENT MORTGAGES" is added after § 203.435 and before § 203.436.

44. Section 203.502 is amended to revise the first sentence of paragraph (a) and all of paragraph (b) to read as follows:

§ 203.502 Responsibility for servicing.

(a) After January 10, 1994, servicing of insured mortgages must be performed by a mortgagee that is approved by HUD to service insured mortgages. * * *

* * * * *

(b) Whenever servicing of any mortgage is transferred from one mortgagee or servicer to another, notice of the transfer of service shall be delivered:

(1) By the transferor mortgagee or servicer to the mortgagor. The notification shall be delivered not less than 15 days before the effective date of the transfer and shall contain the

information required in § 3500.21(e)(2) of this title; and

(2) By the transferee mortgagee or servicer:

(i) To the mortgagor. The notification shall be delivered not less than 15 days before the effective date of the transfer and shall contain the information required in § 3500.21(e)(2) of this title; and

(ii) To the Secretary. This notification shall be delivered within 15 days of the transfer, in a format prescribed by the Secretary.

* * * * *

45. Section 203.604 is amended by revising the second sentence of paragraph (b) to read as follows:

§ 203.604 Contact with the mortgagor.

* * * * *

(b) * * * If default occurs in a repayment plan arranged other than during a personal interview, the mortgagee must have a face-to-face meeting with the mortgagor, or make a reasonable attempt to arrange such a meeting within 30 days after such default and at least 30 days before foreclosure is commenced, or at least 30 days before assignment is requested if the mortgage is insured on Hawaiian home land pursuant to section 247 or Indian land pursuant to section 248 or if assignment is requested under § 203.350(d) for mortgages authorized by section 203(q) of the National Housing Act.

* * * * *

46. Section 203.670 is amended by revising paragraph (a) to read as follows:

§ 203.670 Conveyance of occupied property.

(a) It is HUD's policy to reduce the inventory of acquired properties in a manner that expands homeownership opportunities, strengthens neighborhoods and communities, and ensures a maximum return to the mortgage insurance fund.

* * * * *

47. Section 203.679 is amended by revising paragraph (b)(4) to read as follows:

§ 203.679 Continued occupancy after conveyance.

* * * * *

(b) * * *

(4) Assignment of the property by the Secretary to a different use or program.

§ 203.685 [Removed]

48. Section 203.685 is removed.

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

49. The authority citation for 24 CFR part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–1720; 42 U.S.C. 3535(d).

§ 206.3 [Amended]

50. Section 206.3 is amended by removing the last sentence of the definition of "*Maximum claim amount*".

51. Section 206.9 is amended by revising the paragraph heading of paragraph (b) to read as follows:

§ 206.9 Eligible mortgagees.

* * * * *

(b) *HUD approved mortgagees.*

§ 206.13 [Removed and reserved]

52. Section 206.13 is removed and reserved.

53. Section 206.17 is amended by revising paragraph (a) to read as follows:

§ 206.17 General.

(a) *Payment options.* A mortgage shall initially provide for the tenure payment option (§ 206.19(a)), the term payment option (§ 206.19(b)), or the line of credit payment option (§ 206.19(c)), or a combination as provided in § 206.25(d), subject to later change in accordance with § 206.26.

* * * * *

§ 206.45 [Amended]

54. Section 206.45(b) is amended to remove the second sentence.

§ 206.121 [Amended]

55. Section 206.121(c) is amended to remove the citation "§ 206.27(e)" and to add in its place the citation "§ 206.27(d)."

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

56. The authority citation for part 221 continues to read as follows:

Authority: 12 U.S.C. 1707(a), 1715b, and 1715f; 42 U.S.C. 3535(d).

57. Section 221.45 is revised to read as follows:

§ 221.45 Mortgage obligation in multiples.

The mortgage shall involve a principal obligation in multiples of \$1.

PART 233—EXPERIMENTAL HOUSING MORTGAGE INSURANCE

58. The authority citation for part 233 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715x; 42 U.S.C. 3535(d).

59. Section 233.5 is amended by revising paragraph (a) introductory text and paragraph (b) to read as follows:

§ 233.5 Cross-reference.

(a) To be eligible for insurance under this subpart, a mortgage or home improvement loan shall meet the eligibility requirements for insurance under § 203.1 *et seq.* (part 203, subpart A); § 213.501 *et seq.* (part 213, subpart C); § 220.1 *et seq.* (part 220, subpart A); § 221.1 *et seq.* (part 221, subpart A); § 226.1 *et seq.* (part 226, subpart A); § 234.1 *et seq.* (part 234, subpart A); § 235.1 *et seq.* (part 235, subpart A); or § 237.1 *et seq.* (part 237, subpart A) of this chapter, except that:

* * * * *

(b) For the purposes of this subpart, all references in parts 203, 213, 220, 221, 226, 234, 235, and 237 of this chapter to sections 203, 213, 220, 221, 809, 234, 235, and 237 of the National Housing Act shall be construed to refer to section 233 of the Act.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

60. The authority for part 234 continues to read as follows:

Authority: 12 U.S.C. 1715qb and 1715y; 42 U.S.C. 3535(d). Section 234.520(a)(2)(ii) is also issued under 12 U.S.C. 1707(a).

61. Section 234.1 is amended by revising paragraph (n) to read as follows:

§ 234.1 Definitions used in this subpart.

* * * * *

(n) *State* includes the several States, Puerto Rico, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Virgin Islands.

* * * * *

62. Section 234.11 is added to read as follows:

§ 234.11 Disclosure regarding interest due upon mortgage prepayment.

