

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 200, 202, 203, and 206**

[Docket No. FR-4169-I-01]

RIN 2502-AC87

Delegation of Insuring Authority to Direct Endorsement Mortgagees; Interim Rule

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

ACTION: Interim rule.

SUMMARY: This interim rule implements the Lender Insurance program, under which the Secretary will delegate the authority to insure single family mortgages to certain mortgagees that are approved under the Direct Endorsement program. This interim rule provides that eligible mortgagees that participate in the Lender Insurance program will be responsible for conducting a pre-insurance review during the origination of their single family mortgages, and they will be responsible for insuring the mortgages. HUD intends that delegating this insurance authority through the Lender Insurance program will be consistent with HUD's efforts to reinvent the Federal Housing Administration (FHA) by creating a more efficient and less burdensome process for providing single family mortgage insurance.

DATES: *Effective Date:* July 2, 1997. The information collection requirements in § 203.255(f) of this interim rule, however, will not be effective until the Office of Management and Budget (OMB) has approved them under the Paperwork Reduction Act of 1995 and assigned them a control number. Publication of the control numbers notifies the public that OMB has approved these information collection requirements.

Deadline for comments on this interim rule: August 1, 1997.

Deadline for comments on the proposed information collection requirements: August 1, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. eastern time) at the

above address. HUD will not accept comments sent by facsimile (FAX).

HUD also invites interested persons to submit comments on the proposed information collection requirements in § 203.255(f) of this interim rule. Comments should refer to the above docket number and title, and should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John J. Coonts, Director, Office of Insured Single Family Housing, Department of Housing and Urban Development, Room 9162, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708-3046 (this number is not toll-free). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:**I. Background**

Section 427 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. 104-204, approved September 26, 1996; 110 Stat. 2874, 2928) (the Appropriations Act) amended title II of the National Housing Act (12 U.S.C. 1707 *et seq.*) to provide that the Secretary may delegate to Direct Endorsement mortgagees the authority to insure mortgages on single family properties. Section 427 provided that, in determining whether to delegate this authority to a mortgagee, the Secretary must consider the experience and performance of the mortgagee in order to minimize the risk of loss to the insurance funds. Section 427 also provided for enforcement of the insurance requirements by expressly authorizing the Secretary to require indemnification from the mortgagee under certain circumstances in the event of a claim.

Under the Federal Housing Administration's (FHA's) current insurance endorsement process, a copy of FHA's Mortgage Insurance Certificate (MIC) is evidence that FHA has actually insured a mortgage. The Secretary issues an MIC, endorsing the mortgage for insurance, after determining that a mortgage meets the eligibility requirements for insurance. Although issuing MICs is a highly routine process, it is also a very staff-intensive and time-consuming one, and one that requires unnecessary paperwork for the mortgagee and HUD. Under section 427 of the Appropriations Act, the Secretary

can now delegate the insuring authority to certain Direct Endorsement mortgagees. This interim rule will therefore implement a new Lender Insurance program that will give mortgagees participating in the program the responsibility of performing their own pre-insurance review, and of insuring the mortgages they have underwritten.

Consistent with HUD's efforts to reduce the amount of paperwork associated with FHA insured loans, mortgagees under this new Lender Insurance program will be required to communicate with HUD in a purely automated manner. HUD's new electronic system for the Lender Insurance program is in its final stages of development and should be operational in several months.

In addition, HUD is developing a system that will allow it to communicate electronically with all mortgagees that participate in HUD programs. This new system will eventually eliminate the necessity of issuing MICs as evidence of insurance. Therefore, this interim rule, in addition to implementing the Lender Insurance program, will amend the regulations to allow for future electronic communication with all mortgagees.

