

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 203

[Docket No. FR-4831-P-01; HUD-2004-0007]

RIN 2502-A103

**Revisions to the Single Family
Mortgage Insurance Program**

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

ACTION: Proposed rule.

SUMMARY: To reflect recent statutory changes, this proposed rule revises certain regulations under the single family mortgage insurance program that govern actions by mortgagees with respect to mortgages in default. The rule also amends other regulations under the program to make them consistent with industry practices. The Department believes that these changes will help to increase the administrative efficiency of the single family mortgage insurance program.

DATES: *Comment Due Date:* January 10, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at: <http://www.regulations.gov>; or
- The HUD electronic Web site at: www.epa.gov/feddoCKET. Follow the link entitled View Open HUD Dockets. Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (fax) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at www.epa.gov/feddoCKET.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Office of the Deputy Assistant Secretary for Single Family Housing, Department of Housing and Urban Development, Room 9172, 451 Seventh Street, SW., Washington, DC 20410-8000; telephone (202) 708-1672 (this is not a toll-free number). Hearing- and speech-impaired persons may

access this number through TTY by calling the toll free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Department's regulations governing the procedures, rights, and servicing responsibilities, among other things, arising out of a mortgage insured under the single family mortgage insurance program of the Federal Housing Administration (FHA) generally are codified at 24 CFR part 203. Statutory amendments enacted by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998) (FY1999 Appropriations Act), and other changes in practices and procedures require changes to the regulations at 24 CFR 203.23, 203.24, 203.359, 203.370, 203.371, 203.389, 203.402, 203.604, and 203.605.

II. This Proposed Rule

This rule would amend 24 CFR 203.23(a) to require a provision in the mortgage for the payment of homeowner or condominium association fees among the other payments that the mortgagor is required to make under the mortgage. Several states have enacted legislation that gives condominium and homeowners' associations the right to file a lien for non-payment of association fees by a mortgagor, resulting in a lien that has priority over the FHA-insured mortgage. HUD has performed a study on the various state laws applicable to the priority of the homeowners' and condominium association fees and charges. There is great variance among the states with respect to how they treat the lien status of condominium association fees and charges. Some states have established a priority or "super lien" for six months, but the time that the six-month period begins to run varies. Also, the time that the lien for the fees and charges is perfected varies by state. As a result, HUD has experienced difficulty in several jurisdictions where the condominium or homeowners' association has started foreclosure proceedings under its lien. In addition, even where the lien for fees and assessments is not senior to the mortgage, there are many questions raised as to whether the mortgagee should pay the unpaid fees before conveying the property to the Secretary. HUD has been apprised that other states are contemplating legislation that would make these assessments prior liens.

Further, HUD desires to protect the viability of homeowners' and condominium associations by providing a method whereby there would be greater assurance of these associations' collecting their fees. HUD also wants to protect those homeowners who do pay their fees from being assessed for maintenance and other expenses that cannot be paid because other homeowners do not pay their fees. It is also a costly process to have attorneys handle redemption of the property, if the homeowners' or condominium association forecloses on its lien. Therefore, the amendment to § 203.23 would require mortgagees of FHA-insured mortgages endorsed on or after the effective date of this rule to collect as part of the monthly mortgage payment an escrow of the amounts necessary for the payment of these fees when they become due.

A corresponding amendment is made to 24 CFR 203.24(a)(1) to provide for the application by the mortgagee of that part of the monthly payment received from the mortgagor for condominium or homeowners' association fees.

This rule also would amend 24 CFR 203.359(b)(2). After reviewing its experience with the application of this regulation, HUD has concluded that amendment of this regulation is warranted to better protect the insurance fund. HUD's experience has shown that too many mortgagees have not pursued conveying the foreclosed property to the Secretary with the diligence that the regulation contemplated. Consequently, the Department has been forced to pay additional interest on the outstanding debt pending recordation of the deed to the Secretary by the mortgagee. The amended regulation would provide that the deed to the Secretary must be recorded within 30 days after the later of the acquisition of possession of the property by the mortgagee or the expiration of the redemption period.

The rule would amend § 203.370 by removing the existing language in paragraph (c)(4) and substituting therefor the amendatory language in section 601(a) of the FY1999 HUD Appropriations Act, which amended section 204 of the National Housing Act (12 U. S. C. 1710). Section 204 now provides for the payment of insurance benefits by the Secretary in a preforeclosure sale of the property if, among other things, "the mortgagor has received an appropriate disclosure, as determined by the Secretary." Formerly, section 204 required counseling. The revised language of 24 CFR 203.370(c)(4) reflects the cited language

from section 601(a) of the FY1999 HUD Appropriations Act.

HUD proposes in this rule to add a new paragraph 6 to 24 CFR 203.371(b) to provide that, along with the existing requirements that must be satisfied for payment of a partial claim, the mortgagor must have made a minimum number of monthly payments as prescribed by the Secretary.

