

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 207

[Docket No. FR-4679-I-01]

RIN 2502-AH64

Mortgage Insurance Premiums in Multifamily Housing Programs

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

ACTION: Interim rule.

SUMMARY: HUD currently has statutory authority to set the mortgage insurance premiums ("MIP") for multifamily programs from one-fourth to one percent of the outstanding principal balance per annum. However, HUD's current regulations currently set the MIP at a specific figure, one-half of one percent in most programs. This interim rule revises current regulations to permit the Secretary to set mortgage insurance premiums by program within the full range of HUD's statutory authority through notice, making it easier for HUD to respond more efficiently to changing market and programmatic conditions, and making it possible to continue these programs for the remainder of fiscal year 2001 and into 2002.

DATES: *Effective Date:* August 1, 2001.

Comment Due Date: August 31, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, at (202) 708-1142. Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

A. Background

Section 203(c)(1) of the National Housing Act authorizes the Secretary to set the premium charge for insurance of

mortgages under the various programs in Title II of the National Housing Act. The range within which the Secretary may set such charges must be between one-fourth of one percent per annum and one percent per annum of the amount of the principal obligation of the mortgage outstanding at any time. (See 12 U.S.C. 1709(c)(1)).

HUD's multifamily mortgage insurance program regulations have generally set the MIP at a specific percentage amount within the authorized range and have not reflected the authorized range. Thus, for example, 24 CFR 207.252 and 207.252a(a) have set the general MIP rate for most mortgage insurance programs at one-half of one percent of the average outstanding principal balance of the mortgage per year. There are other programs where the MIP has been set at the maximum authorized amount, for example, the first year mortgage insurance premium for section 223(f) specified in section 207.252b.

Each year, Congress appropriates funds to cover HUD's credit subsidy needs, based on an assessment of the probable risk of loss in the insurance programs. The Federal Credit Reform Act of 1990, 2 U.S.C. 661 *et seq.* ("FCRA") requires that the budgetary treatment for all direct loan and loan guarantee programs recognize, in advance, the estimated net cost to the Federal Government resulting from these transactions. In other words, under FCRA, HUD is required to estimate the probable cost to the agency of all multifamily mortgages it insures and must request "credit subsidy" as part of its budget each fiscal year to cover those costs. For example, the most popular of HUD's multifamily construction programs, Section 221(d)(4), currently requires a subsidy of 3.35 cents for each dollar of loan insured.

Due to greater than anticipated requests for loan insurance commitments by HUD, the existing credit subsidy is insufficient for HUD to continue the following programs: section 207 for new construction/substantial rehabilitation and manufactured home parks, section 220 for housing in urban renewal areas, sections 221(d)(3), 221(d)(4), 223(d) operating loss loans, section 231 housing mortgage insurance for the elderly, Section 234(d) for condominiums, section 241(a) supplemental loans for multifamily projects, and HOPE VI projects under the sections 207, 220, 221(d)(4) and 231 programs. Because of this lack of necessary credit subsidy, these programs will not be able to continue to

operate throughout the fiscal year. HUD is anticipating some additional credit subsidy to be appropriated in the near future for the remainder of Fiscal Year (FY) 2001, but it will not be sufficient to fund all outstanding requests for commitments. In addition, it is anticipated that only a small amount of credit subsidy will be available in FY 2002. For these reasons, HUD is revising certain multifamily mortgage insurance programs to eliminate or substantially reduce the need for credit subsidy by amending its regulations to allow the Secretary to raise mortgage insurance premiums to the full extent of his statutory authority. The Secretary will proceed to set the actual MIP within the statutory and new regulatory limits by notice as described below.

B. This Interim Rule

This interim rule revises Subpart B "Contract Rights and Obligations" of Part 207 "Multifamily Housing Mortgage Insurance" so that the provisions on mortgage insurance premiums reflect the statutory language, and allow the Secretary to raise or lower mortgage premiums within the statutory limits through notice.

Where "one-half of one percent" appears in §§ 207.252 and 207.252a, this interim rule changes that phrase to "not less than one-fourth of one percent nor more than one percent as the Secretary shall determine." Where the regulations have specified that a one percent premium will be charged, including during the first year mortgage insurance premium for the Section 223(f) program specified in § 207.252b, and for properties located near military installations insured under Special Risk Insurance Fund, as set forth in § 207.252c, the one percent premium remains and there is no change in the regulations to §§ 207.252b or 207.252c. There is no change to regulations at § 207.252d (late charge) or to § 207.252e (electronic transmission of premiums).

An increase as described below in the mortgage premium for mortgages under the section 221(d)(4), section 207, section 207 for mobile home parks, section 220, section 231, section 234(d) and HOPE VI projects under sections 207, 220, 221(d)(4), and 231 will result in a decrease in the credit subsidy needed for those programs for the remainder of FY 2001, and the elimination of credit subsidy requirements for FY 2002. The section 221(d)(3), section 223(d), and section 241(a) for apartments programs will continue to require some credit subsidy in both FY 2001 and FY 2002, albeit a reduced amount.

