DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4745–P–01]

RIN 2502–AH84

Eligibility of Adjustable Rate Mortgages

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

ACTION: Proposed rule.

SUMMARY: Pursuant to a recent statutory revision, this rule makes available new adjustable rate mortgage products for single-family homes tailored to the needs of borrowers. This rule also makes provisions for the frequency and amount of interest rate changes for these new products.

DATES: *Comment Due Date:* May 12, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, 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 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: James Beavers, Home Mortgage Insurance Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, at (202) 708–2121. Persons with hearing- or speech-impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Background

Section 251 of the National Housing Act, 12 U.S.C. 1715z–16 (Section 251) authorizes the Secretary to insure adjustable rate mortgages (ARMs). Congress enacted revisions to this statute in the Veterans Affairs, HUD, and Independent Agencies Appropriations Act for Fiscal Year 2002 (Pub. L. 107–73, approved November 26, 2001; 115 Stat. 651, at 674). Prior to this statutory change, Section 251 permitted the Secretary to insure ARMs where the adjustments: (1) Were made on an annual basis; (2) were, as to each adjustment, limited to an annual cap of 1 percentage point on the outstanding loan balance; and (3) were limited, for the life of the loan, to a maximum increase of 5 percentage points above the initial interest rate.

The recently-enacted revision adds additional categories of ARMs to these pre-existing ones. Under this revision, which adds a new subsection (d) to Section 251, the Secretary may insure ARMs on single-family properties that have interest rates that are fixed for the first three years or more of the mortgage term; that are thereafter adjusted annually; and are not limited to adjustments of one percentage point if the interest rate remains fixed for more than five years.

The new statute also amends the information disclosure requirements of Section 251. HUD must require mortgage lenders to make available to the mortgagor, at the time of applying for an ARM under this section, a written explanation of the features of an adjustable rate mortgage. This explanation must be consistent with the disclosure requirements under the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, applicable to variable rate mortgages secured by a principal dwelling. The regulation includes this provision; however, the provision would be self-implementing even were it absent from the regulation.

The rate index provisions remain unchanged. As in the statute prior to the recent revisions, the interest rate must be based on a national index approved in regulations, information about which is readily accessible to borrowers from generally published sources.

HUD's current regulations on adjustable rate mortgages eligible for mortgage insurance are found at 24 CFR 203.49. This proposed rule would amend that section.

B. This Proposed Rule

This proposed rule would add a new paragraph (a) between the introductory paragraph and current § 203.49(a), which is redesignated as § 203.49(b). The effect of this paragraph would be to recognize specific categories of adjustable rate mortgages as eligible for insurance, based on the year of the loan in which the rate may first be adjusted. These categories are one, three, five, seven and ten-year ARMs.

Proposed § 203.49(d) would specify the time periods mortgages must be adjusted for each of the different types of ARMs. In each case, in accordance with current practice, the rule proposes a six-month ''window'' for adjustment. In other words, groups of mortgages, the anniversary dates of which fall into a six-month period, can be adjusted together. This is convenient for lenders, and also allows GNMA, when pooling mortgages for purposes of issuing mortgage-backed securities, to have larger pools. For example, if the adjustment date of a particular set of mortgages to be pooled is June 1, 2001, GNMA can include mortgages with adjustment dates going back to January 1, 2001, in the pool. Those January 1 mortgages would not adjust until June 1, 2001. This proposed window for adjustments is a matter of administrative convenience and would not change the fact that five-year ARMs fall under the maximum cap provisions (one percentage point for the annual adjustment and five percent total variance in rates for the life of the loan) in 12 U.S.C. 1715z–16(a).

Proposed § 203.49(e), ''Magnitude of changes,'' is redesignated as § 203.49(f) and revised to take into account the new types of ARMs. Section 203.49(f)(1) covers one, three and five-year ARMs. Following the statutory provisions applicable to adjustable rate mortgages that have an interest rate that is fixed for five or fewer years, adjustments would be limited to a maximum of one percentage point in variance from the prior interest rate. If the underlying index changes more than one percentage point, the rule proposes that the excess amount may not be made up in an adjustment the following year. Finally, the overall total cap in adjustments of five percentage points over the life of the loan from 12 U.S.C. 1715z–16(a) would be implemented in this paragraph. Because of the insertion of new § 203.49(f)(2), described in the following paragraph, new § 203.49(f)(3) contains the material in current § 203.49(e)(2).

Proposed § 203.49(f)(2) would implement the somewhat different requirements for seven and ten-year ARMs. The one-year and total loan adjustment caps do not apply to ARMs in these categories. The proposed rule would permit for these ARMs a change in annual adjustments of up to two percentage points, and the total mortgage change may go up to six percentage points.