II. The Lender Insurance Program*Mortgagee Participation*

Each mortgagee choosing to participate in the Lender Insurance program will be required to use the Lender Insurance process to insure all of the loans it originates or underwrites. Only Direct Endorsement mortgagees with a minimum 2-year acceptable claim and default record under the Direct Endorsement program will be considered for participation in the Lender Insurance program. Two years provides HUD with a sufficient amount of claim and default data on which to examine the mortgagee's experience and performance. At the time of the lender's request to participate in this program, HUD will determine the lender's claim performance based upon the cumulative claim and default rate of the lender's FHA originated mortgages for the prior two years, as of the most recent quarter available to HUD.

HUD will compare the mortgagee's claim and default record with that for all insured mortgages. For the purposes of fairly determining a mortgagee's performance, HUD will place the mortgagee in one of two categories: (1) Mortgagees that operate in a single State (Single State mortgagees), and (2) Mortgagees that operate in more than one State (Multi-State mortgagees).

Single State and Multi-State mortgagees that are at or below 150 percent of the national average for claims and defaults will be eligible for this new authority. In addition, this interim rule will provide for an exception process for Single State mortgagees that do not meet the national claim and default average. Under this exception process, a Single State mortgagee will have the option of having its claim and default rate compared with the average in the State in which it operates. Therefore, Single State mortgagees using the exception process will also be eligible for this new authority if they are at or below 150 percent of the State average for claims and defaults.

Net worth requirements will be the same as those for Direct Endorsement mortgagees. HUD does not see the value in establishing separate net worth requirements for this new program at this time.

A mortgagee's ability to participate in this program will be reviewed on a yearly basis. Furthermore, HUD will monitor the quality of the mortgagee's performance in the pre-insurance review process. If HUD determines that a mortgagee has not performed in accordance with prudent review techniques and/or HUD's requirements, HUD will take appropriate action, including the immediate withdrawal of the mortgagee's authority to participate in the Lender Insurance program.

Pre-Insurance Review

Under the Direct Endorsement program, a mortgagee submits to the Secretary the documents listed in § 203.255(b), which includes a property appraisal, an application for insurance, a copy of the mortgage, and underwriter and mortgagee certifications. The Secretary reviews the documents for such purposes as to ensure that the mortgage is properly executed and that it is within the maximum mortgage amount (§ 203.255(c)). After this review, if the Secretary determines that the mortgage is eligible, the Secretary endorses the mortgage for insurance by issuing an MIC.

Under the Lender Insurance program implemented through this interim rule, the program requirements will remain the same as those under the Direct Endorsement program. Under the Lender Insurance program, however, HUD is transferring the pre-insurance review function to participating mortgagees. HUD will directly inform participating mortgagees of the items that HUD would review prior to endorsement if it were insuring the mortgage, and the mortgagee's staff that is insuring the mortgage will review the

appropriate items. The mortgagee's staff reviewing and subsequently insuring the loan must not be the same staff that originated the loan and/or underwrote the loan for insurance.

Insurance of the Mortgage

Under the Lender Insurance program, the mortgagee will electronically transmit the proper amount of mortgage insurance premium (MIP) and data in a standardized format. HUD's electronic systems will check to ensure that the proper amount of MIP was paid and determine that complete mortgage insurance data was provided. Once HUD's systems acknowledge the mortgagee's information, the mortgage is insured.

Recordkeeping Requirements

This interim rule provides that Lender Insurance mortgagees must maintain records, including origination files, in a manner and for a time period to be prescribed by the Assistant Secretary for Housing—Federal Housing Commissioner, and must make them available to authorized HUD staff upon request.

Post-Insurance Technical Review

Under the Direct Endorsement program, the Secretary may review the mortgage documentation after the mortgage is insured to ensure that the mortgage satisfies the Secretary's requirements. Under the Lender Insurance program, mortgagees will not be expected to submit case binders on mortgages that they insure themselves, unless they are chosen by HUD's electronic system for post-insurance technical review. HUD's electronic system will notify mortgagees that a loan has been selected for post-insurance technical review when it reviews the mortgage insurance data transmitted by the mortgagee. Prudent quality control measures require that HUD perform an underwriting review on a sample of loans relatively soon after they are insured.