C. Changes in MIP

No later than the date this interim rule becomes effective, HUD will issue a separate notice increasing its mortgage insurance premium requirements for certain multifamily programs that currently require credit subsidy to reduce the credit subsidy rates and the need for credit subsidy. Other programs will keep the premiums in effect prior to the notice. Based on HUD's analysis of credit subsidy needs, for the period from the effective date of this rule to September 30, 2001, the notice will change certain mortgage insurance programs, now having a mortgage premium of 0.5% of the outstanding principal balance of the insured loan, to programs with a mortgage premium of 0.8% of the outstanding principal balance. HUD will make future changes by notice as credit subsidy allocations and program needs dictate, although HUD currently plans to keep the 0.8% rate in effect through FY 2002. HUD will provide 30 days for public comment on all such future changes in mortgage insurance premiums. Changes made by this rule in the method for setting mortgage insurance premiums will be applied in accordance with 24 CFR 207.499.

The mortgage insurance premiums, by program, will be:

Multifamily loan program	Percent ¹
Section 207—Multifamily Housing—new/sub. Rehab	0.8
Section 207—Mobile Home Parks	0.8
Section 220—Housing In Urban Renewal Areas	0.8
Section 221(d)(3) and 221(d)(4)—Moderate Income Housing	0.8
Section 223(a)(7) Refinancing of Insured Multifamily Project	0.5
Section 223(d) Operating Loss Loans	0.8
Section 207/223(f) Purchase or Refinance—housing	0.5
Section 231 Housing for the Elderly	0.8
Section 232 Health Care Facilities	0.5
Section 232 pursuant to Section 223(f) Purchase or Refinance Transactions	0.5
Section 234(d) Condominium Housing	0.5
Section 241(a) Additions & Improvements for Apartments	0.8
Section 241(a) Additions & Improvements for Health Care Facilities	0.5
Section 242—Hospitals	0.5
Title XI—Group Practice	0.5
HOPE VI Projects—[207, 220, 221(d)(4) and 231]	0.8

Multifamily loan program	Percent ¹
Low Income Tax Credit Projects [207, 220, 221(d)(4) and 231] without HOPE VI	0.5

¹ Annual mortgage insurance premiums charged.

Absent any change in law, premium rate changes will not apply to mortgages which have received a firm commitment and a sufficient obligation of credit subsidy; such mortgagees may continue to proceed to closing at the committed amount with the premium rate in effect before the change made by this rule and the notice to be issued on or before its effective date. An obligation of credit subsidy occurs when the mortgagee has notified the appropriate HUD office in writing of the acceptance of the firm commitment by the mortgagee and the borrower, and has received notice in writing from HUD that there is sufficient credit subsidy to cover the mortgage amount for which a firm commitment was received.

All firm commitments for these programs to be issued, reissued or amended on or after the effective date of this rule and its implementing notice must be processed at the 0.8% rate. In the case of commitments having a sufficient obligation of credit subsidy, amendments to those commitments that do not affect the mortgage amount need not be reprocessed at the new premium rate. All projects in the Headquarters queue that did not receive an obligation of credit subsidy prior to the effective date of this rule and its implementing notice will, subject to the availability of credit subsidy and any conditions that may be imposed on such availability, not be reprocessed at the new rate but will continue to be processed at the rate on which the commitment was based. Notwithstanding the previous sentence, all projects in the Headquarters queue that did not receive an obligation of credit subsidy prior to the effective date of this rule and implementing notice, upon the request of the mortgagee, will be reprocessed at the new premium rates.

In accordance with 24 CFR 200.40, HUD will refund to the mortgagee any firm commitment application fee, if the mortgagee advises the Field Office in writing that it wishes to withdraw its application or surrender its outstanding firm commitment because of the increase in the mortgage insurance premium.

D. Findings and Clearances*Justification for Interim Rulemaking*

HUD generally publishes a rule for public comment before issuing a rule for

effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is “impractical, unnecessary, or contrary to the public interest” (see 24 CFR 10.1). Because the credit subsidy appropriated for FY 2001 HUD mortgage insurance programs affected by this rule has been almost completely committed, and the additional credit subsidy HUD is anticipating will not suffice to cover upcoming requests currently in the application pipeline, HUD is facing the near-term shutdown of those programs. It is in the public interest for those programs to continue so that the various low and moderate income multifamily projects, for which mortgage insurance is made available by HUD's programs, can continue to receive the HUD-insured mortgage funding that makes such housing possible. The business community, as well, needs continuity if these programs are to remain useful vehicles for housing production. Therefore, HUD finds that good cause exists to have the regulations reflect the statutory requirements so that the Secretary has the flexibility to adjust the MIPs within those requirements as necessary so that the programs can continue uninterrupted throughout the fiscal year. The changes being made by this rule are prospective only and do not affect existing commitments.

