

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 200**

[Docket No. FR 5395–F–02]

RIN 2502–AI92

Federal Housing Administration (FHA): Refinancing an Existing Cooperative Under Section 207 Pursuant to Section 223(f) of the National Housing Act

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

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations governing the eligibility for FHA insurance of mortgages used for the purchase or refinancing of existing multifamily housing projects. Although the statutory language authorizing such insurance does not distinguish between rental or cooperative multifamily projects, HUD's regulations limit FHA insurance to existing rental projects. Given the significant needs identified for multifamily cooperative financing, the Department determined that it was appropriate to reconsider the regulatory imposed limitation. Accordingly, this rule revises HUD's regulations to enable existing multifamily cooperative project owners to obtain FHA insurance for the refinancing of existing indebtedness.

DATES: *Effective Date:* August 20, 2014.

FOR FURTHER INFORMATION CONTACT: James Carey, Director, Policy Division, Office of Multifamily Housing Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6152, Washington, DC 20410–8000; telephone number 202–708–1142 (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 Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:**I. Background****A. The February 1, 2011, Proposed Rule**

On February 1, 2011, at 76 FR 5518, HUD proposed to revise its regulations governing the eligibility for FHA insurance of mortgages used for the purchase or refinancing of existing multifamily housing projects. Under section 223(f)(1) of the National Housing Act (12 U.S.C. 1715n(f)(1)) (NHA), FHA is authorized to insure mortgages executed in connection with the purchase or refinancing of an existing multifamily housing project. The existing multifamily housing project to

be purchased or refinanced may have been financed originally with conventional debt, equity, or FHA insured mortgages. The section 223(f) program insures lenders against loss on mortgage defaults and allows for long term mortgages (up to 35 years). In general, a project is eligible for section 223(f) mortgage insurance if the sponsor can demonstrate that there is a definite market demand, and that the project is economically self-sufficient.

HUD's regulations implementing the section 223(f) program are codified at 24 CFR part 207 (entitled "Multifamily Housing Mortgage Insurance"). Section 207.1 of these regulations cross references to the eligibility requirements for existing projects contained in 24 CFR 200.24 and makes the eligibility requirements applicable to multifamily project mortgages insured under section 24 CFR part 207.¹ Section 200.24 provides that "a mortgage financing the purchase or refinance of an existing rental housing project . . . may be insured pursuant to the provisions of section 223(f) of the [National Housing] Act . . ." (emphasis added). Thus, while the statutory language of section 223(f) authorizes FHA mortgage insurance for existing multifamily housing projects, irrespective of whether the project is for rental or cooperative housing, HUD's regulations limit section 223(f) financing to rental housing.

Lack of financing has recently been a particular problem for multifamily cooperatives, which contend with legal restrictions on cooperative share transfers and requirements for approval by the board of a cooperative for some membership or operational changes. In addition, "affordable" cooperatives, which have low initial purchase prices, limited maintenance fees, and a cap on unit resale prices, face further challenges because the potential for generating new income through turnover of units and additional assessments is low.

Through the February 11, 2011 proposed rule, HUD proposed to remove the regulatory limitation to facilitate the refinancing of cooperatives through mortgage insurance issued under section 223(f) of the NHA to both provide needed support to this cooperative financing market sector and

¹ The regulations codified at 24 CFR part 200 (entitled "Introduction to FHA Programs") set forth, in a single location of the Code of Federal Regulations, requirements that are generally applicable to FHA programs. Section 207.1 cross-references to the eligibility requirements set forth in 24 CFR part 200, subpart A. Section 200.24 is the relevant eligibility provision for existing multifamily projects in subpart A of 24 CFR part 200.

further HUD's mission of preserving affordable housing. The changes were proposed to assist eligible cooperative projects to obtain refinancing to make necessary repairs and/or consolidate more expensive outstanding debt, thereby preserving affordable housing stock. Interested readers are referred to the preamble of the February 1, 2011, proposed rule for additional information regarding the proposed regulatory changes.

B. This Final Rule

This final rule follows publication of the February 1, 2011, proposed rule and takes into consideration the public comments received in response to the proposed rule. By the close of the public comment period on April 4, 2011, HUD received five public comments on the proposed rule.

