

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for  
Housing—Federal Housing  
Commissioner**

**24 CFR Part 201**

[Docket No. R-95-1765; FR-3823-F-01]

RIN 2502-AG41

**Title I Property Improvement and  
Manufactured Home Loans; Electronic  
Payment of Title I Insurance Charges**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations governing the property improvement and manufactured home loan insurance programs under Title I, section 2 of the National Housing Act. This rule permits the Secretary to require that Title I insurance charge payments be made through the Automated Clearing House (ACH) program. The purpose of this rule is to improve the efficiency of the Federal Housing Administration (FHA) Title I insurance program and reduce costs to HUD lenders.

**EFFECTIVE DATE:** April 13, 1995.

**FOR FURTHER INFORMATION CONTACT:** James A. White, Acting Director, Title I Accounting and Servicing Division, Room 3100, Department of Housing and Urban Development, 470 L'Enfant Plaza, East, Washington, DC 20024; telephone (202) 755-7545, extension 105; or (202) 708-4594 (voice/TDD). (These are not toll-free telephone numbers.)

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In 1985 the Department of Housing and Urban Development (HUD) implemented the Automated Clearing House (ACH) program, with voluntary participation by mortgagees, for the payment of up-front mortgage insurance premiums for single-family mortgages that are obligations of the Mutual Mortgage Insurance Fund.

On June 9, 1992, HUD published a proposed rule in the **Federal Register** (57 FR 24424) that would amend the Title II regulations to permit the FHA Commissioner to require that all such premium payments be made through ACH. Five comments were received in response to that proposed rule. Two comments were from automated clearing house associations, and expressed general approval of HUD's proposal. Two comments were from

national trade associations; both of these were favorable to the proposal, although one expressed a number of technical operational concerns. The fifth comment, from a small lender, expressed a similar concern to one raised by one of the trade associations, namely the financial impact on small lenders.

On March 8, 1993, HUD published a final rule in the **Federal Register** (58 FR 12901) that was unchanged from the proposed rule. However, because of the concerns communicated in the comments, HUD allowed a one-year grace period for institutions making 300 or fewer new FHA single family loans per year. Also in 1993, HUD implemented the ACH program on a voluntary basis for the payment of Title I insurance charges.

The ACH system is designed to process the collection of Title I insurance charges from lenders, using remote terminals instead of sending checks and HUD-646 forms by mail. The lender's terminal operator dials a number that ties the terminal or personal computer into the collection agent's telenet system. The collection agent originates an ACH file of debit transactions based on the data keyed by the lender.

Each day at 6 p.m. eastern time, the collection agent originates an ACH file of debit transactions based on the data keyed by the lender. When the debit transactions have been processed, the ACH will transmit the Title I insurance charge data to HUD's Title I Insurance System. Through this ACH process, the debit amount is drawn electronically from the designated lender's bank account the next day, or can be "warehoused" and drawn on the lender's bank account on a future date. The corresponding credit entry will update HUD's account.

Without ACH, HUD personnel must correct all incorrect data submitted by lenders, and the HUD system must prepare, key, and then reprocess the corrected transaction. The ACH transfer system eliminates most errors. Built-in edits will verify data and produce an error message for lenders entering their payment data via terminal/personal computer, and an error fax confirmation for lenders entering their payment data via mainframe to mainframe. The ACH transfer system uses the lender contract number as part of the logon procedure. Any error in the lender contract number results in the ACH transfer system rejecting the logon attempt. In addition, the ACH transfer system will verify that the payment amount equals the billing amount less the exceptions.

Penalty charges and interest charges will be processed in the same manner as in the past and billed on the next statement. Penalty charges are levied if payment is received later than 25 days after the billing date. Interest charges are assessed when payment is received on or after the 55th day after the billing date. For the ACH program, penalty charge and interest charge amounts are automatically calculated by the system.

ACH provides lenders with numerous tangible benefits that should reduce their servicing costs. The advantages of ACH are:

(1) Control of payment timing—The use of ACH debits and credits can increase control of payment initiation and funds availability;

(2) Banking costs are reduced—ACH transfers cost less than paper checks and wire transfers;

(3) Accounting reconciliation is reduced—Payments are computerized and cash application is more automated than with manual systems;

(4) On-line edits can reduce data errors created by manual recording;

(5) The chance of lost/late mail is eliminated;

(6) ACH payments are fully traceable;

(7) The premium payments are drawn down electronically from the lender's designated bank account.

Because ACH provides lenders as well as HUD with numerous tangible benefits that reduce servicing costs, HUD intends to use ACH as the sole method for collecting Title I insurance charges. HUD believes that this rule does not have a significant economic impact on the smaller lending community for two reasons. First, lenders need only have access to a personal computer to participate in the ACH program, and personal computing is pervasive within the industry. Second, implementation of this process will be phased in and coordinated with lenders on an individual basis. This rule implements a program that will enhance operations and be cost beneficial for all Title I lenders.

Under this final rule, insurance charges will be collected by the ACH program for all property improvement and manufactured home loan insurance programs under Title I, section 2 of the National Housing Act (12 U.S.C. 1703). Instructions implementing this rule will be transmitted to all Title I lenders at least 30 days before payment of Title I insurance charges by ACH will be required. The instructions will provide for a grace period of up to one year for compliance by small lenders with portfolios of fewer than 200 loans.

**II. Justification for Final Rulemaking**

In general, HUD 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 provides for exceptions from that general rule if HUD 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). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. Due to HUD's experience in promulgating the amendment to the Title II regulations for payment of insurance premiums through ACH, and the voluntary participation in the ACH program by some Title I lenders, HUD finds that prior public procedure is unnecessary.

**III. Other Matters**

*Environmental Impact*

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality, and 24 CFR 50.20(k) of the HUD regulations, this rule is categorically excluded from the requirements of the National Environmental Policy Act. The rule relates solely to internal administrative procedures, the content of which do not involve a development decision or affect the physical condition of project areas or building sites, but only relate to the performance of accounting, auditing, and fiscal functions.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule implements a program that will enhance

operations and be cost beneficial for all Title I lenders. In addition, the plan to phase in the program with lenders on an individual basis assures against undue burdens on small organizations.

*Regulatory Agenda*

This rule was not listed in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

*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 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. As a result, the rule is not subject to review under the Order. Specifically, the requirements of this rule are directed to lenders, and do not impinge upon the relationship between the Federal government and State and local governments.

*Executive Order 12606, The Family*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this 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. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

*Catalog of Federal Domestic Assistance*

Program numbers are:

14.110 Manufactured Home Loan Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;

14.142 Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures; and

14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans.

**List of Subjects in 24 CFR Part 201**

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 201 is amended as follows:

**PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS**

1. The authority citation for 24 CFR part 201 continues to read as set forth below:

**Authority:** 12 U.S.C. 1703; 42 U.S.C. 3535(d).

2. A new paragraph (b)(4) is added to § 201.31 to read as follows:

**§ 201.31 Insurance charge.**

\* \* \* \* \*

(b) \* \* \*

(4) The Secretary may require that loan insurance charges be remitted electronically. Instructions implementing this requirement shall be communicated to all affected lenders.

\* \* \* \* \*

Dated: February 8, 1995.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

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