

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 206

[Docket No. FR-5129-I-01]

RIN 2502-AI49

Home Equity Conversion Mortgages (HECMs): Determination of Maximum Claim Amount; and Eligibility for Discounted Mortgage Insurance Premium for Certain Refinanced HECM Loans

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

ACTION: Interim rule.

SUMMARY: This rule makes two technical changes to HUD's Home Equity Conversion Mortgage (HECM) program. First, the rule extends the date for calculating the maximum claim amount in the HECM program from the date of the underwriter's receipt of the appraisal report to the date of closing. This change provides a more easily verifiable and more easily identifiable date. Second, this rule corrects an unintended consequence that results in a situation where HECM loans that are not in default but have been assigned pursuant to regulatory provisions, and remain in effect, are not eligible to be refinanced with a discounted initial mortgage insurance premium (MIP). This rule would permit such HECM loans to be eligible for the discounted initial MIP upon refinancing, in accordance with the purpose of the HECM program, which is to improve the financial situation of elderly homeowners.

DATES: *Effective Date:* February 7, 2008.
Comment Due Date: March 10, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0001. Communications should refer to the above docket number and title.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically, because doing so allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make the comment immediately available for viewing by other commenters and interested

members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title.

Public Inspection of Public Comments. All comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: James Beavers, Deputy Director, Single Family Program Development, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000; telephone number (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

A. Maximum Claim Amount

Section 255 of the National Housing Act (12 U.S.C. 1715z-20) (the Act) authorizes the Federal Housing Administration (FHA) to insure HECM loans to enable elderly homeowners to convert the equity in their homes to streams of income or lines of credit. Section 255(g) of the Act (12 U.S.C. 1715z-20(g)) provides that "in no case may the benefits of insurance under this section exceed the maximum dollar amount established under section 203(b)(2) of the Act for one-family residences in the area in which the dwelling subject to the mortgage under this section is located."

HUD's HECM regulations are found in 24 CFR part 206. HUD's regulation at 24 CFR 206.3 defines "Maximum claim amount" as the "lesser of the appraised value of the property or maximum dollar amount for an area established by the Secretary for a one-family residence under section 203(b)(2) of the Act (as

adjusted where applicable under section 214 of the Act)." Section 203(b)(2) of the Act (12 U.S.C. 1709(b)(2)) provides for maximum mortgage amounts. Section 203(b)(2)(A) provides that the maximum insurable amount is the lesser of: (1) In the case of a one-family residence, 95 percent of the median one-family house price in the area, as determined by the Secretary; or (2) 87 percent of the dollar amount limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (Freddie Mac) for a residence of similar size, as specified in 12 U.S.C. 1709(b)(2)(A)(ii) of the Act. Finally, section 203(b)(2)(B) of the Act provides for a ceiling amount based on the sum of the amount of the mortgage insurance premium paid at the time the mortgage is insured and a percentage of the appraised value of the property.

This interim rule revises the point in time at which the appraised value of the property and the maximum dollar amount for an area under 12 U.S.C. 1709(b)(2) are compared to determine the maximum claim amount. The definition of "maximum claim amount" currently codified in HUD's regulations in 24 CFR 206.3 provides that both of these values "must be as of the date the Direct Endorsement Lender or Lender Insurance Underwriter receives the appraisal report." Experience, however, has shown that the appraisal report received date is not the best date to use as a benchmark for property valuation for mortgage insurance purposes. This is because HUD's reporting systems do not capture the date the appraisal report is received by the Direct Endorsement underwriter or Lender Insurance underwriter, which means the date cannot be later audited or verified. The date of closing is a more practical and verifiable benchmark date. Additionally, using the closing date will automatically allow for larger equity payments when FHA's mortgage limits increase between the date the case number is assigned and the date the loan closes, in cases where the property's appraised value meets or exceeds the new jurisdictional FHA maximum mortgage. This rule would therefore change the calculation date for determining the maximum claim amount to the closing date. The rule revises only the calculation date. There is no change to when the appraisal report is submitted and no requirement, under this regulatory revision, for a second appraisal. Additionally, this rule, upon becoming effective, would not result in an increased maximum claim amount for

loans insured before this rule takes effect.

