

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR-4779-I-01]

RIN 2502-AH92

Eligibility of Mortgages on Hawaiian Home Lands Insured Under Section 247

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

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations regarding eligibility for mortgages on Hawaiian home lands to reflect a recent statutory change to the National Housing Act.

DATES: *Effective Date:* July 15, 2004.

Comment Due Date: August 16, 2004.

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. Electronic comments may be submitted through Regulations.gov (www.regulations.gov). 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, Office of the Deputy Assistant Secretary for Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000; telephone (202) 708-2121 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the toll free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule implements an amendment to Section 247 of the National Housing Act (12 U.S.C. 1715z-12) relating to single family insurance on Hawaiian home lands made by section 215 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Pub. L. 107-73, approved November 26, 2001) (FY2002 HUD Appropriations Act). The amendment revised the definition of the terms “Hawaiian home

lands” and “native Hawaiian.” Section 215 also changed the eligibility criterion for the receipt of a leasehold or mortgage insured under section 247 of the National Housing Act.

II. This Interim Rule

This interim rule amends 24 CFR 203.43i(c)(2) to conform the existing regulatory definition of the term “Hawaiian home lands” to the revised definition of the term found in section 247(d)(2) of the National Housing Act. Even though the only change is the addition of two statutory citations, the inclusion of the citations makes the regulatory definition consistent with the statutory language. This rule also amends 24 CFR 203.43i(c)(3) to conform the existing regulatory definition of the term “native Hawaiian” to the revised definition enacted by section 215 of the FY2002 HUD Appropriations Act. A “native Hawaiian” now is defined as “any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian islands before January 1, 1778, or, in the case of an individual who is awarded an interest in a lease of Hawaiian home lands through transfer or succession, such lower percentage as may be established for such transfer or succession under section 208 or section 209 of the Hawaiian Homes Commission Act of 1920 (42 Stat. 111), or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled “An Act to provide for the admission of the State of Hawaii into the Union”, approved March 18, 1959 (73 Stat. 5).”

Section 247 of the National Housing Act was amended by section 215(2) of the FY2002 HUD Appropriations Act to provide that possession of a lease of Hawaiian home lands issued under section 207(a) of the Hawaiian Homes Commission Act of 1920 (42 Stat. 110) shall be necessary to certify eligibility to obtain an insured mortgage. Therefore, 24 CFR 203.43i(i) is amended to state that, in addition to all the other eligibility requirements set forth in subpart A of 24 CFR part 203, possession of a lease issued under section 207 of the Hawaiian Homes Commission Act of 1920, which has been certified by the Department of Hawaiian Home Lands as being valid, current, and not in default, will be sufficient to satisfy the eligibility of a mortgagor for an insured mortgage under this section. Such certification is customary when a leasehold is the security for a mortgage transaction.

This rule amends 24 CFR 203.43i(h) also as a result of the amendment made

by section 215(2) of the FY2002 HUD Appropriations Act. The restrictive language in § 203.43i(h) with respect to assumption of the leasehold is removed. As a consequence of the enactment of section 215(2), this rule eliminates the requirement for a certification from the Department of Hawaiian Home Lands that the mortgagor (lessee) qualifies as a native Hawaiian; therefore, the requirement for a certification when a leasehold is assumed also is eliminated.

Findings and Certifications

Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is “impracticable, unnecessary, or contrary to the public interest.”

The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment. The amendments enacted by Section 215 of the FY2002 HUD Appropriations Act, discussed above, are fairly prescriptive and allow little, if any, discretion in defining a “native Hawaiian” or “Hawaiian home lands” or in setting forth the procedure for a qualified lessee to establish proof of eligibility for mortgage insurance. Moreover, the regulatory text reflects the amendatory language of Section 215 without any substantive change. Accordingly, the Department believes that it is in the public interest to publish this interim rule to make the statutory amendments effective as soon as possible and that prior public procedure is unnecessary. Although the Department is publishing this interim rule for effect, the Department is inviting and welcomes public comment on the rule. Comments received in response to the published interim rule will be considered during development of a final rule that will supersede this interim rule.

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule 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. The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in

the Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-5000.

Unfunded Mandates Reform Act

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 rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are no unusual procedures that would need to be complied with by small entities. The rule would facilitate FHA insurance of mortgages on leaseholds held by native Hawaiians. Although HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternative to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this 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 rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection

in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-5000.

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 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.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.117.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indian-lands, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, solar energy.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 1. The authority citation for part 203 continues to read as follows:

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

■ 2. Amend § 203.43i to revise paragraphs (c)(2) and (3), (h), and (i) to read as follows:

§ 203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act.

* * * * *

(c)(1) * * *

(2) Hawaiian home lands means all lands given the status of Hawaiian home

lands under section 204 of the Hawaiian Homes Commission Act of 1920 (42 Stat. 110), or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union," approved March 18, 1959 (73 Stat. 5).

(3) Native Hawaiian means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian islands before January 1, 1778, or, in the case of an individual who is awarded an interest in a lease of Hawaiian home lands through transfer or succession, such lower percentage as may be established for such transfer or succession under section 208 or 209 of the Hawaiian Homes Commission Act of 1920 (42 Stat. 111), or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union," approved March 18, 1959 (73 Stat. 5).

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(h) *Form of lease.* The form of lease must be approved by both HUD and the Department of Hawaiian Home Lands (DHHL). The lease may not be terminated by DHHL without the approval of the Secretary while the mortgage is insured or held by the Secretary.

(i) *Eligibility of mortgagor.* In addition to the eligibility requirements contained in this subpart, possession of a lease of Hawaiian home lands issued under section 207(a) of the Hawaiian Homes Commission Act of 1920 (42 Stat. 110) that has been certified by the Department of Hawaiian Home Lands as being valid, current, and not in default, shall be sufficient to certify eligibility to receive a mortgage to be insured under this section.

Dated: May 19, 2004.

Sean Cassidy,

General Deputy Assistant Secretary for Housing.

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