HUD will be accepting comments on this interim rule for a 60-day period. HUD will consider these comments in promulgating the final rule.

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 an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review 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.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this rule will not have a significant

economic impact on a substantial number of small entities. While this rule does raise mortgage insurance premiums in certain programs, the amount of increase, which is constrained by HUD's statutory authorization, is relatively small. Furthermore, without the increase, it is likely that the effect on business entities will be much greater, as a number of HUD's mortgage insurance programs would have to cease operations completely, causing hardship and uncertainty to those who depend upon these programs to secure mortgages. Thus, this rule acts to minimize adverse impacts on the business community.

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

Environmental Impact

In accordance with 24 CFR 50.19(c)(6) of HUD's regulations, this rule involves establishment of rate or cost determinations and related external administrative requirements and procedures which do not constitute a development decision that affects 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).

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 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 (Pub. L. 104-4; approved March 22, 1995) (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 interim rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.134.

List of Subjects in 24 CFR Part 207

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

For the reasons stated in the preamble, HUD amends 24 CFR part 207 as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 207 is revised to read as follows:

Authority: 12 U.S.C. 1701z-11(e), 1709(c)(1), 1713 and 1715b; 42 U.S.C. 3535(d).

Subpart B—Contract Rights and Obligations—Premiums

2. Revise § 207.252 to read as follows:

§ 207.252 First, second and third premiums.

The mortgagee, upon the initial endorsement of the mortgage for insurance, shall pay to the Commissioner a first mortgage insurance premium equal to not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the original face amount of the mortgage. The specific premium to be charged will be set forth in **Federal Register** notice.

(a) If the date of the first principal payment is more than one year following the date of such initial insurance endorsement, the mortgagee, upon the anniversary of such insurance date, shall pay a second premium equal to not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the original face amount of the mortgage. On the date of the first principal payment, the mortgagee shall pay a third premium equal to not less than one-fourth of one percent nor more than one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said three premiums shall equal the sum of:

(1) One percent of the average outstanding principal obligation of the

mortgage for the year following the date of initial insurance endorsement; and

(2) Not less than one-fourth of one percent nor more than one percent per annum as the Secretary shall determine of the average outstanding principal obligation of the mortgage for the period from the first anniversary of the date of initial insurance endorsement to one year following the date of the first principal payment.

(b) If the date of the first principal payment is one year, or less than one year following the date of such initial insurance endorsement, the mortgagee, upon such first principal payment date, shall pay a second premium equal to not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of:

(1) One percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of initial insurance endorsement to the date of first principal payment; and

(2) Not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the average outstanding principal obligation of the mortgage for the year following the date of the first principal payment.

(c) Where the credit instrument is initially and finally endorsed for insurance pursuant to a Commitment to Insure Upon Completion, the mortgagee on the date of the first principal payment shall pay a second premium equal to not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the average outstanding principal obligation of the mortgage for the year following such first principal payment date which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of not less than one-fourth of one percent nor more than one percent per annum as the Secretary shall determine of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(d) Until the mortgage is paid in full, or until receipt by the Commissioner of an application for insurance benefits, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the mortgagee, on each anniversary of the date of the first principal payment, shall pay an annual mortgage insurance premium equal to

not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the average outstanding principal obligation of the mortgage for the year following the date on which such premium becomes payable.

(e) The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

(f) Premiums shall be payable in cash or in debentures at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as hereinafter provided in this subpart.

(g) Any change in mortgage insurance premiums pursuant to this section will apply to new commitments issued or reissued on or after August 1, 2001 and any notice setting mortgage insurance

premiums issued pursuant to this section.

3. Revise § 207.252a to read as follows:

§ 207.252a Premiums—operating loss loans.

(a) The mortgagee, upon the insurance endorsement of the increase loan credit instrument covering the operating loss loan, shall pay to the Commissioner a first mortgage insurance premium of not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the original amount of the loan.

(b) The provisions of paragraphs (d), (e), (f) and (g) of Sec. 207.252 shall apply to operating loss loans.

4. Add a new 24 CFR 207.254 to read as follows:

§ 207.254 Changes in premiums; manner of publication.

Notice of future premium changes will be published in the **Federal**

Register. The Department will propose MIP changes for multifamily mortgage insurance programs and provide a 30-day public comment period for the purpose of accepting comments on whether the proposed changes are appropriate. After the comments have been considered, the Department will publish a final notice announcing the premiums for each program and their effective date. The provisions of paragraph (g) of 24 CFR 207.252 shall apply to any notice of future premium changes published pursuant to this section.

Dated: June 12, 2001.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

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