

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

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

24 CFR Part 266

[Docket No. FR-3981-F-01]

RIN 2502-AG60

**Regulatory Reinvention; Streamlining
of Housing Finance Agency Risk-
Sharing Program for Insured
Affordable Multifamily Project Loans**

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

ACTION: Final rule.

SUMMARY: This final rule streamlines HUD's regulations governing the Housing Finance Agency (HFA) Risk-Sharing program at 24 CFR part 266. Specifically, this rule removes regulatory provisions from part 266 which are best set forth in non-regulatory guidance. Under the HFA Risk-Sharing Program, HFAs are permitted to originate and service mortgage loans that are fully insured by the Federal Housing Administration. Participating HFAs are required to share in the risk associated with monetary losses that may result from loan defaults. HUD's elimination of redundant or unnecessary language from part 266 will increase program flexibility and assist in HUD's continuing efforts to streamline title 24.

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jane Luton, Director, New Products Division, Office of Multifamily Housing Development, Room 6142, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708-2556 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TDD by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, HUD conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. As part of this review, HUD reexamined its regulations governing the Housing Finance Agency (HFA) Risk-Sharing

Program at 24 CFR part 266. Under the HFA Risk-Sharing Program, HFAs are permitted to originate and service mortgage loans that are fully insured by the Federal Housing Administration. Participating HFAs are required to share in the risk associated with monetary losses that may result from loan defaults.

HUD has determined that the regulations for the HFA Risk-Sharing Program can be improved and streamlined by eliminating unnecessary provisions. After careful consideration, HUD has decided to retain most of part 266, inasmuch as the regulations are incorporated by reference in each approved HFA's Risk-Sharing Agreement. Since the Risk-Sharing Agreement forms the basis for operating the program, it is in HUD's interest, and that of program participants, to retain most sections of part 266. However, this final rule removes those sections of part 266 concerning the application process and the contents of the Risk-Sharing Agreement.

With respect to the section on application requirements, applications are solicited through publication of a notice in the Federal Register. Since that notice contains the requirements for submitting an application, including required exhibits, it is unnecessary to repeat such requirements in part 266. Therefore, this final rule revises § 266.105, which concerns the application requirements, to simply state that HUD will identify all necessary requirements for the submission of an application through Federal Register notice.

With respect to the section on the contents of the Risk-Sharing Agreement, an agreement for use by State and local HFAs participating in the program has been developed. Therefore, it is no longer necessary to list the items to be included in the Risk-Sharing Agreement. Accordingly, this final rule amends § 266.15 to remove such a list.

II. Justification for Final 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 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. This final rule merely removes unnecessary

provisions which can best be set forth in non-regulatory guidance. This rule does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

III. Other Matters

A. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines 24 CFR part 266 by removing provisions which do not require regulatory codification. The rule will have no adverse or disproportionate economic impact on small businesses.

B. Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by streamlining provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing the HFA Risk-Sharing Program. That finding remains applicable to this rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that 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. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

D. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on

family formation, maintenance, or 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.

List of Subjects in 24 CFR Part 266

Aged, Fair housing, Intergovernmental relations, Mortgage insurance, Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 266 is amended as follows:

**PART 266—HOUSING FINANCE
AGENCY RISK-SHARING PROGRAM
FOR INSURED AFFORDABLE
MULTIFAMILY PROJECT LOANS**

1. The authority citation for 24 CFR part 266 continues to read as follows:

Authority: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

2. Section 266.15 is revised to read as follows:

§ 266.15 Risk-Sharing Agreement.

Execution of a Risk-Sharing Agreement is a prerequisite to participation in this program. The Risk-Sharing Agreement shall be in a form acceptable to the Commissioner.

3. Section 266.105 is revised to read as follows:

§ 266.105 Application requirements.

(a) *Applications for approval as a HUD-approved multifamily mortgagee.* HFAs that are not HUD-approved mortgagees at the time of their application to participate in the program under this part must submit, concurrently, separate applications for approval to participate in the program and for approval to operate as a HUD-

approved mortgagee. Application for approval as a HUD-approved mortgagee must be submitted to HUD in accordance with the applicable HUD requirements.

(b) *Applications for participation in program.* Applications from HFAs for approval to participate in the program under this part will be submitted in response to a notice published in the Federal Register. The notice will include the required application exhibits and any other information or documentation necessary for approval for participation in the Risk-Sharing Program.

Dated: February 22, 1996.

Nicolas P. Retsinas,

*Assistant Secretary for Housing-Federal
Housing Commissioner.*

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