Indemnification

Section 427 of the Appropriations Act provides for a mortgagee to indemnify the Secretary for losses incurred if fraud or misrepresentation was involved in the origination of the loan, regardless of when the claim is paid. Section 427 also provides that the Secretary may require indemnification for those loans involving violations of the Secretary's requirements.

A requirement of indemnification in a case of fraud or misrepresentation may arise when HUD reviews the origination package in the case of a claim. HUD

may, however, notify mortgagees of the possibility of indemnification prior to a claim—as the result of a post-insurance technical review or a mortgagee monitoring audit. This right of indemnification under the Lender Insurance program in the case of fraud or misrepresentation will not affect HUD's rights to otherwise seek indemnification, or to refer matters to the Mortgagee Review Board.

When considering this right of indemnification in cases other than when fraud or misrepresentation are present, HUD does not intend to require indemnification on the basis of errors related to those items that the mortgagee is responsible for reviewing prior to insuring the mortgage under the Lender Insurance program. HUD will, however, retain the authority to take enforcement steps, including the immediate withdrawal of the mortgagee's authority to participate in the Lender Insurance program, Mortgagee Review Board action, or proposed indemnifications on select cases.

Claims

Mortgagees participating in the Lender Insurance program will follow the current claim procedures in subpart B of part 203.

Conforming Changes; Correction

This interim rule makes several amendments to HUD's single family regulations in parts 200, 202, 203, and 206 to include references to the Lender Insurance program.

This interim rule also makes a correction to § 203.415(b) that is unrelated to the Lender Insurance program. That paragraph was revised on December 9, 1992 to include a reference to the Direct Endorsement program (57 FR 58326). The December 9, 1992 final rule, however, inadvertently changed the date described in § 203.415(b) to September 2, 1984, rather than September 2, 1964. This interim rule will correct that date to read September 2, 1964.

III. Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that prior public procedure is unnecessary.

Delegating the insuring authority to mortgagees through the Lender

Insurance program is consistent with HUD's efforts to reinvent the Federal Housing Administration (FHA). The Lender Insurance process will be a more efficient and less burdensome process for providing single family mortgage insurance. While this interim rule makes the Lender Insurance process available, it does not require mortgagees to participate, nor does it withdraw any procedures that are otherwise available to mortgagees. However, HUD is allowing for a full 60-day public comment period on the provisions of this interim rule, and HUD will consider the relevant issues raised by the commenters in its development of a final rule for the Lender Insurance program.

IV. Findings and Certifications

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban

Development, 451 Seventh Street, SW., Washington, DC.

Paperwork Reduction Act

The information collection requirement contained in § 203.255(f) of this interim rule have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

As required under 5 CFR 1320.8(d)(1), HUD and OMB are seeking comments from members of the public and affected agencies concerning the proposed collection of information to:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Interested

persons are invited to submit comments according to the instructions in the **DATES** and **ADDRESSES** sections in the preamble of this interim rule.

This document also provides the following information:

Title of Proposal: Request for Insurance Endorsement under the Direct Endorsement Program.

OMB Control Number: OMB has previously approved the information collection requirements for the Direct Endorsement Program under control number 2502–0365. HUD is seeking to reinstate that previously approved collection, incorporating the information collection requirement contained in § 203.255(f) of this rule.

Description of the Need for the Information and Proposed Use: Lenders must submit certain information regarding the mortgages to HUD so that HUD can, as generally required by statute, produce statistics and reports, and track repair escrows, certain types of mortgages, and warranties. This information is also necessary for HUD to monitor lender calculations of qualifying ratios.

Form Numbers: HUD–54111; however, lenders are free to tailor this format to their individual procedures and needs.

Members of Affected Public: Business or other for-profit.