Comments were submitted by individuals, a local housing preservation and development agency, a national association representing the interests of housing cooperatives, and a national nonprofit organization focused on manufactured housing ownership. The majority of comments expressed support for the proposed regulatory changes, with a few commenters raising questions about the rule or offering suggestions for additional amendments. After careful consideration of the issues raised by the commenters, HUD has decided to adopt the proposed regulatory amendments without change.

The final regulatory text provides as did the proposed regulatory text that a mortgage financing the purchase or refinance of an existing rental housing project or refinance of the existing debt of an existing cooperative project under section 207 of the NHA, or for refinancing the existing debt of an existing nursing home, intermediate care facility, assisted living facility, or board and care home, or any combination thereof, under section 232 of the NHA, may be insured pursuant to provisions of section 223(f) of the NHA and such terms and conditions established by HUD. HUD's risk management practices for the financing or refinancing of mortgages for all projects covered by section 207 of the National Housing Act, and which, as a result of this rule, would now include cooperatives provides for more careful review of projects that exceed \$100 million.

The following section of this preamble summarizes the significant issues raised by the commenters on the February 1, 2011, proposed rule and HUD's responses to these comments.

II. Discussion of Public Comments Received on the February 1, 2011, Proposed Rule

Comment: Include section 223(f) cooperative refinancing in the Multifamily Accelerated Processing (MAP) system. One commenter suggested that, in order to expedite processing time, HUD allow section 223(f) refinancing for housing cooperatives to be processed under the Multifamily Accelerated Processing (MAP) system. MAP is a processing procedure designed to establish national standards for approved lenders to prepare, process, and submit loan applications for FHA multifamily mortgage insurance.

HUD Response. HUD agrees that processing cooperative refinance transactions under MAP would expedite the processing of these transactions. Section 223(f) purchase loan transactions are already eligible for processing under MAP and HUD will consider including cooperative refinance transactions for processing under MAP.

Comment: Expand regulation to include manufactured housing cooperatives. One commenter urged HUD to include cooperatives formed by homeowners in manufactured home communities to be eligible for FHA mortgage insurance upon refinancing their existing blanket mortgage debt covering the land and infrastructure improvements. The commenter wrote that, consistent with the mission of FHA, manufactured housing cooperatives expand opportunities for low and moderate income homebuyers. The commenter wrote that resident ownership of manufactured home communities has proven critical to providing long-term housing security to homeowners.

HUD Response. HUD declines to accept the commenter's recommendation. It is HUD's long standing policy to not use Section 223(f) mortgage insurance for the refinancing of manufactured housing parks. The Section 223(f) program structure is not tailored to accommodate the unique risks and real estate features associated with financing for manufactured home communities. Such properties are appropriately served by conventional financing sources which can tailor loan terms and underwriting requirements to address these risks and real estate features. HUD notes that manufactured home cooperatives as well as other manufactured homeownership transactions are eligible under the Section 207 mortgage insurance

program when substantial rehabilitation or new construction is proposed.

Comment: Questions regarding FHA programs. Two commenters raised concerns that supporting cooperatives by providing government support for refinancing could negatively affect other parts of the housing market. The commenters requested that HUD provide some basic information on such as the following issues: Where the money is coming from, who will pay for the mortgage insurance, and whether lenders could increase their rates during the life of the loan.

HUD Response. HUD disagrees that providing refinancing for cooperatives could negatively affect other parts of the housing market. Providing refinancing for cooperatives helps preserve affordable housing stock in the nation. With respect to basic information about Section 223(f) program, information about this program can be found at the following HUD Web site: http://portal.hud.gov:80/hudportal/HUD?src=/program_offices/housing/mfh/progdesc/purchrefi223f. This Web site provides detailed information about the Section 223(f) program.

III. Costs and Benefits

In providing for refinancing for cooperatives under the Section 223(f) program, the costs incurred by FHA and the borrower are costs typical of those associated with HUD's multifamily insurance programs. The documents and transactions for refinancing cooperatives are similar to those for FHA-insured multifamily programs, and the costs for the borrower are those that typically occur with closing the loan and document transaction costs. The costs for FHA include those pertaining to underwriting applications, overseeing construction advances, monitoring program compliance, collecting mortgage insurance premiums and processing claims for insurance. Typically these costs are offset by mortgage insurance premiums received under the program.

