

§ 203.29 Eligible mortgages in Alaska, Guam, Hawaii, or the Virgin Islands.

(a) *When is an increased mortgage limit permitted for these areas?* For Alaska, Guam, Hawaii or the Virgin Islands, the Commissioner may increase the maximum mortgage amount permitted by section 203(b)(2)(A) of the National Housing Act when authorized by section 214 of that Act, through the procedures described in §203.18(h).

(b) If a party believes that the otherwise applicable mortgage limit needs to be increased to reflect the extent to which high costs make it infeasible to construct dwellings without sacrificing sound standards of construction, design or livability, the party may submit documentation in support of an alternative mortgage limit. This documentation should include actual or estimated costs of such items as design, construction, materials, and labor. In addition, actual sales prices of new homes may be submitted, together with any other documentation requested by the Commissioner. Requests for alternative mortgage limits, together with supporting documentation should be sent to the appropriate HUD field office. The field office will forward the request and supporting material, with the field office's recommendation, to the Commissioner for determination.

(c) If the Alaska Housing Authority, or the Government of Guam, Hawaii, or the Virgin Islands or any agency or instrumentality of those entities, is the mortgagor or the mortgagee, or the mortgagor is regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation to such an extent and in such manner as the Commissioner determines advisable to provide reasonable rental and sales prices and a reasonable return on the investment, any mortgage otherwise eligible for insurance under this subpart may be insured:

(1) In any case where the Alaska Housing Authority, or the government of Guam, Hawaii, the Virgin Islands, or any agency or instrumentality of those entities, is the mortgagor, without regard to any requirement that the mortgagor occupy the dwelling as a prin-

cipal residence or a secondary residence (as these terms are defined in §203.18(f)), or meet loan-to-value or comparable limitations based on the failure of the mortgagor to meet this occupancy requirement;

(2) Without regard to any requirement that the mortgagor has paid on account of the property a prescribed percentage of the appraised value of the property; or

(3) Without regard to any requirement that the mortgagor certify that the mortgaged property is free and clear of all liens other than the mortgage offered for insurance and that there will not be any unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property.

(d) The provisions of §203.28 requiring economic soundness shall not be applicable to mortgages covering property located in Alaska, in Guam, in Hawaii, or in the Virgin Islands, but the Commissioner shall find that the property or project is an acceptable risk, giving consideration to the acute housing shortage in Alaska, Guam, Hawaii, or the Virgin Islands.

(Approved by the Office of Management and Budget under control number 2502-0302)

[36 FR 24508, Dec. 22, 1971, as amended at 49 FR 14338, Apr. 11, 1984; 55 FR 34804, Aug. 24, 1990; 56 FR 18948, Apr. 24, 1991; 64 FR 14569, Mar. 25, 1999]

§ 203.30 Certificate of nondiscrimination by the mortgagor.

The mortgagor shall certify to the Commissioner as to each of the following points:

(a) That neither he, nor anyone authorized to act for him, will refuse to sell or rent, after the making of a bonafide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by the mortgage to any person because of race, color, religion, national origin, familial status (except as provided by law), or handicap.

(b) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

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(c) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

(d) That buildings having four (4) or more units, which were built for first occupancy after March 13, 1991, were constructed in compliance with the Fair Housing Act new construction requirements in 24 CFR 100.205.

[36 FR 24508, Dec. 22, 1971, as amended at 57 FR 58347, Dec. 9, 1992; 61 FR 36264, July 9, 1996]

§ 203.31 Mortgagor of a principal residence in military service cases.

(a) A mortgage that is otherwise eligible for insurance under any of the provisions of this part may be insured without regard to any requirement contained in this part that the mortgagor occupy the dwelling as a principal residence (as defined in § 203.18(f)(1)) at the time of insurance, or that the mortgagor meet loan-to-value or comparable limitations based on the failure of the mortgagor to meet an occupancy requirement, if:

(1) The Commissioner is satisfied that the inability of the mortgagor to meet the occupancy requirement is by reason of his or her entry into military service after the filing of an application for insurance; and

(2) The mortgagor expresses an intent (in such form as the Commissioner may prescribe), to meet the occupancy requirement upon his or her discharge from the service.

(b) A serviceperson will also be considered to meet the occupancy requirement referred to in paragraph (a) of this section for mortgage insurance purposes, if the following conditions are satisfied:

(1) The serviceperson and his or her family expect to meet the occupancy requirement referred to in paragraph (a) of this section for two or more years. The Commissioner may shorten this period to one year, if (i) the serviceperson's family will occupy the property for at least one year and (ii) the serviceperson is assigned to a combat zone or other hazardous duty area where the family cannot accompany him or her; and

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(2) The property is located in an area in which the prospects of resale are reasonable.

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[55 FR 34804, Aug. 24, 1990]

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§ 203.32 Mortgage lien.

(a) Except as otherwise provided in this section, a mortgagor must establish that, after the mortgage offered for insurance has been recorded, the mortgaged property will be free and clear of all liens other than such mortgage, and that there will not be outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations that are secured by property or collateral owned by the mortgagor independently of the mortgaged property.

(b) With prior approval of the Secretary, the mortgaged property may be subject to a secondary mortgage or loan made or insured, or other secondary lien held, by a Federal, State, or local government agency or instrumentality, or an entity designated in the homeownership plan submitted by an applicant for an implementation grant under the Homeownership and Opportunity for People Everywhere (HOPE) program, or an eligible nonprofit organization as defined in § 203.41(a)(5) of this part, provided that the required monthly payments under the insured mortgage and the secondary mortgage or lien shall not exceed the mortgagor's reasonable ability to pay as determined by the Secretary.

(c) With the prior approval of the Secretary, the mortgaged property may be subject to a second mortgage held by a mortgagee not described in paragraph (b) of this section. Unless the mortgage is for the purpose described in paragraph (d) of this section, it shall meet the following requirements:

(1) The required monthly payments under the insured mortgage and the second mortgage shall not exceed the mortgagor's reasonable ability to pay, as determined by the Commissioner;