

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Parts 200, 203, and 234

[Docket No. FR-4323-P-01]

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:** Proposed rule.

**SUMMARY:** This proposed rule would amend HUD's Single Family Mortgage Insurance Minimum Property Standards concerning flood hazard exposure. The rule would clarify that it is the location of the dwelling and any related structures/equipment that determines whether the flood hazard exposure and National Flood Insurance purchase requirements apply. If the property improvements are located within the 100-year floodplain, the proposed rule would permit mortgagees to submit an Elevation Certificate in place of a final Letter of Map Amendment or a final Letter of Map Revision. The proposed rule would also remove obsolete provisions concerning subdivisions and improved area processing, and would make a number of clarifying revisions.

**DATES:** *Comments Due Date:* June 29, 1999.

**ADDRESSES:** Submit your comments about this proposed 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 20410-0500. Your comments should refer to the above docket number and title. We do not accept facsimile (FAX) comments. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mark Holman, Chief, Mortgage Underwriting and Insurance Branch, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-8000, Room 9270; telephone (202) 708-2121 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number by calling the toll-free Federal Information Relay Service at (800) 877-8399.

## SUPPLEMENTARY INFORMATION:

### I. Background

#### a. Flood Hazard Requirements

HUD's Minimum Property Standards (MPS) for the Single Family Mortgage Insurance Program are set out at 24 CFR §§ 200.926 to 200.926e. The current regulations at § 200.926d(c)(4) (entitled "Drainage and flood hazard exposure") contain construction requirements covering drainage and flood hazard exposure. The current regulations at § 200.926d(c)(4)(vii), in particular, require a Direct Endorsement (DE) or Lender Insurance (LI) mortgagee to determine whether a property is located within a 100-year floodplain (as designated on maps issued by the Federal Emergency Management Agency (FEMA)). The DE or LI mortgagee must make this determination before seeking to insure a mortgage on a newly constructed one- to four-family dwelling.

If the DE or LI mortgagee determines that the property is located within a 100-year floodplain, the mortgagee must obtain, before the mortgage may be insured, a final Letter of Map Amendment (LOMA) or a final Letter of Map Revision (LOMR) from FEMA. In addition, HUD's insurance eligibility regulations (24 CFR 203.16a, entitled "Mortgagor and mortgagee requirement for maintaining flood insurance coverage") for these programs require the mortgagor and mortgagee to purchase and maintain insurance under the National Flood Insurance Program (42 U.S.C. 4001-4129).

This proposed rule would revise these provisions in two ways. First, the proposed rule would clarify that it is the location of the dwelling and related structures/equipment, and not simply any portion of the property, that triggers these requirements. To be considered related, structures/equipment must be essential to the value of the property and subject to flood damage. This clarification is consistent with HUD's interpretation of the provisions of the current regulations, as reflected in HUD's Mortgagee Letter 97-41, issued August 27, 1997.

Second, the proposed rule would amend § 200.926d(c)(4)(vii) (note: the proposed rule would redesignate this section as § 200.926d(c)(4)(iv); the current § 200.926d(c)(4)(iv) would be removed by the proposed rule—see section I.b. of this preamble) to add an alternative to obtaining a LOMA or LOMR. This amendment would allow a mortgagee to submit, in place of a LOMA or LOMR, an Elevation Certificate (EC) documenting that the

lowest floor (including basement) of the property improvement is built at, or above, the 100-year flood elevation in compliance with National Flood Insurance Program criteria at 44 CFR 60.3 through 60.6. This alternative would provide more flexibility and, potentially, would have less impact on the floodplain than filling to the 100-year floodplain elevation as may be needed for a LOMA.

#### b. Obsolete Provisions

The proposed rule would remove obsolete provisions in § 203.12 (entitled "Mortgage insurance on proposed or new construction in a new subdivision") concerning subdivisions and improved areas and would make conforming amendments to other provisions to reflect the removal of these terms. The proposed rule would amend § 234.1 (entitled "Cross-reference") to reflect the new heading for § 203.12.

The proposed rule would also remove current § 200.926d(c)(4)(iv) (entitled "'Critical Actions'"). The term "Critical Actions" is defined at 24 CFR 55.2(b)(2). The proposed rule would remove this provision because the Single Family Mortgage Insurance Program does not involve the type of actions encompassed under the term "Critical Action". In addition, the first sentence in paragraph (c)(4)(iv) incorrectly provides that the lowest floor of a structure must be at or above the FEMA-designated "500-year" frequency flood elevation. The current § 200.926d(c)(4)(vii) would be redesignated as § 200.926d(c)(4)(iv).

#### c. Clarifications

The proposed rule would make the following revisions to correct exceptions from coverage that are drawn more broadly than intended in the current regulations. Section 200.926(a)(1) (entitled "Residential building code comparison items") would be revised to make it clear that all of the provisions of § 200.926d(c)(4) apply to four-unit homes. As currently drafted, only the provision on "Critical Actions" applies. The proposed rule would make a similar revision to § 200.926d(c)(1)(ii) so that all of 200.926d(c)(4) would apply to a community, whether or not the community has adopted criteria for site development.

Section 200.926d(c)(1)(iii), as currently drafted, appears to exempt residential structures without basements from the 100-year elevation requirement, if the dwelling is a single family detached house situated on an individual lot located on an existing street with utilities. This is incorrect. HUD intends these structures to be

subject to the same elevation requirements as are structures with basements. The proposed rule would correct this error by removing the reference to § 200.926d(c)(4)(ii) (entitled "Residential structures without basements located in FEMA-designated areas of special flood hazard") in § 200.926d(c)(1)(iii) (entitled "Residential structures located in FEMA-designated 'coastal high hazard areas.'").

## II. Findings and Certifications

### *Environmental Impact*

A Finding of No Significant Impact 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 (Public Law 91–190, 83 Stat. 852, 853, approved January 1, 1970, codified as amended at 42 U.S.C. 4321–4347, 4332). 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 at the above address.

### *Paperwork Reduction Act Statement*

The information collection requirement contained at § 203.12 of this rule has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 109 Stat. 163, approved May 22, 1995, codified at 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 the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, approved September 19, 1980, codified as amended at 5 U.S.C. 601–612), has reviewed this proposed 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 proposed rule would serve two primary purposes. First, it would allow mortgagees greater flexibility by allowing them to comply with floodplain requirements through the submission of an additional type of document. Second, the proposed rule would remove obsolete provisions and make clarifying amendments to the regulations. These changes reflect HUD's current interpretation of its

regulations and would not increase the regulation's burden. These changes are being proposed in order to make the regulations clearer and more accurate.

While HUD has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes any comments regarding alternatives to this rule that would meet HUD's objectives, as described in this preamble, and would be less burdensome to small entities.

### *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 proposed rule would 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.

### *Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance number for part 203 is 14.117 and for part 234 is 41.112.

### **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.

Accordingly, 24 CFR parts 200, 203, and 234 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. 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.

\* \* \* \* \*  
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).  
The revisions read as follows:

#### **§ 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.

\* \* \* \* \*  
(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.

\* \* \* \* \*

## **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(a), 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".

Dated: March 29, 1999.

**William C. Apgar,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

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