

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Parts 200, 203, and 234

[Docket No. FR-4323-F-02]

RIN 2502-AH16

**Single Family Mortgage Insurance;
Clarification of Floodplain
Requirements Applicable to New
Construction**

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

ACTION: Final rule.

SUMMARY: This final rule adopts revisions to HUD's regulations concerning flood hazard exposure and single family mortgage insurance published for public comment in a proposed rule on April 30, 1999. These revisions provide mortgagees with an additional means of complying with HUD's single family flood hazard regulations and clarify a number of provisions in HUD's single family mortgage insurance regulations. HUD considered the comments received on the April 30, 1999 proposed rule, but is adopting the revisions published in the proposed rule without change.

DATES: *Effective Date:* November 15, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Holman, Chief, Mortgage Underwriting and Insurance Branch, Office of Insured Single Family Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 9270, Washington, DC 20410-8000; telephone (202) 708-2121 (this is not a toll-free telephone number). Hearing- or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

a. The April 30, 1999 Proposed Rule

On April 30, 1999, HUD published a rule (64 FR 23480) for public comment that proposed certain revisions to HUD's regulations concerning flood hazard exposure and single family mortgage insurance. The revisions permit mortgagees to obtain an Elevation Certificate as an alternative to a final Letter of Map Amendment or Revision for submission with the Builder's Certification of Plans, Specifications, and Site when property improvements are located in a Special Flood Hazard Area. The revisions clarify that all

provisions of § 200.926d(c)(4) apply to one- to four-unit homes and to communities, whether or not the community has adopted criteria for site development. The revisions also clarify that structures are subject to the same elevation requirements, whether or not they have basements. Finally, the revisions remove obsolete provisions concerning subdivisions and improved area processing and make a number of conforming changes.

b. This Final Rule

This final rule adopts the revisions published in the April 30, 1999 proposed rule without change. The public comment period for the proposed rule closed on June 29, 1999. HUD received 14 comments. Commenters included trade associations, government agencies, lending institutions, and housing developers. HUD appreciates the suggestions offered by commenters and carefully considered the issues raised by them. For the reasons discussed below, however, we have chosen not to implement these suggestions. This section of the preamble presents a summary of the issues raised by the public commenters and HUD's responses to their comments.

Comment—Require submission of other evidence of compliance in addition to elevation certificate. One commenter wrote that an elevation certificate (EC) alone does not document compliance with National Floodplain Insurance Program (NFIP) floodplain management requirements. The commenter suggested that the final rule require, in addition to an elevation certificate, the submission of other evidence from the community that indicates that property improvements comply with the community's floodplain management regulations. The commenter listed a number of documents that could be required to satisfy this requirement, including a building permit and a certificate of occupancy issued by the community.

HUD Response. HUD agrees that the EC alone does not document compliance with NFIP floodplain management requirements. We do not believe, however, that it is necessary to require additional documentation of compliance because local procedures already require these documents. For example, it is absolutely necessary for a builder to obtain a building permit from local authorities before construction commences. Similarly, all properties submitted to HUD for endorsement must have been issued an occupancy permit by local authorities prior to submission. Requiring these additional documents, therefore, is unnecessary, would be a

duplication of effort, and would run counter to the principle of streamlining government processes.

Comment—Required flood insurance that is lesser of the outstanding balance of the mortgage, value of building, or maximum amount of NFIP insurance available. One commenter was concerned about the language in § 203.16a(c) that states that flood insurance must be maintained in an amount equal to either "the outstanding balance of the mortgage, less estimated land costs, or the maximum amount of the NFIP insurance available with respect to the property improvements, whichever is less." The commenter wrote that subtracting the estimated land cost from the outstanding balance of the mortgage could result in situations where no flood insurance is required on a mortgaged building. The commenter suggested requiring that the amount of flood insurance be at least equal to the lesser of the outstanding balance of the mortgage, the value of the building, or the maximum amount of NFIP insurance available.

