

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 202, 203, 221, and 234**

[Docket No. FR-3957-F-02]

RIN 2502-AG57

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Streamlining Mortgagee Requirements

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

ACTION: Final rule.

SUMMARY: This rule makes final the January 26, 1996 interim rule which revised FHA's mortgagee requirements to streamline and make the FHA process more flexible for mortgagees and FHA's customers and clients.

EFFECTIVE DATE: August 9, 1996.

FOR FURTHER INFORMATION CONTACT: William M. Heyman, Director, Office of Lender Activities and Land Sales Registration, Room 9156, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (voice) (202) 708-1515, (TTY) (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:**Background**

Early in 1995 the FHA Single Family Business Practices Working Group was established to develop recommendations to streamline the FHA process, reduce or eliminate unnecessary requirements, promote greater opportunities for first-time homebuyers and minorities, and maintain a responsible risk management program. The Working Group was comprised of representatives of mortgage lenders, State and local governments, trade associations, realtors, government-sponsored enterprises, and other interested parties.

On January 26, 1996, at 61 FR 2650, the Department published an interim rule on Streamlining Mortgagee Requirements. The revisions made by the interim rule resulted from the efforts and recommendations made by the Working Group. They were designed to make the FHA process more flexible for mortgagees, and for State and local governments and nonprofit associations, and also to expand homeownership opportunities. They were also intended to assist in making the FHA a more effective organization to serve the needs of our customers and clients. In addition, the revisions were intended to

minimize the differences between FHA and conventional loan processing and to place greater reliance and accountability on mortgagees.

The interim rule made the following changes:

- Section 202.11(a)(5) was revised to establish uniform requirements on the use of authorized agents by supervised and nonsupervised mortgagees. For conforming reasons, §§ 202.13(e) and 202.17(d) were removed.
- Section 202.12(m) was revised to eliminate the requirement that a branch office of a mortgagee must be approved by FHA to originate FHA mortgages. A branch registry process is permitted. However, a nonsupervised loan correspondent is required to provide evidence that it complies with the net worth requirements for itself and all of its branches, as set forth in § 202.12(n)(3).
- Section 202.15(c)(1) was revised to eliminate the requirement that loans must be closed in the name of the Loan Correspondent, and to permit such mortgages to be closed in either the name of the Loan Correspondent or its Sponsor(s).
- Section 202.15(c)(5) was revised to eliminate the compliance report and the report on internal control from Loan Correspondents' annual audited financial statements.
- Section 203.3(b)(2) was revised to eliminate the requirement that FHA individually approve mortgagees' Direct Endorsement underwriters and to establish a registry process for the underwriter. Also, the requirement that the technical staff utilized by the mortgagee be approved by the Secretary was removed. For conforming reasons, §§ 203.3(b)(3) and (c) were eliminated.

Public Comments

The public was afforded a 60-day comment period on the January 26, 1996 interim rule. Two commenters responded: one certified public accountant firm and one national association of certified public accountants. Below is a listing of the comments presented, and the Department's response follows each comment.

Comment: The commenter questions (1) Whether the auditor needs to meet GAO Yellow Book general requirements for education, etc., given the lower level of scope, and (2) is the auditor required to communicate indications of illegal acts to HUD if such indications are present?

Response: (1) Unless engaged in other GAO Yellow Book audits, the auditor of a loan correspondent mortgagee would no longer have to meet the GAO Yellow Book education requirements. The Department notes, however, that Professional Standards provide that an auditor should obtain a level of knowledge of the auditee's business that will enable the auditor to plan and perform the audit in accordance with Generally Accepted Auditing Standards. (2) The auditor will still be required to report illegal acts as set forth in Handbook 2000.04 REV-1, Consolidated Audit Guide for Audits of HUD Programs.

Comment: The commenter urges the issuance by the Office of the Inspector General of a supplement to Handbook 2000.04 REV-1, Consolidated Audit Guide for Audits of HUD Programs. Otherwise, the commenter believes there will be confusion among both loan correspondents and their auditors since the Consolidated Audit Guide is in conflict with the interim rule.

Response: The Department is revising the Consolidated Audit Guide to reflect this and other changes. In the meantime, loan correspondent mortgagees and auditors may refer to Mortgagee Letter 96-12 for guidance.

Comment: Another commenter requests that the final rule state whether the financial statement audits of Loan Correspondents should be performed in accordance with Government Auditing Standards or in accordance with Generally Accepted Auditing Standards (GAAS).

Response: The Department will no longer require that financial statement audits of loan correspondent mortgagees be performed in accordance with Government Auditing Standards. Such audits, however, must be performed according to Generally Accepted Auditing Standards. Although this will not be incorporated into the final rule, it will be specified in the Consolidated Audit Guide and in Mortgagee Approval Handbook 4060.1 REV-1, both of which are being revised by the Department.

This Rule

No changes are needed to the regulatory text as a result of the public comments received on the January 26, 1996 interim rule. Therefore, this final rule adopts the interim rule without substantive change. In addition, this final rule makes conforming changes to parts 202, 203, 221, and 234.

Other Matters**Environmental Finding**

A Finding of No Significant Impact with respect to the environment was

made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, for the January 26, 1996 interim rule. Since this final rule makes no changes to the interim rule, the Finding of No Significant Impact for the interim rule shall serve as the finding for the final rule. The 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, S.W., Washington, D.C. 20410.

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 do 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. Specifically, the requirements of this rule are directed to insuring mortgages and do not impinge upon the relationship between the Federal government and State and local governments.

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 because it revises mortgage requirements.

The Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Secretary by his approval of this rule hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because the changes made by this rule are primarily procedural and will not have a significant economic impact.

List of Subjects

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 221

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

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, under the authority of 42 U.S.C. 3535(d), chapter II of title 24 of the Code of Federal Regulations is amended by adopting as final, without change, the interim rule for “Parts 202 and 203, Streamling Mortgage Requirements”, published in the Federal Register on January 26, 1996 (61 FR 2650). Chapter II is also amended by further amending part 203, and by amending parts 221 and 234 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, and 1715u; 42 U.S.C. 3535(d).

§§ 203.51, 203.258, 203.259a, 203.359, 203.363, 203.366, 203.368, 203.369, 203.378, 203.379, 203.380, 203.402, and 203.423 [Amended]

2. Part 203 is amended by removing the word “approved” wherever it appears before the word “underwriter” in the following sections: §§ 203.51(2), 203.258(c)(2), 203.259a(a)(2)(ii)(B), 203.359(b) introductory text, 203.363(b) paragraph heading, 203.366(b)(1), 203.368(a)(1)(ii), 203.369(a)(1), 203.369(b), 203.378(c)(3), 203.379(b), 203.380(a)(1)(iii), 203.402(g)(1) paragraph heading, 203.402(g)(2) paragraph heading, and 203.423(a)(1).

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

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

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

§ 221.70 [Amended]

7. In § 221.70(a)(2), the reference to “approved underwriter” is revised to read “underwriter”.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

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

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

234.85 [Amended]

9. In § 234.85(a)(2), the reference to “approved underwriter” is revised to read “underwriter”.

Dated: July 2, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

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