

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 203

[Docket No. FR-4749-P-01]

RIN 2502-AH82

**Up-Front Mortgage Insurance
Premiums for Loans Insured Under
Sections 203(k) and 234(c) of the
National Housing Act**

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

ACTION: Proposed rule.

SUMMARY: HUD charges an up-front mortgage insurance premium (MIP) for loans that are obligations of its mutual mortgage insurance fund, and of its general insurance fund only for insurance in connection with Section 8 homeownership. However, to date there has been no provision for up-front premiums for loans such as home rehabilitation loans under section 203(k) of the National Housing Act (NHA) and condominium unit loans under section 234(c) which are obligations of the general insurance fund. Recent statutory changes now provide for an up-front MIP for those programs. This rule amends HUD's regulations related to mortgage insurance to conform the regulations to the recent statutory changes.

DATES: *Comment Due Date:* December 8, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, at (202) 708-2121 (this is not a toll-free number). Persons with hearing- or speech-impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Background

Section 203(c) of the National Housing Act (NHA) authorizes the Secretary to set the premium charge for insurance of mortgages under Title II of the NHA. Prior to a recent statutory change, section 203(c)(2) provided for the establishment of an up-front premium for mutual mortgage insurance programs not to exceed 2.25 percent of the amount of the original insured principal obligation of the mortgage. The Fiscal Year (FY) 2002 HUD Appropriations Act (Pub. L. 107-73, approved November 26, 2001), amended this authority. Specifically, section 207 of the FY 2002 HUD Appropriations Act amended section 203(c) of the NHA to include mortgages insured under section 203(k) (rehabilitation loans) and section 234(c) (condominium loans) among those mortgages for which HUD collects a premium payment not to exceed 2.25 percent of the amount of the original insured mortgage (or not to exceed 2.0 percent for a first-time homebuyer who completes an approved program of homeownership counseling) at the time of insurance. Finally, the statutory amendments that are the subject of this rule only apply to mortgages that are executed after the date of enactment of the law, which was November 26, 2001. HUD, however, will only collect up-front premiums for 203(k) and 234(c) loans originated after the effective date of the final rule.

B. This Proposed Rule

This proposed rule would amend relevant sections of HUD's regulations in 24 CFR part 203 to conform these regulations to the statutory changes. Specifically, this proposed rule would amend regulations at 24 CFR 203.284(a) and 203.285(a), on up-front premiums, and § 203.50, on rehabilitation loans under section 203(k). Part 234, which relates to condominium mortgage insurance, incorporates by reference at § 234.255 the provisions of 24 CFR 203.284 and 203.285, and, therefore, will include the latest revisions, so that further revision of part 234 is unnecessary. Transition provisions in 24 CFR 203.284 and 203.285 for older mortgage loans will remain as published in the April 1, 2003, edition of title 24 of the Code of Federal Regulations.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial

number of small entities. This rule imposes no new obligations of any kind, but only changes the scheduling and conditions of premium payment obligations, requiring an up-front payment instead of monthly payments. Generally, these amounts are amortized in the mortgage and ultimately impose no obligations on businesses.

Notwithstanding HUD's determination that this rule does not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"), which the President issued on September 30, 1993. This rule was determined economically significant under E.O. 12866. Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. The Economic Analysis prepared for this rule is also available for public inspection in the Regulations Division.

Environmental Impact

This proposed rule involves the discretionary establishment of a rate or cost determination and related external administrative or fiscal requirements, which do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Order are met. This rule does not have federalism implications and does not

impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.

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 on the private sector. This proposed 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.

Congressional Review of Final Rules

This rule constitutes a "major rule" as defined in the Congressional Review Act (5 U.S.C. Chapter 8). At the final rule stage, this rule will have a 60-day delayed effective date and be submitted to Congress in accordance with the requirements of the Congressional Review Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to this rule is 14.117.

List of Subjects in 24 CFR Part 203

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

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY HOUSING MORTGAGE INSURANCE

1. 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 A—Eligibility Requirements and Underwriting Procedures

2. Amend 24 CFR 203.50 by adding a paragraph (m) to read as follows:

§ 203.50 Eligibility of rehabilitation loans.

(m) With regard to loans under this section executed on or after [the effective date of the final rule], the Commissioner shall charge an up-front and annual MIP in accordance with 24 CFR 203.284 or 203.285, whichever is applicable.

Subpart B—Contract Rights and Obligations

3. Amend 24 CFR 203.284 by revising paragraph (a) introductory text and paragraph (b) to read as follows:

§ 203.284 Calculation of up-front and annual MIP on or after July 1991.

(a) *Permanent provisions.* Any mortgage executed on or after October 1, 1994, that is an obligation of the Mutual Mortgage Insurance Fund, as well as any mortgage executed after [the effective date of the final rule], which is insured under sections 203(k) or 234(c) of the

National Housing Act (12 U.S.C. 1709 (k) and 12 U.S.C. 1715y(c)) shall be subject to the following requirements:

(b) *Transition provisions; savings provision.* Mortgages that are obligations of the Mutual Mortgage Insurance Fund and that were insured during Fiscal Years 1991–1994, are governed by 24 CFR 203.284(b) as in effect on April 1, 2003, (see 24 CFR parts 200–499 revised as of April 1, 2003).

4. Amend 24 CFR 203.285 by revising the first sentence of paragraph (a) to read as follows:

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

(a) *Up-front.* Any mortgage for a term of 15 or fewer years executed on or after December 26, 1992, that is an obligation of the Mutual Mortgage Insurance Fund, and any mortgage executed on or after [the effective date of the final rule], to be insured under sections 203(k) and 234(c) of the National Housing Act, shall be subject to a single up-front premium payment established and collected by the Commissioner in an amount not exceeding 2.0 percent of the amount of the original insured principal obligation of the mortgage. * * *

Dated: September 9, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

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