HUD Response. While HUD appreciates the commenter's suggestion, the provision contained in § 203.16a(c) is not a direct subject of this rulemaking. Consequently, we have not made any changes in response to this comment. HUD, however, will consider this issue as a subject for a future rulemaking.

Comment—HUD should conduct eight-step analysis required by Executive Order 11988. One commenter wrote that the proposed rule, in effect, waives the full eight-step process required by Executive Order 11988 (entitled "Floodplain Management") for individual mortgage transactions. The commenter suggested that HUD should perform an analysis applying the eight-step process to the transactions covered under the proposed rule. The commenter suggested that the analysis should balance the adverse impacts of placing fill in some floodplains against any benefits of the current rule in discouraging floodplain development by requiring letters of map amendment (LOMA) and letters of map revision (LOMR).

HUD Response. The commenter has misinterpreted HUD's regulations. The FHA single family mortgage insurance program, both for new construction (which this rule addresses) as well as for existing construction, is not subject to the requirements of Executive Order 11988. HUD regulations at 24 CFR part 55 specifically address our responsibilities and procedures regarding the Executive Order. Prior to 1993, single family new construction

was analyzed in an environmental assessment, which included the requirements of the Executive Order's eight-step analysis through HUD subdivision processing procedures. However, we terminated subdivision processing and approval in 1993.

Currently, all applications for mortgage endorsement (insurance) are submitted to HUD by lenders after the structure has been built and the applicable local entity has determined that it meets floodplain and other requirements.

Comment—Clarify when flood insurance must be purchased. One commenter wrote that the preamble to the proposed rule was not clear about when flood insurance must be purchased. The commenter suggested that the preamble to the final rule should clarify that flood insurance must be purchased when an EC is submitted, but not when a LOMA or LOMR is submitted.

HUD Response. The commenter's understanding about when flood insurance must be purchased is correct. Whenever an EC is utilized, it indicates that improvements are in the base floodplain, and, therefore, flood insurance is mandatory. HUD will make this requirement clear in its processing documents and will advise lenders by issuing a Mortgagee Letter.

Comment—Clarify rule and extend comment period. Two commenters urged HUD to clarify the proposed rule and requested that HUD extend the comment period in order to accomplish this.

HUD Response. The commenters did not specify what aspects of the proposed rule needed clarification, and they gave no other justification for extending the comment period. Therefore, we have not extended the comment period. It is important to note, however, that we accepted and considered all comments received on the proposed rule, including those that were received shortly after the close of the comment period.

Comment—Permit mortgage insurance in those portions of alluvial fans that pose the same or less risk as riverine special flood hazards. A number of commenters suggested that HUD should treat alluvial fans that pose the same or less risk as riverine special flood hazards the same as riverine special flood hazards for the purpose of issuing FHA mortgage insurance. These commenters wrote that these areas pose no more severe a threat than do riverine areas, and addressing them in the final rule will open up many areas to affordable housing that have previously been closed. Two commenters suggested certain additional engineering

certification requirements for allowing construction on alluvial fans.

HUD Response. HUD appreciates these commenters' concern for building affordable housing. Specific provisions concerning alluvial fans, however, are not the subject of this rulemaking. HUD's prohibition on mortgage insurance for properties in alluvial fans is based on the hazard posed by location in an alluvial fan and is not dependent on the availability from the Federal Emergency Management Agency (FEMA) of a LOMA or LOMR, which is no longer required under this rule. Adding provisions to specifically address alluvial fans in this rule would require the publication of a new proposed rule for public comment, which would delay the publication of this final rule. In addition, any decision to permit alluvial fans would require serious and detailed engineering and hydrological studies and analysis. These studies, of FEMA identified and designated alluvial fan areas, would be extremely time consuming and costly to conduct on a "area by area" basis. The reliance on certifications would be meaningless until such time as FEMA completes their currently ongoing studies of alluvial fans and makes a formal determination and issues guidance, requirements, and regulations regarding the safety aspects of alluvial fans that should be considered and taken into account. For the preceding reasons, we have decided not to specifically address alluvial fans in this rulemaking and have decided to proceed with the publication of this final rule.