Estimation of the Total Number of Hours Needed to Prepare the Information Collection including Number of Respondents, Frequency of Response, and Hours of Response:

Number of respondents	Total annual responses	Est. avg. response time (hours)	Est. annual burden (hrs.)
4,800	600,000	.0833	50,040

HUD estimates that 95 percent of the responses will be collected electronically; therefore, since the requested information is already in lenders' files and computers, the reporting burden is minimal.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding 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 General Counsel, Room 10276,

Department of Housing and Urban Development, 451 7th 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 interim rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. This interim rule does not require mortgagees to participate, nor does it otherwise withdraw any procedures that are otherwise available to mortgagees. Small entities are specifically invited, however, to comment on whether this rule will significantly affect them, and

to provide any alternatives for less burdensome compliance.

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 interim 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. 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 interim rule would 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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

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 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.

Accordingly, for the reasons stated in the preamble, parts 200, 202, 203, and

206 of title 24 of the Code of Federal Regulations, are amended as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

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).

2. In § 200.926, paragraph (a)(2)(i) is revised to read as follows:

§ 200.926 Minimum property standards for one and two family dwellings.

(a) * * *

(2) * * *

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

* * * * *

3. In § 200.926d, paragraph (c)(4)(vii) is revised to read as follows:

§ 200.926d Construction requirements.

* * * * *

(c) * * *

(4) * * *

(vii) In all cases in which a Direct Endorsement (DE) mortgagee or a Lender Insurance (LI) mortgagee seeks to insure a mortgage on a newly constructed one- to four-family dwelling (including a newly erected manufactured home) which was processed by the DE or LI mortgagee, the DE or LI mortgagee shall determine whether the property is located in a 100-year floodplain as designated on maps of the Federal Emergency Management Agency and, if so, shall obtain a final Letter of Map Amendment (LOMA) or final Letter of Map Revision (LOMR) before the DE mortgagee submits the application for insurance to HUD, or before the LI mortgagee submits all the required data regarding the mortgage to HUD, as applicable. Under the DE program, such mortgages shall not be eligible for insurance unless the DE mortgagee submits the LOMA or LOMR to HUD with the mortgagee's request for endorsement.

* * * * *

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

4. 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).

5. In § 202.3, paragraph (c)(2)(v)(A) is revised to read as follows:

§ 202.3 Approval status for lenders and mortgagees.

* * * * *

(c) * * *

(2) * * *

(v) * * *

(A) The eligibility of the mortgage for insurance, absent fraud or misrepresentation, if the mortgagor and all terms and conditions of the mortgage had been approved before the termination by the Direct Endorsement or Lender Insurance mortgagee or were covered by a firm commitment issued by the Secretary; however, no other mortgages originated by the mortgagee shall be insured unless a new originated approval agreement is accepted by the Secretary;

* * * * *

6. In § 202.8, paragraph (b)(9) is revised to read as follows:

§ 202.8 Loan correspondent lenders and mortgagees.

* * * * *

(b) * * *

(9) For mortgages processed through Direct Endorsement under §§ 203.5 and 203.255(b) of this chapter, or through Lender Insurance under §§ 203.6 and 203.255(f) of this chapter, underwriting shall be the responsibility of the Direct Endorsement sponsor or Lender Insurance sponsor (respectively), and the mortgage shall be closed in the loan correspondent mortgagee's own name or the name of the sponsor that will purchase the loan. For mortgages not processed through Direct Endorsement or through Lender Insurance, the mortgage must be both underwritten and closed in the loan correspondent's own name.

* * * * *

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

7. 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). Subpart C also is issued under 12 U.S.C. 1715u.

Subpart A—Eligibility Requirements and Underwriting Procedures

8. In subpart A of part 203, the undesignated center heading between the subpart heading and § 203.1 is revised to read as follows: "DIRECT ENDORSEMENT, LENDER INSURANCE, AND COMMITMENTS".

9. Section 203.1 is revised to read as follows:

§ 203.1 Underwriting procedures.

The three underwriting procedures for single family mortgages are:

(a) *Direct Endorsement.* This procedure, which is described in § 203.5, is available for mortgagees that are eligible under § 203.3.

(b) *Lender insurance.* This procedure, which is described in § 203.6, is available for mortgagees that are eligible for the Direct Endorsement program under § 203.5, and that are also approved according to § 203.4.

