

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 207, 251, 252; and 255**

[Docket No. FR-3813-F-02]

RIN 2502-AG50

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Conversion From Coinsurance to Full Insurance

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

ACTION: Final rule.

SUMMARY: On September 19, 1995 (60 FR 48596), HUD published an interim rule which amended its multifamily coinsurance regulations. The September 19, 1995 interim rule provided coinsuring lenders with two new options in dealing with defaulted coinsured mortgages. Specifically, the interim rule permitted certain coinsuring lenders to request that HUD endorse defaulted mortgages for full insurance. Additionally, the interim rule established a partial payment of claim procedure which permitted coinsuring lenders to advance funds to cure mortgage delinquencies on a coinsured mortgage and to reduce principal on that mortgage to a level that restored the financial viability of the project. This rule finalizes the policies and procedures set forth in the September 19, 1995 interim rule. Further, this final rule makes several clarifying and streamlining amendments to the September 19, 1995 interim rule.

EFFECTIVE DATE: October 17, 1996.

FOR FURTHER INFORMATION CONTACT: Steven J. Hans, Housing Policy Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500, Room 6278, telephone (202) 708-3730 ext. 2682. Hearing or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339. (Other than the "800" number, these telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:**I. The September 19, 1995 Interim Rule**

On October 10, 1994 (55 FR 41312), HUD published a final rule terminating the authority of the FHA Commissioner to insure mortgage loans under the coinsurance program. The final rule also reduced HUD's coinsurance regulations at 24 CFR parts 251, 252, and 255 to a single section concerning the program phase-out process. However, those

regulations removed by the October 10, 1994 final rule continue to govern the rights and obligations of mortgagors, coinsuring lenders, and HUD under coinsurance contracts entered into before the termination of the coinsurance programs.

On September 19, 1995 (60 FR 48596), HUD published an interim rule amending 24 CFR parts 251, 252, 255. The September 19, 1995 interim rule, which became effective on October 19, 1995, provided coinsuring lenders with two new options for dealing with defaulted coinsured mortgages. The changes made by the rule were designed to reduce Government costs, benefit coinsuring lenders by minimizing their risk of default under a GNMA guaranty agreement, and encourage the continued viability of housing financed with coinsured mortgages. The first amendment permitted coinsuring lenders to request that HUD endorse certain coinsured mortgages for full insurance. The second amendment established a partial payment of claim mechanism for coinsuring lenders. The September 19, 1995 interim rule described in detail the amendments to 24 CFR parts 251, 252, and 255.

II. This Final Rule

The public comment period on the September 19, 1995 interim rule expired on November 20, 1995. No public comments were submitted. Although no changes are being made as a result of public comment, HUD has determined that it is necessary to make several revisions to the September 19, 1995 interim rule.

First, as part of HUD's continuing efforts to implement the President's regulatory reform initiative, this final rule makes several streamlining amendments to the interim rule. These changes will increase flexibility and remove unnecessary regulatory provisions. Further, this rule requires that a coinsuring lender convert to full insurance before accepting a partial payment of claim. This final rule also clarifies that coinsuring lenders must file an insurance claim upon conversion to full insurance. Finally, the rule amends HUD's multifamily mortgage insurance regulations at 24 CFR part 207 to reflect the procedures established by the September 19, 1995 interim rule.

A. Streamlining Parts 251, 252, and 255

In response to President Clinton's regulatory reform initiative, HUD conducted a page-by-page review of its regulations to determine which could be eliminated, consolidated, or otherwise improved. As a result of this review, HUD has made several streamlining

amendments to the September 19, 1995 interim rule.

One of the goals of the President's initiative is to increase regulatory flexibility. The September 19, 1995 interim rule made conversion to full insurance available only to coinsured mortgages which back GNMA guaranteed securities. HUD originally developed the conversion procedure to assist such lender-issuers. Under the former regulations, the option to have a mortgage endorsed for full insurance was available only to GNMA after it had taken over all loans in a coinsuring lender-issuer's portfolio following the lender-issuer's default under the GNMA guaranty agreement. In response to the President's call for increased flexibility, HUD has decided to make conversion available to all coinsuring lenders. Coinsuring lenders electing to convert to full insurance will still be required to meet all the other regulatory requirements for conversion established by the September 19, 1995 interim rule.

This final rule contains several fees. However, the fee amounts may change over time. To prevent the necessity for cumbersome rulemaking procedures each time a fee is revised, HUD has set forth all the required fees in an appendix to this final rule. The regulatory text still establishes the requirement for the payment of the fees, and directs lenders to the appendix. This appendix will not be codified in title 24 of the Code of Federal Regulations. HUD will update and revise the appendix as necessary.