Comment—Add provision acknowledging Voluntary Affirmative Marketing Agreement. One commenter suggested adding the following language to § 203.12(b)(3) at the end of the first paragraph:

In lieu of submission of an Affirmative Fair Housing Marketing Plan, if the builder or developer is, either through a state or local home builder association or directly, a signatory to the Voluntary Affirmative Marketing Agreement (VAMA) between HUD and the National Association of Home Builders, the builder or developer may meet the requirement of this section by certifying to this effect on the Builder's Certification of Plans, Specifications and Site.

HUD Response. While HUD appreciates the commenter's suggestion, the suggestion is outside the scope of this rulemaking. However, it should be noted that the provision that the commenter suggests is already part of HUD procedures. Box 11 of the Builder's Certification of Plans, Specifications, & Site allows a builder to certify that they are a signatory in good

standing to a Voluntary Affirmative Marketing Agreement in lieu of submission of an Affirmative Fair Housing Marketing Plan.

Comment—Include "back-to-back" units in § 200.926(a)(1). One commenter suggested that the language in § 200.926(a)(1) be expanded to include units that are "back-to-back" as well as units that are "side-to-side." The commenter suggested using the language "where the units are joined in some manner with adjacent living units."

HUD Response. We have reviewed this suggestion, but do not believe any change or additional language is necessary. Section 200.926 applies to any one- to four-family structure, regardless of whether it is side-by-side, back-to-back, stacked, or configured as a duplex, triplex, or fourplex.

II. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been 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 (42 U.S.C. 4332). The FONSI is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Paperwork Reduction Act Statement

The information collection requirement contained at § 203.12 of this final rule has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0496. 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.

Regulatory Flexibility Act

The Secretary, in accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final 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 final rule serves two primary purposes. First, it allows mortgagees greater flexibility by permitting them to comply with floodplain requirements through the submission of an additional type of document. Second, the final rule

removes obsolete provisions and makes clarifying amendments to the regulations. These changes reflect HUD's current interpretation of its regulations and would not increase the regulations' burden. These changes are being made in order to make the regulations clearer and more accurate.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612 (entitled "Federalism"), has determined that the policies contained in this final rule do not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

III. 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 203

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

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

PART 200—INTRODUCTION TO FHA PROGRAMS

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

PART 234—CONDOMINIUM OWNER MORTGAGE INSURANCE

For the reasons stated in the preamble, HUD amends 24 CFR parts 200, 203, and 234 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. Revise § 200.926(a)(1) to read as follows:

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

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

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3. Amend § 200.926d as follows:

- a. Revise paragraph (c)(1)(ii);
- b. Revise paragraph (c)(1)(iii);
- c. Revise paragraph (c)(4)(iv); and
- d. Remove paragraph (c)(4)(vii):

§ 200.926d Construction requirements.

* * * * *

(c) * * *

(1) * * *

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

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

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(4) * * *

(iv)(A) In all cases in which a Direct Endorsement (DE) mortgagee or a Lender Insurance (LI) mortgagee seek to insure a mortgage on a newly constructed one-to four-family dwelling (including a newly erected manufactured home) that was processed by the DE or LI mortgagee, the DE or LI mortgagee must determine whether the property improvements (dwelling and related structures/equipment essential to the value of the property and subject to flood damage) are located in a 100-year floodplain, as designated on maps of the Federal Emergency Management Agency. If so, the DE mortgagee, before submitting the application for insurance to HUD, or the LI mortgagee, before submitting all the required data regarding the mortgage to HUD, must obtain:

(1) A final Letter of Map Amendment (LOMA);

(2) A final Letter of Map Revision (LOMR); or

(3) A signed Elevation Certificate documenting that the lowest floor

(including basement) of the property improvements is built at or above the 100-year flood elevation in compliance with National Flood Insurance program criteria 44 CFR 60.3 through 60.6.

