

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR-4251-P-01]

RIN 2502-AH00

Suspension of Authority To Insure New FHA Single Family Mortgages on Indian Reservations Pursuant to Section 248 of the National Housing Act

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

ACTION: Proposed rule.

SUMMARY: This rule proposes to suspend the authority of the HUD Secretary to provide FHA insurance pursuant to section 248 of the National Housing Act for mortgage loans made for the financing of single family homes on Indian reservations. The suspension would be in effect whenever authority is available to the Department to guarantee additional loans under its Indian Housing Loan Guarantee program authorized by section 184 of the Housing and Community Development Act of 1992. The rule would suspend a program that has not been effective in promoting housing opportunities for Native Americans and permit HUD to focus scarce resources on the similar section 184 program, whenever authority under that program is available. In recent fiscal years the Department has received annually a limited amount of additional authority to guarantee new loans under section 184. If that pattern is not continued, or if the available section 184 authority is otherwise exhausted, the Department would resume mortgage insurance under the section 248 program.

DATES: Comment due date: April 6, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Comments should refer to the above docket number and title. An original and four copies of comments should be provided. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: John J. Coonts, Office of the Insured Single

Family Housing, Room 9162, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708-3046. (This is not a toll-free number.) For hearing and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

The mortgage insurance program for mortgages on Indian reservations was initially authorized under the Housing and Urban—Rural Recovery Act of 1983, which added Section 248 to the National Housing Act. The Department implemented the program by a final rule (51 FR 21871, June 16, 1986) that added several new provisions to 24 CFR part 203, including new §§ 203.43h, 203.438 and 203.664 and amendments to §§ 203.350 and 203.604.

The new program was intended to encourage mortgage lenders to extend loans on Indian reservations and other trust or restricted land ("Indian land"). Indian land is generally subject to restraints against alienation and other title issues, and mortgage lenders are reluctant to make mortgage loans because of the extreme difficulty in bringing and completing a foreclosure action, if the mortgagor defaults. Because FHA generally requires a mortgagee to convey good marketable title to the HUD Secretary in presenting a claim for insurance, and good marketable title is difficult or impossible to obtain as a result of a foreclosure on Indian land, mortgage lenders were hesitant to make such mortgage loans.

Section 248 provided ways to mortgagees to overcome these title and claim issues, primarily by providing the lender with a right to assign a defaulted mortgage to the HUD Secretary, but the program has always operated at a very low volume. The Clinton Administration has made extensive efforts over the past four years to publicize the program and encourage its use. Mortgage lenders and Native Americans, however, have found another similar HUD program—the section 184 loan guarantee program—to be more attractive based on the large volume of loans made in comparison to the history of section 248. Thus, the Department believes it is smart management to apply its resources to a program that works and accomplishes the same goals. Section 184 has proven to be substantially more effective in providing housing opportunities for Native Americans. Under a

Memorandum of Understanding, the HUD Office of Insured Single Family Housing will provide support to the HUD Office of Native American Programs to assure that the lending community and Native Americans have adequate access to information about Section 184.

The Department proposes to amend § 203.43h to suspend new insurance, excepting only cases with a HUD conditional commitment or DE underwriter's Statement of Appraised Value issued no later than 90 days after the effective date of the final rule, as long as the Department has authority to guarantee new loans under its section 184 program. Insurance for streamlined refinancing would continue to be available for any mortgage that has been insured under section 248.

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 proposed rule does not have a significant economic impact on a substantial number of small entities. The proposed rule merely suspends new insurance for a program that has no significant volume, whenever the Department has guarantee authority under the similar but more successful section 184 program. Any lenders that participated in the suspended program can easily qualify to participate under the section 184 program. The proposed rule has no adverse or disproportionate economic impact on small businesses. Small entities are specifically invited, however, to comment on whether this proposed rule will significantly affect them, and persons are invited to submit comments according to the instructions in the **DATES** and **ADDRESSES** sections in the preamble of this proposed rule.

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 implements section 102(2)(C) of the National Environmental Policy Act of 1969. 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.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, Federalism, has determined that this proposed rule

would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes would result from this proposed rule that affect the relationship between the Federal Government and State and local governments.

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.

List of Subjects in Part 203

Loan programs—housing and community development, Mortgage

insurance, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to amend part 203 of Title 24 of the Code of Federal Regulations as follows:

PART 203—SINGLE FAMILY 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).

2. Section 203.43h is amended by revising the introductory text to read as follows:

§ 203.43h Eligibility of mortgages on Indian land insured pursuant to Section 248 of the National Housing Act.

No mortgage will be insured pursuant to section 248 of the National Housing Act unless the Secretary determined that there is no available authority to guarantee a mortgage under section 184 of the Housing and Community Development Act of 1992, or before [a date of 90 days after the effective date of final rule will be inserted in the final

rule] the Secretary issued a conditional commitment or a Direct Endorsement underwriter issued a Statement of Appraised Value in connection with the mortgage. If insurance is available under the preceding sentence, a mortgage covering a one-to-four family residence located on Indian land shall be eligible for insurance pursuant to section 248 of the National Housing Act (12 U.S.C. 1715z-13), notwithstanding otherwise applicable requirements related to marketability of title, if the mortgage meets the requirements of this subpart as modified by this section and is made by an Indian tribe, or on a leasehold estate by an Indian who will occupy it as a principal residence. Mortgage insurance on cooperative shares is not authorized under this section.

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Dated: December 10, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

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