In § 203.371, paragraph (d) would be revised to provide that HUD must receive the original of the note and security instrument no later than 60 days after the date of the execution of the note and the security instrument. Section 203.371(d) would allow submission by the mortgagee of a copy of the security instrument with the date and time of the recording stamped by the recorder's office, if the original document is not available. A certification from the recorder's office that the security instrument has been recorded and stating the date of recordation also would be acceptable. If the mortgagee does not provide the original of the note and the security agreement (or the stamped copy or certification as provided above) to HUD by the 60-day deadline, HUD will require reimbursement of the amount of the partial claim paid to the mortgagee, including the incentive. If the mortgagee meets the 60-day requirement by providing HUD with the original note and a copy of the security instrument with a stamp or certification as described above, the mortgagee will have six months from the date of the execution of the security instrument to provide HUD with the original of the security instrument. If the security instrument is not provided to HUD by the six-month deadline, then HUD will require reimbursement of the claim, including the incentive.

This proposed rule also would amend 24 CFR 203.389 to add "aviation easements" approved by the Secretary at the time of the mortgage origination to the list of easements in paragraph (b)(1) to which the Commissioner may not raise objection in taking title to property covered by an insured mortgage in default. This amendment recognizes that, since the regulation was last updated in 1976, aviation easements have become fairly common with the growth in the number of airports.

In 24 CFR 203.402, paragraphs (a) and (j) are revised to incorporate new items that would be included in insurance benefits paid by HUD with respect to conveyed and non-conveyed properties. In paragraph (a), language is added that provides for an amount to be included in the claim payment of a utility fee, if it is a lien prior to the mortgage. HUD

also has added language to paragraph (a) that would permit HUD to reimburse mortgagees for payments of homeowners' association and condominium fees if, because of a default of a mortgagor, in making escrow payments, the mortgagee has to pay these fees. This amendment would affect only mortgages endorsed on or after the effective date of this rule. The revision to paragraph (j) will eliminate the need for approval by the Secretary, prior to the issuance of a mortgage, of a covenant that provides for charges and fees for the administration, operation, and maintenance of community-owned property. The requirement for Secretary approval has not been in effect for some time. Section 203.604(c)(2) would be revised to eliminate the requirement of a face-to-face meeting if the mortgaged property is within 200 miles of the mortgagee or a branch office thereof. Even if the mortgagee does have an office, or a branch office, within 200 miles, a face-to-face meeting would not be necessary if the servicer does not have an office or a branch within 200 miles. The revision is being made since servicers, rather than holding mortgagees, take the necessary actions required when a mortgagor is delinquent. As revised, § 203.604(c)(2) would provide that a face-to-face meeting is no longer required if "The mortgaged property is not within 200 miles of the servicer [the reference to mortgagee has been removed] or a branch office of the servicer."

The revision to 24 CFR 203.605 clarifies the existing language regarding the deadline for the mortgagee to complete its loss mitigation evaluation. HUD has always considered 90 days of delinquency to be the appropriate amount of time required to ensure that a borrower would have an opportunity to respond to requests from the mortgagee and for the mortgagee to complete its review for loss mitigation. The existing language ("no later than when three full monthly installments * * * are unpaid") was intended to allow the mortgagee to the end of the third month of delinquency to complete the loss mitigation evaluation, *i.e.*, while three payments were still unpaid, but before four payments had become unpaid. However, this language created an ambiguity, causing some mortgagees to believe that they were required to complete the loss mitigation review by the day the account became three full payments due and unpaid. To remove any ambiguity and to make clear the intent of the rule, the revision to 24 CFR 203.605 provides in part that: "Before the account becomes four payments due

and unpaid, the mortgagee shall evaluate all of the loss mitigation techniques provided in § 203.501 to determine which, if any, is appropriate, and shall reevaluate monthly thereafter."

Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "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 the rule as a result of that review are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-5000.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) 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 rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

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 would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are not any unusual procedures that would need to be complied with by small

entities. The rule revises certain regulations under the Single Family Mortgage Insurance program to improve the efficiency of the program. Although HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

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 does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians-lands, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.117.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

2. Amend § 203.23 by removing the word "and" at the end of paragraph (a)(4), by redesignating existing paragraph (a)(5) as (a)(6) and revising it, and by adding a new paragraph (a)(5) to read as follows:

§ 203.23 Mortgagor's payments to include other charges.

(a) * * *

(5) For mortgages endorsed for insurance on or after the effective date of this rule, homeowner association or condominium association fees, as appropriate; and

(6) Fire and other hazard insurance premiums, if any. The mortgage shall

further provide that such payments shall be held by the mortgagee in a manner satisfactory to the Commissioner for the purpose of paying such ground rents, taxes, assessments, insurance premiums, and (for mortgages endorsed on or after the effective date of this rule), homeowners' or condominium association fees before the same become delinquent, for the benefit and account of the mortgagor. The mortgage also must make provisions for adjustments in case the estimated amount of such taxes, assessments, insurance premiums, and fees shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor. Such payments shall be held in an escrow subject to § 203.550.