Each mortgagee with respect to a mortgage under this part shall, at or before closing with respect to any such mortgage, provide the mortgagor with written notice in a form prescribed by the Commissioner describing any requirements the mortgagor must fulfill upon prepayment of the principal amount of the mortgage to prevent the accrual of any interest on the principal amount after the date of such prepayment.

63. Section 234.16 is amended by adding a new paragraph (d) to read as follows:

§ 234.16 Certificate of nondiscrimination by mortgagor.

* * * * *

(d) That buildings having four (4) or more units, which were built for first occupancy after March 13, 1991, were constructed in compliance with the Fair Housing Act new construction requirements in 24 CFR 100.205.

64. Section 234.25 is amended by revising paragraph (b) to read as follows:

§ 234.25 Mortgage provisions.

* * * * *

(b) *Mortgage multiples.* The mortgage shall involve a principal obligation in a multiple of \$1.

* * * * *

65. Section 234.52 is amended by revising paragraph (c) to read as follows:

§ 234.52 Refinancing of existing mortgages.

* * * * *

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

(1) When a fixed rate mortgage is given to refinance an adjustable rate mortgage held by a mortgagor who is to occupy the dwelling as a principal residence or secondary residence, as these terms are defined in § 237.27(e); or

(2) When refinancing a mortgage for a shorter term will result in an increase in the mortgagor's regular monthly payments of no more than \$50. In the case of a graduated payment mortgage, the reduction in regular monthly payments means a reduction from the payment due under the existing mortgage for the month in which the refinancing mortgage is executed;

* * * * *

66. Section 234.54 is added, under the undesignated center heading "ELIGIBLE MORTGAGES," to read as follows:

§ 234.54 Eligibility of assigned mortgages and mortgages covering acquired property.

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

§ 234.67 [Removed and reserved]

67. Section 234.67 is removed and reserved.

68. The undesignated center heading "OPEN-END ADVANCES" immediately preceding § 234.70 is removed.

69. Section 234.70 is revised to read as follows:

§ 234.70 Eligibility of open-end advances.

Mortgagees may not make open-end advances under section 255 of the National Housing Act in connection with mortgages insured under this chapter.

PART 280—NEHEMIAH HOUSING OPPORTUNITY GRANTS PROGRAM

70. The authority citation for 24 CFR part 280 continues to read as follows:

Authority: 12 U.S.C. 1715¹ note; 42 U.S.C. 3535(d).

71. Section 280.330 is amended by revising the section heading and paragraph (c)(2) to read as follows:

§ 280.330 Loan and Profit.

* * * * *

(c) * * *

(2) *Loan and Profit*—Any amounts remaining after distribution of the down payment shall be shared equally between the Secretary and the family, but only to the extent that the Secretary recovers an amount equal to the amount of the loan originally made to the family under this section. If such remaining amounts are insufficient for the Secretary to recover the full amount of the loan made under this section, the remaining balance of the second mortgage shall be cancelled and shall not be transferred to a subsequent purchaser.

* * * * *

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

72. The authority for 24 CFR part 291 continues to read as follows:

Authority: 12 U.S.C. 1790 and 1715(b); 42 U.S.C. 1441, 1441a, 1551a, and 3535(d).

73. Section 291.100 is amended by revising the first sentence of paragraph (a)(3) and the introductory text in paragraph (a)(4) to read as follows:

§ 291.100 General policy.

(a) * * *

(3) Except as provided in paragraph (a)(4) of this section, tenants in occupancy will not be offered the right of first refusal to purchase the property.

* * *

(4) HUD tenants in occupancy will be offered the right of first refusal to purchase property where:

* * * * *

74. Section 291.105 is amended by revising the first sentence of paragraph (e) and the first sentence of paragraph (h)(2), to read as follows:

§ 291.105 Competitive sales procedure.

* * * * *

(e) *Full price offers.* HUD field offices that operate under a "full price offer" program open offers at specified times during the 10-day bidding period. * * *

* * * * *

(h) * * *

(2) All bids must be accompanied by earnest money deposits in the form of a cash equivalent as prescribed by the Secretary, or a certification from the real estate broker that the earnest money has been deposited in the broker's escrow account. * * *

* * * * *

75. Section 291.110 is amended by revising the first sentence of paragraph (b)(1) to read as follows:

§ 291.110 Other sales procedures.

* * * * *

(b) *Direct sales to displaced persons.*
(1) At the discretion of the Field Office,

properties eligible for insured financing are offered for direct sale, at a discount of 10 percent off the list price, to displaced persons who will occupy the properties. * * *

* * * * *

76. Section 291.115 is amended by revising paragraph (b)(2) to read as follows:

§ 291.115 Insured sales.

* * * * *

(b) * * *

(2) For an owner-occupant purchaser, the mortgage amount is based on the bid price plus any allowable pre-pays (e.g., taxes) and financing or closing costs, up to local maximum mortgage amounts. For investor purchasers without rehabilitation loans insured under § 203.50 of this chapter, the mortgage amount is limited to 75 percent of the

bid price for one-unit properties, and 85 percent for two- to four-unit properties, up to local maximum mortgage amounts. Pre-pays, financing or closing costs may not be included in the mortgage amount for such investor purchasers. For investor purchasers with rehabilitation loans insured under § 203.50 of this chapter, the mortgage amount is calculated as provided in § 203.50(f) of this chapter and the bid price is used as the Commissioner's estimate of the value of the property before rehabilitation.

Dated: June 13, 1996.
Nicolas P. Retsinas,
Assistant Secretary for Housing-Federal Housing Commissioner.
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