

against the property assessed after the property is mortgaged) are satisfied; or

(2) Enact a law providing that State law shall determine the priority of liens against the property.

(g) *Definitions.* As used in this section and elsewhere in this part, the term:

(1) *Indian* means and individual member of any Indian tribe and that member's family.

(2) *Indian land* means trust or otherwise restricted land (i) as defined by the Secretary of the Interior, over which an Indian tribe is recognized by the United States as having governmental jurisdiction; (ii) held in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation; or (iii) acquired by Alaska natives under the Alaska Native Claims Settlement Act or any other land acquired by Alaska natives pursuant to statute by virtue of their unique status as Alaska natives.

(3) *Indian tribe* means any Indian or Alaska native tribe, band, nation, or other organized group or community of Indians or Alaskan natives recognized as eligible for the services provided to Indians or Alaska natives by the Secretary of the Interior because of its status as such an entity, or that is an eligible recipient under chapter 67 of title 31, United States Code. For purposes of engaging in section 248 insured mortgage transactions under this section, an Indian tribe may act through its duly authorized representative.

(Approved by the Office of Management and Budget under control number 2502-0340)

[51 FR 21871, June 16, 1986, as amended at 53 FR 34282, Sept. 6, 1988; 57 FR 58347, Dec. 9, 1992; 61 FR 36264, July 9, 1996]

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

(a) *Eligibility.* A mortgage on a homestead lease granted by the Department of Hawaiian Home Lands covering a one- to four-family residence located on Hawaiian home lands is eligible for insurance pursuant to section 247 of the National Housing Act (12 U.S.C. 1715z-12) if the mortgagor is a native Hawaiian who will occupy it as a prin-

cipal residence, and if the mortgage meets the requirements of this subpart as modified by this section. Mortgage insurance on cooperative shares under § 203.43c on homes in federally impacted areas under § 203.43e is not authorized under this section.

(b) *Exemptions from other regulations.* The provisions of subparts I, J, and M of part 200, and § 203.30, to the extent that these provisions would otherwise prohibit preferences in favor of Native Hawaiians in the leasing, sale or other disposition of Hawaiian home lands, do not apply to mortgages insured pursuant to section 247 of the National Housing Act. The first lien requirement contained in § 203.17 also does not apply to mortgages insured pursuant to section 247 of the National Housing Act.

(c) *Definitions.* (1) *Department of Hawaiian Home Lands* (DHHL) is a Department of the State of Hawaii responsible for management of Hawaiian home lands for the benefit of native Hawaiians.

(2) *Hawaiian home lands* means all land given the status of Hawaiian home lands under section 204 of the Hawaiian Homes Commission Act, 1920, or under the corresponding provisions 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.

(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 succeeds a spouse or parent in an interest in a lease of Hawaiian home lands, such lower percentage as may be established for such succession under section 209 of the Hawaiian Homes Commission Act, 1920, 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).

(d) *Conditions for insurance.* Mortgages will be eligible for insurance under this section, according to the procedures in §§ 203.5, 203.6, or 203.7 (as applicable), only where the Department of Hawaiian Home Lands:

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- (1) Will be a comortgagor;
- (2) Guarantees or reimburse the Secretary for any mortgage insurance claim paid in connection with a property on Hawaiian home lands; or
- (3) Offers other security acceptable to the Secretary.

(e) *Acceptable security.* Any agreement by the Secretary to accept alternative security under paragraph (d)(3) of this section must contain provisions designed to ensure that the insurance of mortgages under this section has a neutral impact on the appropriate insurance funds. These provisions may require the Department of Hawaiian Home Lands to make an initial deposit of funds with HUD and to maintain additional funds in reserve for subsequent deposits with HUD. The initial and subsequent deposits shall be used to pay obligations incurred by HUD in connection with the insurance of mortgages under this section and any associated costs, including refunds of insurance premiums to mortgagors. If the Department of Hawaiian Home Lands agrees to make deposits in amounts acceptable to HUD, then the Secretary may agree to use a portion of the premiums received for insurance of mortgages under this section solely for payment of such obligations and associated costs.

(f) *Recordation.* The mortgagee must certify that the mortgage has been recorded with the Department of Hawaiian Home Lands.

(g) *Construction advances.* Advances made by the mortgagee during construction are eligible for insurance, according to the procedures in §§ 203.5, 203.6, or 203.7 (as applicable), if the Secretary determines that no feasible financing alternative is available and if:

- (1) The mortgagor and the mortgagee execute a building loan agreement, approved by the Secretary, setting forth the terms and conditions under which advances will be made;
- (2) The advances are made only as provided in the commitment or the approval by the Direct Endorsement or Lender Insurance underwriter;
- (3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor or

to his or her creditors as provided in the loan agreement; and

(4) The mortgage bears interest on the amount advanced to the mortgagor or to his or her creditors and on the amount held in an account or trust for the benefit of the mortgagor.

(h) *Form of lease.* The form of lease must be approved by both HUD and the Department of Hawaiian Home Lands (DHHL). The form of lease must contain a provision requiring that, while the mortgage insurance remains in effect, assumption of the leasehold is restricted to those persons who have certificates issued by the DHHL certifying that they are Native Hawaiians. 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, the mortgagor must produce the following documentation in order to establish his or her eligibility:

(1) A certificate of eligibility issued by the Department of Hawaiian Home Lands certifying that the mortgagor is a Native Hawaiian; and

(2) A homestead lease granted to the mortgagor by the Department of Hawaiian Home Lands.

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§ 203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.

A mortgage on a leasehold estate covering a one- to four-family residence located on the Allegany Reservation of the Seneca Nation of Indians in the State of New York is eligible for insurance if the mortgage meets the requirements of this subpart as modified by this section.

(a) *Title.* This section applies only to a mortgage which:

(1) Does not meet the requirements of § 203.37;

(2) Is on a leasehold under a lease with a termination date in February