Proposed § 203.49(i), redesignated from § 203.49(h) in the current rule, would amend the cross-references to eliminate the cross-reference to mortgage insurance for disaster victims, 24 CFR 203.18(e). The effect of this change is to permit insurance of ARMs under this provision. Finally, technical revisions would be made to § 203.49(i), which is redesignated as § 203.49(j) in this proposed rule.

Other portions of 24 CFR 203.49 are not affected by this rulemaking, and will remain as currently codified in 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 permits greater flexibility in HUD-insured ARMs, thus providing more products for potential homebuyers. This rule imposes no requirements 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 comment regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble.

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. This 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 the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

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 Executive 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 Executive 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.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this proposed 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 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 Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410–0500.

Catalog of Federal Domestic Assistance.

The Catalog of Federal Domestic Assistance numbers applicable to this rule are 14.108, 14.117, and 14.119.

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.

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

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 is revised to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715z–16, and 1715u; 42 U.S.C. 3535(d).

2. Section 203.49 is amended as follows:

a. Redesignate paragraphs (a) through (j) as paragraphs (b) through (k) respectively;

b. Add a new paragraph (a); and

c. Revise newly designated paragraphs (d), (f), (g), (i) and (j).

The additions and revisions read as follows:

§ 203.49 Eligibility of adjustable rate mortgages.

* * * * *

(a) *Types of mortgages insurable.* The types of adjustable rate mortgages that are insurable are those for which the interest rate may be adjusted annually by the mortgagee, beginning after one, three, five, seven or ten years from the date of the mortgagor's first debt service payment.

* * * * *

(d) *Frequency of Interest Rate Changes.* (1) The interest rate adjustments must occur annually from the date of the mortgagor's first debt service payment, except, for these types of mortgages, the first adjustment shall be no sooner nor later than the following:

(i) One year adjustable rate mortgages—no sooner than 12 months nor later than 18 months;

(ii) Three year adjustable rate mortgages—no sooner than 36 months nor later than 42 months;

(iii) Five year adjustable rate mortgages—no sooner than 60 months nor later than 66 months;

(iv) Seven year adjustable rate mortgages—no sooner than 84 months nor later than 90 months; and

(v) Ten year adjustable rate mortgages—no sooner than 120 months nor later than 126 months.

(2) To set the new interest rate, the mortgagee will determine the change between the initial (*i.e.*, base) index figure and the current index figure, or will add a specific margin to the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

* * * * *

(f) *Magnitude of changes.* The adjustable rate mortgage initial contract interest rate shall be agreed upon by the mortgagee and the mortgagor. The first adjustment to the contract interest rate shall take place in accordance with the schedule set forth under paragraph (d) of this section. Thereafter, for all adjustable rate mortgages, the adjustment shall be made annually, subject to the following conditions and limitations:

(1) For one, three and five year adjustable rate mortgages, no single adjustment may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point may not be carried over for inclusion in an adjustment for the following year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more

than five percentage points from the initial contract interest rate.

(2) For seven and ten year adjustable rate mortgages, no single adjustment to the interest rate shall result in a change in either direction of more than two percentage points from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of two percentage points may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than 6 percentage points from the initial contract rate.

(3) At each adjustment date, changes in the index interest rate, whether increases or decreases, must be translated into the adjusted mortgage interest rate, except that the mortgage may provide for minimum interest rate change limitations and for minimum increments of interest rate changes.

(g) *Pre-Loan Disclosure*. The mortgagee is required to make available to the mortgagor, at the time of loan application, a written explanation of the features of an adjustable rate mortgage consistent with the disclosure requirements applicable to variable rate mortgages secured by a principal dwelling under the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

* * * * *

(i) *Cross-reference*. Sections 203.21 (level payment amortization provisions) and 203.44 (open-end advances) do not apply to this section. This section does not apply to a mortgage that meets the requirements of Sections 203.18(a)(4) (mortgagors of secondary residences), 203.18(c) (eligible non-occupant mortgagors), 203.18(d) (outlying area properties), 203.43 (miscellaneous type mortgages), 203.43c (mortgages involving a dwelling unit in a cooperative housing development), 203.43d (mortgages in certain communities), 203.43e (mortgages covering houses in federally impacted areas), 203.45 (graduated payment mortgages), and 203.47 (growing equity mortgages).

(j) *Aggregate amount of mortgages insured*. The aggregate number of adjustable rate mortgages insured pursuant to this section and 24 CFR part 234 in any fiscal year may not exceed 30 percent of the aggregate number of mortgages and loans insured by the Secretary under Title II of the National Housing Act during the preceding year.

* * * * *

Dated: January 9, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–5890 Filed 3–10–03; 8:45 am]

BILLING CODE 4210–27–P