The September 19, 1995 interim rule made identical amendments to 24 CFR parts 251, 252, and 255. Another goal of President Clinton's regulatory reform initiative is the elimination of repetitious regulatory provisions. Accordingly, this final rule amends 24 CFR parts 252 and 255 to simply cross-reference to the conversion and partial payment of claim requirements set forth in 24 CFR part 251.

B. Revision to Partial Payment of Claim Procedures

This final rule requires that coinsuring lenders convert to full insurance prior to accepting a partial payment of claim. Subsequent to conversion, the full insurance requirements at 24 CFR part 207 will govern any partial payment of claim. Unlike the September 19, 1995 interim rule, therefore, this final rule does not establish a separate partial payment of claim mechanism for coinsuring lenders under 24 CFR parts 251, 252, or 255.

HUD determined that the costs it would incur in administering the separate partial payment of claim

procedure might be excessive. HUD's regulation at 24 CFR part 207 already contains a partial payment of claim mechanism which has proven its effectiveness in, both restoring the financial viability of troubled projects and in minimizing government costs. Accordingly, this final rule requires that coinsuring lenders wishing a partial payment of claim utilize the procedure set forth in 24 CFR part 207.

C. Claim Required Upon Conversion

HUD developed the procedure for conversion to full insurance as a means of assisting coinsuring lenders who are dealing with defaulted coinsured mortgages and who are eligible for insurance benefits. HUD always intended that coinsuring lenders immediately file an insurance claim upon conversion. This final rule clarifies HUD's intent by amending § 251.3 to require that lenders file a claim for insurance benefits upon the Commissioner's endorsement of the mortgage for full insurance.

D. Amendments to Full Insurance Regulations

The September 19, 1995 interim rule established a fee on coinsuring lenders converting to full insurance. Further, the rule set forth additional fees on lenders who, subsequent to converting to full insurance, receive payment for the full or partial insurance mortgage amount. The September 19, 1995 interim rule established these additional fees through amendments to HUD's coinsurance regulations at 24 CFR parts 251, 252, and 255. However, once the FHA Commissioner endorses a coinsured mortgage for full insurance, the lender is no longer governed by the coinsurance program regulations. Rather, the lender must now abide by HUD's multifamily mortgage insurance regulations at 24 CFR part 207. This final rule amends part 207 to incorporate the fees. Specifically, the rule revises § 207.259, which sets forth the requirements for full insurance benefits.

III. Findings and Certifications

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 (NEPA). This 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, Office of the

General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this final rule will 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. Specifically, the requirements of this final rule are directed toward participants in the FHA multifamily coinsurance programs. It effects no changes in the current relationships between the Federal government, the States and their political subdivisions in connection with this program.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this final rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. The final rule merely amends the regulations governing HUD's multifamily coinsurance programs. No significant change in existing HUD policies or programs will result from promulgation of this final rule, as those policies and programs related to family concerns.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that his final rule not have a significant economic impact on a substantial number of small entities. This rule finalizes the policies and procedures set forth in the September 19, 1995 interim rule. It permits coinsuring lenders to request that HUD endorse certain defaulted mortgages for full insurance. Further, the rule makes several streamlining and clarifying amendments to the interim rule. These changes will increase flexibility, remove unnecessary regulatory provisions, and permit the continued viability of housing financed with coinsured mortgages. This final rule will not have any meaningful impact on any entity.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it

certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

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 final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

List of Subjects

24 CFR Part 207

Manufactured homes, Mortgages insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 251

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 252

Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 255

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 207, 251, 252, and 255 are amended as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for part 207 continues to read as follows:

Authority: 12 U.S.C. 1701z-11(e), 1713 and 1715b; 42 U.S.C. 3535(d).

2. Section 207.258b is amended by adding a new paragraph (e) to read as follows:

§ 207.258b Partial payment of claim.

* * * * *

(e) Lenders receiving a partial payment of claim following the Commissioner's endorsement of the

Mortgage for full insurance under parts 251, 252, or 255 of this chapter, will pay HUD a fee in an amount set forth through Federal Register notice. HUD, in its discretion, may collect this fee or deduct the fee from any payment it makes in the claim process.

3. Section 207.259 is amended by adding a new paragraph (b)(2)(v) to read as follows:

§ 207.259 Insurance benefits.

* * * * *

(b) * * *

(2) * * *

(v) In the case of a lender receiving insurance benefits for the full Mortgage amount upon the Commissioner's endorsement of the Mortgage for full insurance pursuant to 24 CFR parts 251, 252, or 255, the amount of the fee set forth through Federal Register notice. HUD may, in its discretion, collect this fee rather than deducting the fee from the total of the items computed under paragraph (b)(1) of this section.