B. Refinancing

Section 201 of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569, approved December 27, 2000) amended section 255(k) of the Act (12 U.S.C. 1715z–20(k)) to authorize the refinancing of existing HECM loans by adding the following at 12 U.S.C. 1715z–20(k)(1):

The Secretary may, upon application by a mortgagee, insure under this subsection any mortgage given to refinance an existing home equity conversion mortgage insured under this section.

In addition, 12 U.S.C. 1715z–20(k)(4) was added to permit the Secretary to reduce the initial MIP for refinanced HECM loans.

Following the statutory change, HUD published a proposed rule seeking public comment on a new 24 CFR 206.53. Proposed § 206.53(a) provided for refinancings of HECM loans “presently insured” under 24 CFR part 206. The preamble of the proposed rule indicates that this section is meant to provide for the refinancing of “an existing HECM.” (See 66 FR 30278, June 5, 2001.) The proposed rule did not include a provision for a discounted initial MIP for refinanced HECM loans.

HUD followed this proposed rule with an interim rule on March 25, 2004 (69 FR 15586), which took into account public comments received on the proposed rule. In response to public comment requesting that HUD exercise its statutory authority, the interim rule provided for a discounted initial MIP and for additional public comments on the discounted initial MIP, because of the absence of that provision from the proposed rule. (See 69 FR 15587, 15591.) The preamble to the interim rule refers to this discounted MIP as being applicable to “the existing HECM loan being refinanced.” (See 69 FR 15587.) However, the interim rule retained the regulatory text language of § 206.53(a) providing for refinancing of “presently insured” HECM loans (69 FR 15591). This interim rule was inadvertently made final, without change to the regulatory text referring to “presently insured,” by final rule published on December 15, 2004 (69 FR 75204).

It is the phrase “presently insured” (where the statute itself only speaks in terms of loans that are “insured” by HUD) in § 206.53(a) that gives rise to the issue addressed in this rule. In the HECM context, the phrase has the unintended consequence of excluding certain loans from consideration for the

reduced initial MIP. The March 2004 interim rule provided in § 206.53(c) for a reduced initial MIP for HECM loans that are refinanced. (See 69 FR 15591.) However, because the language of § 206.53(a) limits refinancings under section 255(k) of the Act to HECM loans “presently insured,” the interim rule unintentionally created a class of HECM loans that are existing loans but are considered not eligible for the favorable MIP under the HECM refinancing regulations.

The issue that there is a category of HECM loans that may not be viewed as eligible for the reduced initial MIP arises from the fact that the HECM program permits certain assignments of notes to HUD. These notes are not in default, but are assigned to HUD under the regulatory provisions at 24 CFR 206.107(a)(1) and 206.121(b). Nonetheless, the phrase “presently insured” in § 206.53(a) is viewed as excluding these mortgages from the lower MIP for HECM loan refinancings. These loans are not in default status and, therefore, are “existing HECM loans” that the preambles to both the 2001 proposed rule and the 2004 interim rule indicate are intended to be covered by the favorable HECM refinancing provisions.

The regulatory sections under which these non-default assignments take place are 24 CFR 206.107(a)(1) and 206.121(b). Under § 206.107(a)(1), the mortgagee may elect to assign the mortgage to HUD if the mortgage balance is equal to or greater than 98 percent of the maximum claim amount, and if certain other conditions are met, as stated in the regulation. Under the assignment in § 206.121(b), the assignment may occur when the mortgagee fails to make timely payments. In either case, the loan continues in existence, and should be eligible for the discounted initial MIP for HECM refinancings. Instead, loans in this status are now considered only eligible for the more expensive MIPs for regular loans. HECM borrowers are in these cases unintentionally penalized by an assignment action and prevented from refinancing with the benefits of a statutorily authorized reduced MIP.

II. This Interim Rule

In order to establish a more rational date for the calculation of the maximum claim amount, the rule removes the second sentence of the definition of “maximum claim amount” in 24 CFR 206.3, which currently reads:

Both the appraised value and the maximum dollar amount for the area must be as of the date the Direct Endorsement Lender

or Lender Insurance Underwriter receives the appraisal report.

and revises the first sentence to read:

Maximum claim amount means the lesser of the appraised value of the property, as determined by the appraisal used in underwriting the loan, or the maximum dollar amount for an area established by the Secretary for a one-family residence under section 203(b)(2) of the National Housing Act (as adjusted where applicable under section 214 of the National Housing Act) as of the date of loan closing.