(c) *Issuance of commitments through HUD offices.* Processing through HUD offices as described in § 203.7, with issuance of commitments, is available only for mortgages that are not eligible for Direct Endorsement processing under § 203.5(b) or to the extent required in § 203.3(b)(4), § 203.3(d)(1), or as determined by the Secretary.

10. In subpart A, a new § 203.4 is added, to read as follows:

§ 203.4 Approval of mortgagees for Lender Insurance.

Each mortgagee that chooses to participate in the Lender Insurance program must use the Lender Insurance process to insure all of the mortgages that it underwrites, unless the mortgages are ineligible for the Direct Endorsement program as provided in § 203.5(b), or unless HUD determines that the mortgages are ineligible for the Lender Insurance program.

(a) *Direct Endorsement approval.* To be approved for the Lender Insurance program described in § 203.6, a mortgagee must be unconditionally approved for the Direct Endorsement program as provided in § 203.5.

(b) *Performance: Claim and default rates.* In addition to being unconditionally approved for the Direct Endorsement program, a mortgagee must have had an acceptable claim and default record for at least 2 years prior to its application for participation in the Lender Insurance program. HUD determines acceptable claim and default record as follows:

(1) A mortgagee is eligible for the Lender Insurance program if its claim and default rate is at or below 150 percent of the national average rate for all insured mortgages.

(2) A mortgagee that operates in a single State (Single State mortgagee) may choose to have its claim and default rate compared with the average rate in the State in which it operates, in which case the Single State mortgagee is eligible for the Lender Insurance program if its claim and default rate is at or below 150 percent of the State average rate for insured mortgages.

(c) *Annual review.* HUD will monitor a mortgagee's eligibility to participate in the Lender Insurance program on a yearly basis.

(d) *Termination of approval.* If a mortgagee that has been approved by HUD for the Lender Insurance program violates the requirements and procedures established by the Secretary for such program, or if HUD determines that other good cause exists (including, but not limited to, HUD's determination that the mortgagee is not using prudent review techniques), HUD may immediately terminate the mortgagee's approval to participate in the Lender Insurance program, in accordance with section 256(d) of the National Housing Act (12 U.S.C. 1715z-21(d)). Within 30 days after receiving HUD's notice of termination, a mortgagee may request an informal conference with the Deputy Assistant Secretary for Single Family Housing. The conference will be conducted within 30 days after HUD receives a timely request for the conference. After the conference, the Deputy Assistant Secretary may decide to affirm the termination action or to reinstate the mortgagee's Lender Insurance program approval. The decision will be communicated to the mortgagee in writing and will be deemed a final agency action.

11. In § 203.5, paragraph (b) is revised to read as follows:

§ 203.5 Direct Endorsement process.

* * * * *

(b) *Eligible programs.* (1) All single family mortgages authorized for insurance under the National Housing Act must be originated through the Direct Endorsement program, except the following:

(i) Mortgages underwritten for insurance by mortgagees that have applied for participation in, and have been approved for, the Lender Insurance program;

(ii) Mortgages authorized under sections 203(n), 203(p), 213(d), 221(h), 221(i), 225, 233, 237, 809, or 810 of the National Housing Act, or any other insurance programs announced by **Federal Register** notice; or

(iii) As provided in § 203.1.

(2) The provision contained in § 221.55 of this chapter regarding deferred sales to displaced families is not available in the Direct Endorsement program.

* * * * *

12. A new § 203.6 is added to read as follows:

§ 203.6 Lender Insurance process.

Under the Lender Insurance program, a mortgagee approved for the program conducts its own pre-insurance review, insures the mortgage, and agrees to indemnify HUD in accordance with § 203.255(f).

13. The introductory text of § 203.7 is revised to read as follows:

§ 203.7 Commitment process.

