DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4946–F–02]

RIN 2502–AI26

Eligibility of Adjustable Rate Mortgages

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

ACTION: Final rule.

SUMMARY: On March 29, 2005, HUD published an interim rule making available a new adjustable rate mortgage (ARM) product. In accordance with statutory authority, this rule enabled the Secretary to insure five-year hybrid ARMs with interest rates adjustable up to two percentage points annually (this type of mortgage is known as a 5/1 ARM). The lifetime cap on annual interest rate adjustments for five-year ARMs was set at six percentage points. This final rule follows publication of the March 29, 2005, interim rule, and makes no changes at this final rule stage.

DATES: *Effective Date:* January 5, 2006.

FOR FURTHER INFORMATION CONTACT: Margaret Burns, Deputy Director, Office of Program Development, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9266, Washington, DC 20410–8000; telephone (202) 708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION

I. Background

Section 251 of the National Housing Act (12 U.S.C. 1715z–16) authorizes the Secretary to insure adjustable rate mortgages (ARMs). ARMs are mortgages that remain at a fixed interest rate for a certain period of time, but then provide for periodic adjustments in the interest rate charged on the mortgage. An ARM may be attractive to a potential homebuyer because it offers a lower initial interest rate than most fixed rate mortgage loans.

Section 251 of the National Housing Act limits the amount of the annual interest rate adjustments on ARMs insured by HUD-Federal Housing Administration (FHA) depending on the duration of the initial fixed interest rate term. Section 301 of Public Law 108–186 (approved December 16, 2003) (2003 Act), amended section 251(d) of the National Housing Act to provide for greater flexibility in this regard. Prior to enactment of the 2003 Act, section 251 of the National Housing Act limited annual interest rate adjustments on FHA-insured ARMs to one percentage point only if the initial fixed interest rate term was for a period of five years or less. Section 301 amended section 251(d)(1)(C) of the National Housing Act to reduce this period to three years or less. In other words, the annual adjustment of one percent only applies to ARMs with a fixed term for the first three or fewer years. For five-, seven-, and ten-year ARMs, the mortgagee may make an annual adjustment that exceeds one percent. Thus, prior to the enactment of the interim rule, § 203.49(f)(1) limited the annual interest rate adjustment for five-year ARMs to a single percentage point.

HUD became aware of concerns among mortgage lenders and borrowers regarding the one percentage point limitation on annual interest rate adjustments for five-year ARMs. These concerns were based primarily on the fact that a one percentage point limitation on FHA-insured five-year ARMs did not accurately reflect the realities of the mortgage market. Conventional mortgage lenders do not offer five-year ARMs with a one percentage point cap on annual interest rate adjustments. A maximum annual increase of one percentage point does not provide lenders with sufficient interest rate flexibility to offer five-year ARMs at an interest rate below the traditional 30-year fixed rate mortgage. Accordingly, the one percentage point limitation undercut HUD's ability to offer mortgage insurance for a full range of ARM loans with standing initial interest rates lower than those on conventional 30-year fixed rate mortgages.

On March 29, 2005 (70 FR 16080), HUD published an interim rule that enabled the Secretary to insure five-year hybrid ARMs with interest rates adjustable up to two percentage points annually (this type of mortgage is known as a 5/1 ARM). In addition, the interim rule raised the lifetime cap on interest rate adjustments for five-year ARMs to six percentage points. This change conformed the lifetime cap for five-year ARMs to those applicable to seven- and ten-year ARMs.

II. This Final Rule

This final rule follows publication of the March 29, 2005, interim rule and takes into consideration the public comments received on the interim rule. The public comment period for the interim rule closed May 31, 2005. HUD received one public comment on the interim rule from an association representing real estate practitioners. The commenter wrote that it supports the interim rule because the new interest rate allows sufficient interest rate flexibility and will expand the number of available insured mortgage options. HUD has decided to adopt the March 29, 2005, rule as final without change.

III. Findings and Certifications

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis on any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule permits greater flexibility for all lenders, regardless of size, to offer a revised mortgage product that is eligible for FHA insurance. This rule imposes no additional economic or monetary requirements on businesses. Therefore, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the interim rule stage in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). That Finding remains applicable to this final rule and is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, 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 publishing any rule that has federalism implications and 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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (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 the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal government, or the private sector within the meaning of UMRA.

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 Subject 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.

■ Accordingly, for the reasons stated in the preamble, the interim rule for part 203 of Title 24 of the Code of Federal Regulations, amending § 203.49, published on March 25, 2005, at 70 FR 16080, is promulgated as final, without change.

Dated: November 23, 2005.

Brian D. Montgomery,

Assistant Secretary for Housing, Federal Housing Commissioner.

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