* * * * *

3. Amend § 203.24 by revising paragraph (a)(1) to read as follows:

§ 203.24 Application of payments.

(a) * * *

(1) Premium charges under the contract of insurance (other than a one-time or up-front mortgage insurance premium paid in accordance with §§ 203.280, 203.284, and 203.285), charges for ground rents, taxes, special assessments, flood insurance premiums, if required, fire and other hazard insurance premiums, and (for mortgages endorsed on or after the effective date of this rule), homeowners' and condominium association fees and charges, if applicable.

* * * * *

4. Amend § 203.359 by revising paragraph (b)(2) to read as follows:

§ 203.359 Time of conveyance to the Secretary.

* * * * *

(b) * * *

(2) Direct conveyance. In cases where the mortgagee arranges for a direct conveyance of the property to the Secretary, the mortgagee must ensure that the property is transferred to the Secretary within 30 days of the later of acquiring possession of the property or the expiration of the redemption period.

5. Amend § 203.370 by revising paragraph (c)(4) to read as follows:

§ 203.370 Pre-foreclosure sales.

* * * * *

(c) * * *

(4) Must have received an appropriate disclosure, as prescribed by the Secretary.

6. Amend § 203.371 by revising paragraphs (b)(4) and (b)(5), by adding a new paragraph (b)(6), and by revising paragraph (d), to read as follows:

§ 203.371 Partial claim.

* * * * *

(b) * * *

(4) The mortgagor is not financially able to make sufficient additional payments to repay the arrearage within a time frame specified by HUD;

(5) The mortgagor is not financially qualified to support monthly mortgage payments on a modified mortgage or on a refinanced mortgage in which the total arrearage is included; and

(6) The mortgagor must have made a minimum number of monthly payments as prescribed by the Secretary.

* * * * *

(d) Application for insurance benefits. The mortgagee shall provide HUD with the original credit instrument and the original security instrument no later than 60 days following the date of their execution. If the original security instrument is not yet available, the mortgagee shall provide HUD with a copy of the security instrument on which the date and time of the recording of the original is stamped by the recorder's office. If the recorder's office cannot stamp the copy, HUD will accept a certification from the recorder's office that the original has been recorded and the date of the recordation. If the mortgagee does not provide the original of the note and security instrument (or the stamped copy or certification as provided above) within the 60-day deadline, the mortgagee shall be required to reimburse the amount of the claim paid, including the incentive. If the mortgagee meets the 60-day requirement with the original note and a stamped or certified copy of the security instrument, the mortgagee shall have 6 months from the date of the execution of the security instrument to provide HUD with the original of the security instrument. If the security instrument is not provided within 6 months, HUD will require reimbursement of the claim payment, including the incentive.

7. Amend § 203.389 by revising paragraph (b)(1) to read as follows:

§ 203.389 Waived title objections.

* * * * *

(b)(1) Aviation easements, which were approved by the Secretary at the time of the origination of the mortgage, and other customary easements for public utilities, party walls, driveways, and other purposes.

* * * * *

8. Amend § 203.402 by revising paragraphs (a) and (j) to read as follows:

§ 203.402 Items included in payment—conveyed and nonconveyed properties.

* * * * *

(a) Taxes, ground rents, water rates, and utility charges which are liens prior

to the mortgage; and homeowners' or condominium association fees when the mortgagee is required to escrow the fees under § 203.23, but the mortgagor has defaulted in the payment of the escrow and the mortgagee pays such fees for and on account of the mortgagor.

* * * * *

(j) Charges for the repair or maintenance of the mortgaged property required by and in an amount approved by the Secretary; charges for condominium and homeowners' association fees which the mortgagee advanced for and on behalf of the mortgagor for those mortgages endorsed for insurance before the effective date of the rule.

* * * * *

9. Amend § 203.604 by revising paragraph (c)(2) to read as follows:

§ 203.604 Contact with the mortgagor

* * * * *

(c) * * *

(2) The mortgaged property is not within 200 miles of the servicer, or a branch office of the servicer.

* * * * *

10. Revise § 203.605 to read as follows:

§ 203.605 Loss mitigation evaluation.

Before the account becomes four installments due and unpaid, the mortgagee shall evaluate all of the loss mitigation techniques provided in § 203.501 to determine which

techniques, if any, are appropriate, and shall reevaluate monthly thereafter. The mortgagee shall maintain documentation of such evaluations. Should a claim for mortgage insurance benefits later be filed, the mortgagee shall maintain this documentation in the claim file under the requirements of § 203.365(c).

Dated: August 27, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

Sean Cassidy,

General Deputy Assistant, Secretary for Housing.

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