

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR-5197-F-01]

RIN 2502-A162

Changes in Maximum Mortgage Limits for Multifamily Housing

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

ACTION: Final rule.

SUMMARY: This rule conforms HUD's regulations to a recent statutory increase in the amount by which HUD may increase the dollar amount limitations on insured mortgages for multifamily housing.

DATES: *Effective Date:* April 30, 2008.

FOR FURTHER INFORMATION CONTACT: Joe Sealey, Director, Technical Support Division, Office of Housing, 451 Seventh Street, SW., Room 6150, Washington, DC 20410-8000; telephone (202) 708-2866. This is not a toll-free number. Persons with hearing or speech impairments may access these numbers toll-free through TTY by calling the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

Background

Title II of the National Housing Act (12 U.S.C. 1707 *et seq.*) authorizes the Secretary to make exceptions to the maximum mortgage amounts in certain Federal Housing Administration (FHA) multifamily mortgage insurance programs. Until recently, Title II provided for exceptions in amounts of up to a 140 percent increase on a geographical basis and up to a 170 percent increase on a project-by-project basis. For example, section 207(c)(3) of the National Housing Act, after listing the maximum mortgage limits for the program, states that:

[T]he Secretary may, by regulation, increase any of the dollar amount limitations in subparagraph (A) (as such limitations may have been adjusted in accordance with section 1712a of this title) by not to exceed 140 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 140 percent, or 170 percent in high cost areas, where the Secretary determines it necessary on a project-by-project basis * * *

(12 U.S.C. 1713(c)(3)(B)). Similar language provided the same exceptions to maximum mortgage limits in other FHA multifamily insurance programs. (See 12 U.S.C. 1715e(b)(2)(B)(i), 1715k(d)(3)(B)(iii)(II), 1715l(d)(3)(ii)(II),

1715l(d)(4)(ii)(II), 1715v(c)(2)(B), and 1715y(e)(3)(B).)

Section 200.15 of HUD's regulations (24 CFR 200.15) provides that the FHA Commissioner, acting under authority delegated by the Secretary, may increase the dollar amount limitations specified in law for insured mortgages "(a) By not to exceed 140 percent in any geographic area in which the Commissioner finds that cost levels so require; and (b) By not to exceed 140 percent, or 170 percent in high cost areas, where the Commissioner determines it necessary on a project-by-project basis."

These maximum mortgage amounts were recently revised by the Consolidated Appropriations Act, 2008 (Pub. L. 110-161, approved December 26, 2007) (FY2008 Appropriations Act) which appropriated fiscal year 2008 funds for the majority of federal agencies, including HUD. Section 221 of the General Provisions of Title II of Division K of the FY2008

Appropriations Act revises the statutory exceptions to maximum mortgage amounts for the FHA multifamily housing programs, listed in section 221 of the FY 2008 Appropriations Act, by (1) substituting 170 percent for the 140 percent exception for any geographical area, and (2) substituting 215 percent for 170 percent as the maximum exception allowed for a specific project. Accordingly, the statutory revision allows the Secretary to now grant exceptions to maximum mortgage limits for certain multifamily housing programs by (1) up to 170 percent in geographical areas where cost levels so require, and (2) up to 170 percent, or 215 in high cost areas, where necessary on a project-by-project basis.

This Final Rule

This final rule conforms HUD's regulation at 24 CFR 200.15 to the recent statutory changes made by FY2008 Appropriations Act. Because HUD is simply adopting the new statutory limits without change in order to conform its regulation to current law and is not exercising any regulatory discretion, public comment is unnecessary.

Findings and Certifications

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause

requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). In this case, public comment is unnecessary because HUD is only conforming its current rule to statutory change. HUD is not exercising its administrative discretion in this matter. Therefore, there would be no purpose served by accepting public comments on this rule.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule imposes no new obligation of any kind, but only raises the maximum mortgage limits for insured mortgages in HUD multifamily programs by percentage amounts.

Environmental Impact

This final rule is a statutorily required or discretionary establishment and review of loan limits, which does not constitute a development decision that affects the physical condition of specific project areas and 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.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This final 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 (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 final rule does not impose any federal mandates on any state, local, or tribal government, or on

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 14.112, 14.126, 14.127, 14.134, 14.135, 14.138, 14.139, and 14.155.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping

requirements, Social security, Unemployment compensation, Wages.

■ For the reasons stated in the preamble, HUD amends 24 CFR part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535d.

■ 2. Revise § 200.15 to read as follows:

§ 200.15 Maximum mortgage.

Mortgages must not exceed either the statutory dollar amount or loan ratio limitations established by the section of

the Act under which the mortgage is insured, except that the Commissioner may increase the dollar amount limitations:

(a) By not to exceed 170 percent, in any geographical area, in which the Commissioner finds that cost levels so require; and

(b) By not to exceed 170 percent, or 215 percent in high-cost areas, where the Commissioner determines it necessary on a project-by-project basis.

Dated: March 21, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

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