

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR-4431-F-01]

RIN 2502-AH31

FHA Single Family Mortgage Insurance; Statutory Changes for Maximum Mortgage Limit and Downpayment Requirement

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends provisions of current regulations to provide consistency with recent statutory changes for the maximum mortgage limit and downpayment requirements for FHA single family mortgage insurance programs.

EFFECTIVE DATE: April 26, 1999.

FOR FURTHER INFORMATION CONTACT:

Vance Morris, Director, Home Mortgage Insurance Division, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708-2700. (This is not a toll free number.) For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: On October 21, 1998, President Clinton approved the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Pub. L. 105-276. Section 212 of the Act extended on a nationwide basis, through September 30, 2000, the simplified downpayment calculations that have been in effect the previous two years for FHA-insured single family mortgages in Alaska and Hawaii. Section 228 of the Act permitted increased FHA mortgage limits for high-cost areas of the country and raised the basic FHA "floor" mortgage limit available throughout the country. The Department has concluded that neither provision presents implementation issues that require a notice-and-comment procedure before making the necessary conforming revisions to 24 CFR part 203.

Mortgage Limits

As revised, 24 CFR 203.18 will no longer reproduce the statutory language of section 203(b)(2)(A) of the National Housing Act (NHA) regarding dollar amount limitations on FHA-insured mortgages. For a number of years, in an effort to respond to Congressional

expectations of rapid implementation, the Department has initially implemented statutory changes in FHA single family mortgage limits through Mortgagee Letters with the intention of producing a conforming final rule soon afterwards. The Mortgagee Letter procedure has proven to be an effective means of rapidly disseminating information on the initial implementation of these statutory changes. However, HUD's intention to produce a follow-up conforming final rule rapidly has not always been realized in the crush of other competing regulatory priorities. For example, the statutory provision that first related FHA maximum mortgage limits to Freddie Mac's 1992 conforming loan limits was approved in October 1992 but not reflected in FHA regulations until the end of July 1993. In September 1994, the statutory provision was amended to substitute Freddie Mac's current conforming loan limit for the 1992 loan limit, but this change is not yet reflected in regulations.

In recent years, because of the frequent changes in underlying legislation and the annual changes in mortgage limits due to changes in the Freddie Mac limit, the regulations have not served as an important or reliable vehicle for disseminating current information on mortgage limits to the industry or the general public. The Department has concluded that the public would be better served by regulations that make clear that the statute sets out the basic approach to maximum mortgage limits for an area and that HUD will implement changes in mortgage limits by non-regulatory administrative means following the procedure set forth in § 203.18(h). By citing the applicable statutory section, the revised § 203.18(a) will still serve as an informational tool for persons who are uncertain where the statutory provision is located without misleading anyone by outdated provisions.

The Department has also updated 24 CFR 203.29(a) regarding section 214 of the NHA and increased mortgage limits in Alaska, Hawaii, Guam and the Virgin Islands. Some unnecessary repetition of statutory language has been omitted, and the regulatory requirement that mortgage limit increases authorized by section 214 be published in the **Federal Register** has been replaced by a reference to § 203.18(h). Section 203.18(h) generally permits area mortgage limit changes within the statutory minimum and maximum levels to be established by administrative issuances to affected mortgagees as an alternative to **Federal Register** notice, but it has not previously

been applicable to increases authorized by section 214 because of the regulatory language requiring a **Federal Register** notice. Section 214 specifically permits the Secretary to make increases by regulations "or otherwise". This does not require a **Federal Register** notice, and there is no administrative need to continue to distinguish the regulatory procedures for mortgage limits based on section 214 from the procedures for other mortgage limits.

Downpayment Simplification

Section 203.18 is also revised to present the current requirements on downpayments and loan-to-value ratios in a more accessible fashion. In general, the revised rule refers simply to the applicable statutory provisions in the NHA: section 203(b)(10) on a temporary basis, with section 203(b)(2)(B) still in effect on a permanent basis. (Until the interim rule discussed below takes effect, § 203.18(a)(3) will include the current substantive approach to implementation of 203(b)(2)(B) for high-ratio mortgages on new homes. Readers are advised to consider this final rule and the interim rule together because § 203.18(a)(3) of the interim rule, rather than this final rule, presents HUD's warranty policy for high-ratio mortgages, subject to further reconsideration after review of public comments on the interim rule.)

This final rule also continues HUD's previous policy of distinguishing between secondary and primary residences for downpayment purposes by limiting insured mortgages on secondary residences to 85% of appraised value. Section 203(b)(10) has no effect on the calculation of mortgage amounts under section 203(h) of the NHA for homes for disaster victims or section 203(i) of the NHA for homes in outlying areas. Therefore, the language in § 203.18(d) for section 203(i) mortgages remains the same except for one technical cross-reference change required because of the revision of § 203.18(a). No changes are made to § 203.18(e) for homes for disaster victims.

