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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 206**

[Docket No. FR-5129-F-02]

RIN 2502-A149

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:** Final rule.

SUMMARY: This final rule adopts, without change, an interim rule that made two technical changes to HUD's Home Equity Conversion Mortgage (HECM) program. First, the interim rule extended 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, the interim rule corrected 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). The interim rule permitted 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. HUD received one public comment in response to a solicitation of comments on the interim rule, which was supportive of the interim rule.

DATES: *Effective Date:* October 6, 2008.

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 1-800-877-8339.

SUPPLEMENTARY INFORMATION:**I. Background**

The statutory and regulatory background to this rule is fully discussed in the preamble to the January 8, 2008, interim rule at 73 FR 1434-1435. HUD's Home Equity Conversion Mortgage (HECM) statute is at section 255 of the National Housing Act, 12 U.S.C. 1715z-20.

The January 2008 interim rule revised 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." For reasons described in the January 8, 2008, interim rule, however, the date is changed to the date of loan closing.

The interim rule also addressed an issue in the HECM program in which refinanced HECM notes assigned to HUD under assignment provisions at § 206.107(a)(1) (election of assignment or shared premium option) and § 206.121(b) (assignment to HUD when the mortgagee is unable or unwilling to make payments to mortgagor), but not in default, could not be insured at the reduced initial mortgage insurance premium (MIP) rates applicable to refinanced HECM loans. The interim rule clarified that refinanced HECM loans in these categories are also eligible for mortgage insurance at the reduced rate.

II. This Final Rule

This final rule adopts the interim rule without change. The following provides a summary of the regulatory amendments made by the interim rule, and adopted without change by the final rule.

- The interim rule removed the second sentence of 24 CFR 206.3, and revised 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.

- The interim rule revised 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).

III. Discussion of Public Comments

The public comment period on the January 8, 2008, interim rule closed on March 10, 2008. HUD received one comment, which supported the change made by the rule, and urged HUD to make other changes to the program regulations that would especially assist elderly minority homeowners. With no other issues for consideration at the final rule stage, HUD is adopting the interim rule without change.

IV. Findings and Certifications*Environmental Impact*

The final 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 final 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.

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 final 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.

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

■ Accordingly, the interim rule amending 24 CFR part 206, which was published at 73 FR 1434 on January 8, 2008, is adopted as a final rule without change.

Dated: August 22, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0843]

RIN 1625–AA00

Safety Zone: Wantagh Parkway 2 Bridge over the Goose Creek Channel, Town of Hempstead, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Goose Creek Channel surrounding the Wantagh

Parkway 2 Bridge located in the Town of Hempstead, New York. This safety zone is necessary to protect vessels transiting in the area from hazards imposed by construction barges and equipment. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound, New Haven, CT.

DATES: This rule will be effective from 12:01 a.m. on September 2, 2008 until 11:59 p.m. on December 31, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0843 and are available online at www.regulations.gov. They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, USCG Sector Long Island Sound, 120 Woodward Ave., New Haven, CT 06512 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call LT Douglas Miller, USCG Sector Long Island Sound, Chief Waterways Management at 203–468–4569. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because unforeseen delays in the construction and removal of the Wantagh 3 Bridge forced the original construction dates for the Wantagh 2 Bridge to be modified which in turn makes the publication of a notice of proposed rulemaking and associated comment period impractical; additional repair and replacement work are needed to ensure the continued safe operation of the bridge.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. A delay is not in the public interest as this safety zone is necessary to allow for completion of this bridge construction project.

Background and Purpose

Currently, the New York Department of Transportation is modifying the existing bascule and flanking spans of the Wantagh 2 Bridge located over the Goose Creek Channel in the Town of Hempstead, NY. These modifications are needed to ensure the continued safe operation of the bridge. To complete the modifications on the bridge, barges will need to block the waterway during the course of the project. To ensure the continued safety of the boating community, the Coast Guard is establishing a safety zone in all waters of Goose Creek Channel within 100-yards of the Wantagh Parkway Number 2 Bridge. This safety zone is necessary to protect the safety of the boating community who wish to utilize the Goose Creek channel. Vessels may utilize the Sloop Channel as an alternative route to using the Goose Creek Channel, adding minimal additional transit time. Marine traffic may also transit safely outside of the safety zone during the effective dates of the safety zone, allowing navigation in the Goose Creek Channel, except the portion delineated by this rule.

Discussion of Rule

This regulation establishes a temporary safety zone on the Goose Creek Channel within 100-yards to either side of the Wantagh 2 Bridge. This action is intended to prohibit vessel traffic in a portion of the Goose Creek Channel within 100 yards of the Wantagh 2 Bridge in the Town of Hempstead, NY and to provide for the safety of the boating community due to the hazards posed by construction equipment located in the waterway during the modification of the existing span.

The effective period of this safety zone will be from 12:01 a.m. September 2, 2008 to 11:59 p.m. on December 31, 2008. Marine traffic may continue to transit safely outside of the safety zone during the effective dates of the safety zone, allowing navigation in the Goose Creek Channel, except the portion delineated by this rule. Entry into this zone is prohibited unless authorized by the Captain of the Port Long Island Sound.

Any violation of the safety zone described herein is punishable by,