For single family mortgage programs that are not eligible for Direct Endorsement processing under § 203.5, or for Lender Insurance processing under § 203.6, the mortgagee must submit an application for mortgage insurance in a form prescribed by the Secretary prior to making the mortgage loan. If:

* * * * *

14. In § 203.43i, the introductory text of paragraph (d) is revised, the introductory text of paragraph (g) is revised, and paragraph (g)(2) is revised; to read as follows:

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

* * * * *

(d) *Conditions for insurance.*

Mortgages will be eligible for insurance under this section, according to the procedures in §§ 203.5, 203.6, or 203.7 (as applicable), only where the Department of Hawaiian Home Lands:

* * * * *

(g) *Construction advances.* Advances made by the mortgagee during construction are eligible for insurance, according to the procedures in §§ 203.5, 203.6, or 203.7 (as applicable), if the Secretary determines that no feasible financing alternative is available and if:

* * * * *

(2) The advances are made only as provided in the commitment or the approval by the Direct Endorsement or Lender Insurance underwriter;

* * * * *

15. In § 203.50, paragraph (h) is revised to read as follows:

§ 203.50 Eligibility of rehabilitation loans.

* * * * *

(h) Insurance may be available for advances made during rehabilitation or upon completion of rehabilitation, according to the procedures in §§ 203.5, 203.6, or 203.7 (as applicable).

* * * * *

16. Section 203.249 is revised to read as follows:

§ 203.249 Effect of amendments.

The regulations in this subpart may be amended by the Secretary at any time and from time to time, in whole or in part, but such amendment will not adversely affect the interests of a mortgagee under the contract of insurance on any mortgage or loan already insured, and will not adversely affect the interest of a mortgagee on any mortgage or loan to be insured for which

either the Direct Endorsement or Lender Insurance mortgagee has approved the mortgagor and all terms and conditions of the mortgage or loan, or the Secretary has issued a firm commitment. In addition, such amendment will not adversely affect the eligibility of specific property if such property is covered by a conditional commitment issued by the Secretary, a certificate of reasonable value issued by the Secretary of Veterans Affairs, or an appraisal report approved by a Direct Endorsement or Lender Insurance underwriter.

17. In § 203.255, paragraph (a) is revised, and a new paragraph (f) is added; to read as follows:

§ 203.255 Insurance of mortgage.

(a) *Mortgages with firm commitments.* For applications for insurance involving mortgages not eligible to be originated under the Direct Endorsement program under § 203.5, or under the Lender Insurance program under § 203.6, the Secretary will either endorse the mortgage for insurance by issuing a Mortgage Insurance Certificate, provided that the mortgagee is in compliance with the firm commitment, or will electronically acknowledge that the mortgage has been insured.

(f) *Lender Insurance.* (1) *Pre-insurance review.* For applications for insurance involving mortgages originated under the Lender Insurance program under § 203.6, the mortgagee is responsible for performing a pre-insurance review that meets HUD's requirements. HUD will directly inform participating mortgagees of its minimum requirements for pre-insurance review. The mortgagee's staff that performs the pre-insurance review must not be the same staff that originated the mortgage or underwrote the mortgage for insurance.

(2) *Recordkeeping.* Mortgagees must maintain records, including origination files, in a manner and for a time period to be prescribed by the Assistant Secretary for Housing—Federal Housing Commissioner, and must make them available to authorized HUD staff upon request.

(3) *Insuring the mortgage.* If, following this review, the mortgage is determined to be eligible, the mortgagee will electronically submit all required data to HUD regarding the mortgage. HUD's electronic system will acknowledge that the mortgage has been insured. HUD's electronic system may also issue a notice to the mortgagee that the mortgage has been selected for post-insurance technical review, and that the HUD case binder must be sent to the identified HUD office.

(4) *Indemnification.* By insuring the mortgage, the mortgagee agrees to indemnify HUD under the conditions of section 256(c) of the National Housing Act (12 U.S.C. 1717z–21(c)).

18. Section 203.257 is revised to read as follows:

§ 203.257 Creation of the contract.

