

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 221

[Docket No. FR-4588-P-01]

RIN 2502-AH50

Discontinuation of the Section 221(d)(2) Mortgage Insurance Program

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would discontinue HUD's section 221(d)(2) mortgage insurance program. Through this program, HUD insures mortgage loans made by private lenders to finance the purchase, construction, or rehabilitation of low-cost, one- to four-family housing. The section 221(d)(2) program is rarely used by homebuyers, primarily due to its low mortgage limits. Further, the program provides few homeownership opportunities not already made available by other HUD mortgage insurance programs. Accordingly, HUD proposes to no longer enter into new contracts for mortgage insurance under the program. The proposed rule would remove those provisions of the section 221(d)(2) regulations concerning eligibility for participation in the program, and replace them with a savings clause. The rule, however, would retain those regulatory provisions regarding the contract rights and servicing responsibilities for existing program participants.

DATES: *Comments due date:* November 27, 2000.

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

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Office of Insured Single Family Housing, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000; telephone (202) 708-

2700 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background—The Section 221(d)(2) Single Family Mortgage Insurance Program

Section 221(d)(2) of the National Housing Act (12 U.S.C. 1715l(d)(2)), authorizes HUD to insure private lenders against loss from default on mortgage loans made to finance the purchase, construction, or rehabilitation of low-cost, one- to four-family homes. The regulations implementing the section 221(d)(2) program are located in 24 CFR part 221. The program is administered by HUD's Office of Housing-Federal Housing Administration (FHA).

The section 221(d)(2) program is rarely used by homebuyers, primarily due to its low mortgage limits. The maximum mortgage under the program is \$31,000 for a single-family home (\$36,000 in high cost areas). For a larger family with five or more persons, the limit is \$36,000 (\$42,000 in high-cost areas). Due to these low mortgage limits, which are established by statute, the program is not attractive to the majority of homebuyers. In Fiscal Year 1999, HUD insured 1,009 section 221(d)(2) mortgages, representing less than \$32 million of FHA's total \$120 billion in mortgage origination. During the last three fiscal years, FHA has endorsed only 4,821 section 221(d)(2) mortgages.

The section 221(d)(2) program provides few homeownership opportunities not already made available by other HUD mortgage insurance programs, primarily the single family home mortgage insurance programs authorized by section 203 of the National Housing Act (12 U.S.C. 1709) (implemented by HUD in 24 CFR part 203), and the condominium mortgage insurance program authorized by section 234 of the National Housing Act (12 U.S.C. 1715y) (implemented by HUD in 24 CFR part 234).

The section 203 and section 234 programs have eligibility requirements and underwriting procedures that are almost identical to those of the section 221(d)(2) program. In addition, these programs have the benefit of much higher mortgage limits. For example, the maximum mortgage for a single family dwelling under the section 203(b) and section 234(c) programs ranges from \$121,296 to \$219,849, depending upon location. Although the section 221(d)(2) program does permit some additional financing of closing costs, the low

volume of mortgages originated under the program suggests that this is not a significant benefit to homebuyers.

For these reasons—the infrequent use of section 221(d)(2) mortgage insurance by homebuyers, and the easy availability of alternative FHA mortgage insurance products—HUD has decided to discontinue the section 221(d)(2) program.

II. This Proposed Rule

This proposed rule would remove the HUD regulations establishing the eligibility requirements for section 221(d)(2) mortgage insurance in subpart A of 24 CFR part 221. A savings clause would be retained in subpart A of the part 221 regulations to provide that the authority to insure section 221(d)(2) mortgages is terminated, except that HUD will endorse for insurance validly processed mortgages under direct endorsement where the credit worksheet was signed by the mortgagee's underwriter before the effective date of the final rule. The savings clause would also provide that subpart A, as it existed immediately before the termination date, will continue to govern the rights and obligations of insured mortgage lenders, mortgagors, and HUD with respect to section 221(d)(2) single family loans insured before the effective date of the final rule, and to the aforementioned direct endorsement loans.

III. 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 (42 U.S.C. 4323). The Finding of No Significant Impact is available for public inspection between the hours of 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 Seventh Street, SW., Washington, DC.

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows.

As noted above, the section 221(d)(2) program is rarely used by homebuyers.

Mortgage lenders eligible to participate in the section 221(d)(2) program are also generally eligible to participate in other, alternative, FHA single family mortgage insurance programs that are preferred by homebuyers (such as the section 203 and section 234(c) programs). Accordingly, HUD's decision to discontinue the section 221(d)(2) program is not anticipated to have a significant economic impact on a substantial number of mortgage lenders participating in these FHA programs.

Notwithstanding HUD's determination that this rule will not have a significant economic effect 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 this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would 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 (2 U.S.C. 1531–1538) 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 would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance program number applicable to 24 CFR part 221 is 14.120: Mortgage Insurance—Homes for Low/Moderate Income Families.

List of Subjects in 24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 221 to read as follows:

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

1. The authority citation for part 221 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715l; 42 U.S.C. 3535(d).

2. Subpart A is revised to read as follows:

Subpart A—Eligibility Requirements—Low Cost Homes—Savings Clause

§ 221.1 Savings clause.

(a) Effective [insert effective date of final rule], the authority to insure mortgages under section 221(d)(2) of the National Housing Act (12 U.S.C. 1715l(d)(2)) for low cost and moderate income mortgage insurance is terminated, except that HUD will endorse for insurance validly processed mortgages under direct endorsement where the credit worksheet was signed by the mortgagee's underwriter before [insert effective date of final rule].

(b) Subpart A of this part, as it existed immediately before [insert effective date of final rule], will continue to govern the rights and obligations of insured mortgage lenders, mortgagors, and HUD with respect to section 221(d)(2) single family loans insured before [insert effective date of final rule], or in accordance with paragraph (a) of this section, pursuant to the applicable provisions of this subpart.

Dated: August 24, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner

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