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

4. The authority citation for 24 CFR part 251 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-9; 42 U.S.C. 3535(d).

5. Section 251.3 is revised to read as follows:

§ 251.3 Case-by-case conversion to full insurance.

Upon the request of a coinsuring lender, the Commissioner may endorse a coinsured Mortgage for full insurance, effective as of the date of such endorsement, if the Commissioner is satisfied that:

(a) Continuing the Mortgage under coinsurance could jeopardize the lender's viability and ability to service its remaining portfolio of coinsured Mortgages;

(b) The lender has made reasonable efforts to work out any Mortgage default consistent under 24 CFR 251.811 (1990), but the remedies available to the lender have not been adequate to reinstate the Mortgage;

(c) The conversion would be less costly to HUD than if the Mortgage remained coinsured;

(d) The lender has paid HUD the fee set forth through Federal Register notice; and

(e) The lender agrees to give the Commissioner written notice under 24

CFR 207.258 of its intent to file an insurance claim upon the Commissioner's endorsement of the Mortgage for full insurance.

§§ 251.4 and 251.5 [Removed]

6. Sections 251.4 and 251.5 are removed.

PART 252—COINSURANCE OF MORTGAGES COVERING NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES.

7. The authority citation for 24 CFR part 252 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-9; 42 U.S.C. 3535(d).

8. Section 252.3 is revised to read as follows:

§ 252.3 Case-by-case conversion to full insurance.

Cross-reference. The provisions of 24 CFR 251.3 apply to this part.

§§ 252.4 and 252.5 [Removed]

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

10. The authority citation for 24 CFR part 255 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-9; 42 U.S.C. 3535(d).

11. Section 255.3 revised to read as follows:

§ 255.3 Case-by-case conversion to full insurance.

Cross-reference. The provisions of 24 CFR 251.3 apply to this part.

§§ 255.4 and 255.5 [Removed]

12. Sections 255.4 and 255.5 are removed.

Dated: June 28, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Note: This appendix will not appear in Title 24 of the CFR.

Appendix—Fees for Conversion to Full Insurance and Partial Payment of Claim Under 24 CFR Parts 207, 251, 252, and 255

Sections

1. Purpose
2. Fee for conversion to full insurance under 24 CFR parts 251, 252, and 255.
3. Fees for former coinsuring lenders under 24 CFR part 207.
4. Future revisions to this appendix.

1. Purpose. HUD's regulation at 24 CFR 251.3 permits certain coinsuring lenders under 24 CFR parts 251, 252, and 255 to request that HUD endorse the coinsured Mortgage for full insurance. Section 251.3 states that coinsuring lenders who elect to convert to full insurance must pay HUD a fee in an amount "set forth through Federal Register notice." One of the purposes of this appendix is to identify this fee.

HUD's regulations at 24 CFR part 207 govern its multifamily Mortgage insurance program. Part 207 establishes certain fees on formerly coinsured lenders who have converted to full insurance and subsequently receive payment for the full or partial insured Mortgage amount. Section 207.258b, which governs partial payment of claims, and § 207.259, which sets forth the requirements for full insurance benefits, state that these fees will be in an amount "set forth through Federal Register notice." This appendix sets forth these fees.

2. Fee for conversion to full insurance under 24 CFR parts 251, 252, or 255. Coinsuring lenders requesting the Commissioner's endorsement of a coinsured Mortgage for full insurance under 24 CFR part 251, 252, or 255, will pay HUD a fee in an amount equal to 5 dollars for every 1,000 dollars of the unpaid principal balance. The coinsuring lender must pay this fee concurrently with submission of the request for the Commissioner's endorsement. HUD will not process requests for conversion to full insurance until this fee is paid.

3. Fees for former coinsuring lenders under 24 CFR part 207.

(a) Lenders receiving payment of insurance benefits for the full Mortgage amount under 24 CFR part 207, upon the Commissioner's endorsement of the Mortgage for full insurance pursuant to 24 CFR part 251, 252, or 255, must pay HUD a fee in an amount equal to 10 percent of the outstanding principal balance on the Mortgage. HUD may, in its discretion, collect this fee or deduct the fee from any payment it makes in the claim process.

(b) Lenders receiving a partial payment of claim under 24 CFR part 207, upon the Commissioner's endorsement of the Mortgage for full insurance pursuant to 24 CFR part 251, 252, or 255, must pay HUD a fee in an amount equal to 10 percent of the reduction in the unpaid principal balance resulting from the partial payment. HUD may, in its discretion, collect this fee or deduct the fee from any payment it makes in the claim process.

(c) The fees described in paragraphs (a) and (b) of this section are in *addition* to the fee established by section 2. of this notice.

4. Future revisions to this appendix.

HUD may update or revise this appendix as necessary.

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