The definition of appraised value in § 203.18(f)(4) is amended to recognize that the loan-to-value ratios under section 203(b)(10) downpayment simplification are intended to be applied to appraised value (or sales price, if lower) without including HUD-approved closing costs as part of appraised value.

In today's **Federal Register**, a separate interim rule is published regarding a substantive change in policy on warranty requirements for high ratio mortgages on new homes. That interim

rule will take effect one day after this final rule. It will clarify the applicability of the Department's current handbook policy requiring a comprehensive 1-year builder's warranty for new homes, as a necessary step to full implementation of downpayment simplification for new homes and as a permanent change in policy. It will also make a substantive revision to § 203.18(a)(3) of this final rule.

Justification for Final Rule

HUD ordinarily provides an opportunity for the public to comment on HUD rules before they take effect. However, 24 CFR 10.1 permits HUD to dispense with notice and public procedures—through either an interim or a final rule—if HUD determines that notice and public procedure are impracticable, unnecessary or contrary to the public interest. In this case, public comment is both unnecessary and contrary to the public interest. It is unnecessary because the rule as revised simply reflects the statutory changes, without any other change in substance, with some simplification in regulatory language. Delayed effectiveness pending public comment would be contrary to the public interest because the regulations would mislead by setting forth an outdated version of the law.

Other Matters

Environmental Review

This final rule is exempted from environmental review under the categorical exclusion in 24 CFR 50.19(c)(6).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule merely authorizes an alternative way of qualifying a newly-constructed home for a high-ratio FHA-insured mortgage. The final rule has no adverse or disproportionate economic impact on small businesses.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this final rule would 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. No programmatic or policy changes would result from this final rule that affect the relationship between the Federal Government and State and local governments.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for the principal FHA single family mortgage insurance program is 14.117. This final rule would also apply through cross-referencing to FHA mortgage insurance for condominium units (14.133) and other smaller programs.

List of Subjects in 24 CFR part 203

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

Accordingly, 24 CFR part 203 is amended to read as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 continues to read as follows:

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

2. Section 203.18 is amended by revising paragraph (a), the introductory text of paragraph (b), paragraph (d)(1)(i), and paragraph (f)(4)(ii) to read as follows:

§ 203.18 Maximum mortgage amounts.

(a) *Mortgagors of principal or secondary residences.* The principal amount of the mortgage must not exceed the lesser of the following amounts that apply:

(1) The dollar amount limitation that applies for the area under section 203(b)(2)(A) of the National Housing Act including any increase in the dollar limitation under § 203.29, as announced in accordance with § 203.18(h);

(2)(i) The amount based on appraised value that is permitted by section 203(b)(10) of the National Housing Act, if that provision is in effect and applies to the mortgage; or

(ii) If section 203(b)(10) is not in effect or otherwise does not apply to the mortgage, the lesser of the amounts based on appraised value that are permitted by section 203(b)(2)(B) of the

National Housing Act and paragraph (g) of this section;

(3) An amount equal to 90 percent of the appraised value, if the dwelling is a new home that was completed 1 year or less from the date of the mortgage insurance application and the dwelling is neither approved before the beginning of construction or covered by an acceptable consumer protection or warranty plan as provided in section 203(b)(2)(B) of the National Housing Act; or

(4) An amount equal to 85 percent of the appraised value if the mortgage covers a dwelling that is to be occupied as a secondary residence (as defined in paragraph (f)(2) of this section).

(b) *Veteran qualifications.* The special veteran terms provided in section 203(b)(2) of the National Housing Act shall apply only if the mortgagor submits one of the following certifications:

* * * * *

(d) * * *

(1) * * *

(i) 75 percent of the dollar limitation under (a)(1).

* * * * *

(f) * * *

(4) * * *

(i) * * *

(ii) Borrower-paid closing costs allowed under § 203.27(a)(1)–(3), except that closing costs do not apply if section 203(b)(10) of the National Housing Act is in effect and neither sales price nor closing costs apply for purposes of paragraph (g) of this section.

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3. Section 203.29 is amended by revising paragraph (a) to read as follows:

§ 203.29 Eligible mortgages in Alaska, Guam, Hawaii, or the Virgin Islands.

(a) *When is an increased mortgage limit permitted for these areas?* For Alaska, Guam, Hawaii or the Virgin Islands, the Commissioner may increase the maximum mortgage amount permitted by section 203(b)(2)(A) of the National Housing Act when authorized by section 214 of that Act, through the procedures described in § 203.18(h).

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Dated: March 11, 1999.

William C. Appgar,

Assistant Secretary for Housing.

[FR Doc. 99-7346 Filed 3-24-99; 8:45 am]

BILLING CODE 4210-27-P