In order to address the unintended consequences of the terminology restricting the provisions relating to insurance of refinanced HECM loans to “presently insured” loans rather than to all existing HECM loans, the rule revises the last sentence of § 206.53(a) to remove the term “presently” and clarify that the refinancing provisions apply to “existing” HECM loans, including those assigned under §§ 206.107(a)(1) and 206.121(b). This change makes these HECM loans eligible for the reduced MIP rate for refinanced HECM loans.

III. Justification for Interim Rulemaking

HUD generally publishes regulatory changes for public comment before issuing them for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is “impracticable, unnecessary, or contrary to the public interest.” The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment.

The change being made to the maximum claim amount date is a procedural one, which creates no detriment or presents any administrative burden to HECM-insured borrowers or the public generally. HUD’s regulations require the date that the maximum claim amount is to be established, but the date currently in the regulations is not one that is normally documented in HUD’s systems. Moving the date the maximum claim amount is calculated to the date of closing would have no adverse consequences and would provide a more precise date that can be tracked by the Federal Housing Administration’s systems. Since this is merely a procedural matter, advance public comment is not necessary.

Similarly, the eligibility of non-default HECM loans assigned to HUD under provisions particular to the HECM program has no potential risk of

harm to either HECM-insured borrowers or the public generally, and only a benefit. The intent of the HECM program is to improve the financial situation or otherwise meet the needs of elderly homeowners (12 U.S.C. 1715z–20(c)(1)). It is clear from the face of the statute that the authorization for a reduced MIP was intended to apply to all refinancings of existing HECM loans originated with HUD insurance, not only ones “presently insured.” Section 1715z–20(k)(1), refers to “any mortgage given to refinance an existing home equity conversion mortgage insured under this section [emphasis added].” Section 1715z–20(k)(4), in turn, permits reduced MIPs for “a mortgage financed and insured under this subsection.” The statute does not provide an exception for non-defaulted loans assigned, essentially, to protect the elderly mortgagor. Therefore, this change would be both beneficial to the public and simply remove an unintended consequence of the refinancing provisions. Advance public comment is, therefore, determined unnecessary. HUD will, however, consider all comments received on this interim rule when developing the final rule.

IV. Findings and Certifications

Environmental Impact

The interim rule involves external administrative or fiscal requirements or procedures that are related to loan limits and rate or cost determinations and that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

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 of 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 proposed rule would not have a significant impact on entities because the establishment of a date of maximum claim amount is an automated process and merely changing the date as of which the calculation is made imposes no additional burden on any entity. Allowing for discounted MIPs for refinancings provides a benefit to borrowers and presents no impact on any business entities.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD’s determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD’s objectives, as described in the preamble to this rule.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule 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 would not have federalism implications and would 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 (2 U.S.C. 1531–1538) (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 will not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number is 14.183.

List of Subjects in 24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons stated above, HUD amends 24 CFR part 206 as follows:

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

■ 1. The authority citation for 24 CFR part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–1720; 42 U.S.C. 3535(d).

■ 2. Amend § 206.3 to revise the definition of “Maximum claim amount” to read as follows:

§ 206.3 Definitions.

* * * * *

Maximum claim amount means the lesser of the appraised value of the property, as determined by the appraisal used in underwriting the loan, or the maximum dollar amount for an area established by the Secretary for a one-family residence under section 203(b)(2) of the National Housing Act (as adjusted where applicable under section 214 of the National Housing Act) as of the date of loan closing. Closing costs must not be taken into account in determining appraised value.

* * * * *

■ 3. Revise the last sentence of 24 CFR 206.53(a) to read as follows:

§ 206.53 Refinancings.

(a) * * * HUD may, upon application by a mortgagee, insure any mortgage given to refinance an existing home equity conversion mortgage insured under this part, including loans assigned to the Secretary as described in § 206.107(a)(1) and § 206.121(b) under this part.

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Dated: November 29, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

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