(B) Under the DE program, these mortgages are not eligible for insurance unless the DE mortgagee submits the LOMA, LOMR, or Elevation Certificate to HUD with the mortgagee's request for endorsement.

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PART 203—SINGLE FAMILY MORTGAGE INSURANCE

4. 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).

5. Revise § 203.12 to read as follows:

§ 203.12 Mortgage insurance on proposed or new construction.

(a) *Applicability.* This section applies to an application for insurance of a mortgage on a one-to four-family dwelling, unless the mortgage will be secured by a dwelling that:

(1) Was completed more than one year before the date of the application for insurance or, under the Direct Endorsement Program, was completed more than one year before the date of the appraisal; or

(2) Is being sold to a second or subsequent purchaser.

(b) *Procedures.* (1) Applications for insurance to which this section applies will be processed in accordance with procedures prescribed by the Secretary. These procedures may only provide for endorsement for insurance of a mortgage covering a dwelling that is:

(i) Approved under the Direct Endorsement Program or the Lender Insurance Program; or

(ii) Located in a subdivision approved by the Rural Housing Service.

(2) The mortgagee must submit a signed Builder's Certification of Plans, Specifications and Site (Builder's Certification). The Builder's Certification must be in a form prescribed by the Secretary and must cover:

- (i) Flood hazards;
- (ii) Noise;
- (iii) Explosive and flammable materials storage hazards;
- (iv) Runway clear zones/clear zones;
- (v) Toxic waste hazards;
- (vi) Other foreseeable hazards or adverse conditions (i.e., rock formations, unstable soils or slopes, high ground water levels, inadequate surface drainage, springs, etc.) that may affect the health and safety of the occupants or the structural soundness of

the improvements. The Builder's Certification must be provided to the appraiser for reference before the performance of an appraisal on the property.

(3) If a builder (or developer) intends to sell five or more properties in a subdivision, an Affirmative Fair Housing Marketing Plan (AFHMP) that meets the requirements of 24 CFR part 200, subpart M must be submitted and approved by HUD no later than the date of the first application for mortgage insurance in that subdivision. Thereafter, applications for insurance on other properties sold by the same builder (or developer) in the same subdivision may make reference to the existing previously approved AFHMP.

6. Revise § 203.16a to read as follows:

§ 203.16a Mortgagor and mortgagee requirement for maintaining flood insurance coverage.

(a) If the mortgage is to cover property improvements (dwelling and related structures/equipment essential to the value of the property and subject to flood damage) that:

(1) Are located in an area designated by the Federal Emergency Management

Agency (FEMA) as a floodplain area having special flood hazards, or

(2) Are otherwise determined by the Commissioner to be subject to a flood hazard, and if flood insurance under the National Flood Insurance Program (NFIP) is available with respect to these property improvements, the mortgagor and mortgagee shall be obligated, by a special condition to be included in the mortgage commitment, to obtain and to maintain NFIP flood insurance coverage on the property improvements during such time as the mortgage is insured.

(b) No mortgage may be insured that covers property improvements located in an area that has been identified by FEMA as an area having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and such insurance is obtained by the mortgagor. Such requirement for flood insurance shall be effective one year after the date of notification by FEMA to the chief executive officer of a flood prone community that such community has been identified as having special flood hazards.

(c) The flood insurance must be maintained during such time as the

mortgage is insured in an amount at least equal to either the outstanding balance of the mortgage, less estimated land costs, or the maximum amount of the NFIP insurance available with respect to the property improvements, whichever is less.

PART 234—CONDOMINIUM OWNER MORTGAGE INSURANCE

7. The authority citation for 24 CFR 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).

§ 234.1 [Amended]

8. In § 234.1, remove the words "Mortgage insurance on proposed or new construction in a new subdivision" and add, in their place, the words "Mortgage insurance on proposed or new construction".

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Dated: October 8, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99-26972 Filed 10-12-99; 3:10 pm]

BILLING CODE 4210-27-P