Additionally, with respect to costs and risks, and as noted earlier in this preamble, HUD's risk management practices for the financing or refinancing of mortgages for all projects covered by section 207 of the National Housing Act, and which, as a result of this rule, now includes cooperatives provides for more careful review of projects for which financing or refinancing exceed \$100 million.

While the costs are similar to those involved in FHA multifamily housing transactions, the benefits in allowing refinancing for cooperatives helps to preserve affordable housing stock in the

U.S. Refinancing the existing underlying mortgage of a cooperative is considered a preferred alternative than expending a cooperative's reserve fund, which would have a negative impact on the cooperative's financial strength. Refinancing would help to avoid the need for a special assessment (often needed for a large emergency repair such as a leaking roof), which benefits the residents of a cooperative. If the cooperative's reserve fund is too low, the residents must pay the cost of the assessment, and this could harm low-to-moderate income occupants, especially those on a fixed income.

IV. Findings and Certifications

Executive Order 13563, Regulatory Review

The President's Executive Order (EO) 13563, entitled "Improving Regulation and Regulatory Review," was signed by the President on January 18, 2011, and published on January 21, 2011, at 76 FR 3821. This Executive Order requires executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Section 4 of the EO, entitled "Flexible Approaches," provides, in relevant part, that where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

HUD submits that the changes made by this rule are consistent with the directions of Executive Order 13563 as the rule extends refinancing to cooperatives, which increases affordable multifamily housing options under the Section 207 program. Refinancing a cooperative through FHA mortgage insurance promotes HUD's mission to increase the supply of affordable housing by assisting eligible cooperative projects to obtain refinancing to make necessary repairs and/or consolidate outstanding debt, thereby serving to preserve the affordable housing stock.

Regulatory Flexibility Act—Small Business

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

does not add or modify any economic costs imposed on participants in the FHA multifamily mortgage insurance programs. Rather, the rule eliminates a current regulatory barrier to program eligibility and expand participation in these programs. As discussed earlier in this preamble, section 223(f) of the NHA authorizes FHA mortgage financing for existing multifamily projects, irrespective of whether the project provides rental or cooperative housing. The rule revises the regulations governing eligibility for financing under section 223(f) to enable owners of multifamily cooperative housing projects to refinance their existing mortgage debt with FHA insurance. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the proposed rule stage, in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI remains applicable to this final rule and is available for public inspection between the hours of 8:00 a.m. and 5:00 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments, and is not required by statute, or (2) 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 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 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.

Paperwork Reduction Act

The information collection requirements for this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502-0029. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance Number for the principal FHA mortgage insurance program is 14.155.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

Accordingly, for the reasons stated above, HUD amends 24 CFR part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

■ 2. Revise § 200.24 to read as follows:

§ 200.24 Existing projects.

A mortgage financing the purchase or refinance of an existing rental housing project or refinance of the existing debt of an existing cooperative project under section 207 of the Act, or for refinancing the existing debt of an existing nursing home, intermediate care facility,

assisted living facility, or board and care home, or any combination thereof, under section 232 of the Act, may be insured pursuant to provisions of section 223(f) of the Act and such terms and conditions established by HUD.

Dated: July 15, 2014.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

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BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9636]

RIN 1545–BE18

Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains amendments to correct the final regulations (TD 9636) that provided guidance on the application of sections 162(a) and 263(a) of the Internal Revenue Code (Code) regarding the deduction and capitalization of expenditures related to tangible property. These regulations were published in the **Federal Register** on Thursday, September 19, 2013 (78 FR 57686).

DATES: This correction is effective on July 21, 2014, and is applicable beginning September 19, 2013.

FOR FURTHER INFORMATION CONTACT: Merrill D. Feldstein at (202) 317–5100 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9636) that are the subject of this correction provide guidance under sections 162(a) and 263(a) of the Code to amounts paid to acquire, produce, or improve tangible property and affect taxpayers that acquire, produce, or improve tangible property.

In addition to correcting a number of typographical and syntactical errors, these correcting amendments clarify the manner of electing to capitalize and depreciate the cost of any rotatable spare part, temporary spare part, or standby emergency spare part under § 1.162–3(d). As published, § 1.162–3(d)(3) of