The mortgage shall be an insured mortgage from the date of the issuance of a Mortgage Insurance Certificate, from the date of the endorsement of the credit instrument, or from the date of HUD's electronic acknowledgement to the mortgagee that the mortgage is insured, as applicable. The Commissioner and the mortgagee are thereafter bound by the regulations in this subpart with the same force and to the same extent as if a separate contract had been executed relating to the insured mortgage, including the provisions of the regulations in this subpart and of the Act.

19. In § 203.415, paragraph (b) is revised to read as follows:

§ 203.415 Delivery of certificate of claim.

* * * * *

(b) If the mortgage was accepted for insurance pursuant to a commitment issued on or after September 2, 1964, or under the Direct Endorsement, Lender Insurance, or Coinsurance programs, no certificate of claim will be issued.

20. Section 203.499 is revised to read as follows:

§ 203.499 Effect of amendments.

The regulations in this subpart may be amended by the Secretary at any time and from time to time, in whole or in part, but such amendment will not adversely affect the interests of a mortgagee under the contract of insurance on any mortgage or loan already insured, and will not adversely affect the interest of a mortgagee on any mortgage or loan to be insured for which either the Direct Endorsement or Lender Insurance mortgagee has approved the mortgagor and all terms and conditions of the mortgage or loan, or the Secretary has issued a firm commitment. In addition, such amendment will not adversely affect the eligibility of specific property if such property is covered by a conditional commitment issued by the Secretary, a certificate of reasonable value issued by the Secretary of Veterans Affairs, or an appraisal report approved by a Direct Endorsement or Lender Insurance underwriter.

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

21. 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).

22. In § 206.3, the definition of “*Maximum claim amount*” is revised to read as follows:

§ 206.3 Definitions.

* * * * *

Maximum claim amount means the lesser of the appraised value of the property or maximum dollar amount for an area established by the Secretary for a one-family residence under section 203(b)(2) of the National Housing Act (as adjusted where applicable under section 214 of the National Housing Act). Both the appraised value and the maximum dollar amount for the area must be as of the date the Direct Endorsement or Lender Insurance underwriter receives the appraisal report. Closing costs must not be taken into account in determining appraised value.

* * * * *

23. Section 206.7 is revised to read as follows:

§ 206.7 Effect of amendments.

The regulations in this part may be amended by the Secretary at any time and from time to time, in whole or in part, but amendments to subparts B and C of this part will not adversely affect the interests of a mortgagee on any mortgage to be insured for which either the Direct Endorsement mortgagee or Lender Insurance mortgagee has approved the mortgagor and all terms and conditions of the mortgage, or the Secretary has made a commitment to insure. Such amendments will not adversely affect the interests of a mortgagor in the case of a default by a mortgagee where the Secretary makes payments to the mortgagor.

24. Section 206.15 is revised to read as follows:

§ 206.15 Insurance.

Mortgages originated under this part must be endorsed through the Direct Endorsement program under § 203.5 of this chapter, or insured through the Lender Insurance program under § 203.6 of this chapter, except as provided in §§ 203.1 or 203.4 of this chapter. The mortgagee must submit the information as described in § 203.255 (b) or (f) of this chapter, as applicable; the certificate of housing counselling as described in § 206.41; a copy of the title insurance commitment satisfactory to the

Secretary (or other acceptable title evidence if the Secretary has determined not to require title insurance under § 206.45(a)); the mortgagee's election of either the assignment or shared premium option under § 206.17; and any other documentation required by the Secretary. Section 203.255 (c), (d), (e), and (f) of this chapter, pertaining to the processes for Direct Endorsement and Lender Insurance,

apply to mortgages under this part. If the mortgagee has complied with the requirements of §§ 203.3, 203.4, 203.5, 203.6, and 203.255 of this chapter (as applicable), and the requirements of this part, and the mortgage is determined to be eligible, the Secretary will either endorse the mortgage for insurance by issuing a Mortgage Insurance Certificate or will electronically acknowledge that the mortgage has been insured. The

mortgagee under the Lender Insurance program shall execute for the Secretary the loan agreement included in the term "mortgage" as defined in § 206.3.

Dated: April 23, 1997.

Stephanie A. Smith,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

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