

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR-4945-F-01]

RIN 2502-AI41

Debenture Interest Payment Changes

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

ACTION: Final rule.

SUMMARY: This final rule makes conforming revisions to the regulations under the single family mortgage insurance program with respect to the payment of interest at the debenture rate for mortgage insurance claims. The revisions implement a recent statutory amendment to the National Housing Act that provides for a mandatory change in the calculation of all debenture interest on mortgage insurance claims paid in cash. The statutory change mandates that, when paying insurance claims in cash, debenture interest rates for such claims must be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

DATES: *Effective Date:* July 24, 2006.

FOR FURTHER INFORMATION CONTACT: Leslie Bromer, Office of the Deputy Assistant Secretary for Single Family Housing, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9172, 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

Section 224 of the National Housing Act (NHA) (12 U.S.C. 1710) provides for the debenture interest rate to be used in the payment of Federal Housing Administration (FHA) single family mortgage insurance claims upon default of the mortgage. Before the recent amendment to section 224 of the NHA by section 215 of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199, approved January 23, 2004), section 224 provided that debentures issued under any section of the NHA were to bear interest at the rate in effect on the date the mortgage was endorsed for insurance (or the rate that was in effect on the issue date of the commitment to

insure the loan or mortgage; such a rate is no longer used in single family programs). As amended by section 215 of the Consolidated Appropriations Act, section 224 of the NHA now provides in pertinent part that the debenture interest rate for purposes of calculating an insurance claim paid in cash on a mortgage insured under section 203 or 234 of the NHA and endorsed after January 23, 2004, “shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.”

II. This Final Rule

This final rule amends the single family mortgage insurance regulations under 24 CFR part 203 to conform them to section 215 of the Consolidated Appropriations Act, 2004. As noted above, section 224 of the NHA now provides that the debenture interest rate for purposes of calculating an insurance claim paid in cash on a mortgage insured under section 203 or 234 of the NHA and endorsed after January 23, 2004, “shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.”

HUD is codifying this provision by adding new §§ 203.405(b) and 203.479(b) that track section 224 of the NHA, as amended. Specifically, these new sections state that for mortgages endorsed for insurance after January 23, 2004, the debenture interest rate for insurance claims paid in cash “shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.”

This final rule also makes several conforming changes to HUD’s single family mortgage insurance regulations to ensure that they reflect HUD’s statutory authority and that they accurately describe for the public the procedure by which HUD will determine the debenture interest rate for conveyance claims, non-conveyance claims, assignment claims, and rehabilitation loan claims. These conforming changes are described below.

First, HUD is amending § 203.402 that lists the items included in the payment of insurance benefits paid in connection with conveyance claims, claims without conveyance of title, and pre-foreclosure sale claims. Specifically, § 203.402(k)(1) is amended to provide that insurance claims for properties conveyed and

endorsed for insurance after January 23, 2004, shall include the debenture interest rate as it is set forth in the new § 203.405(b), which, as already described, codifies the debenture rate authorized by section 224 of the NHA, as amended. Furthermore, for properties endorsed for insurance after January 23, 2004, amended § 203.402(k)(2) and (k)(3) also implement the new debenture interest rate as it applies to the payment of insurance benefits for property without conveyance of title and to the payment for insurance benefits following a pre-foreclosure sale, respectively.

The second conforming change that HUD is making is to the regulation describing the amount of payment for assigned mortgages. Specifically, sections 203.404 and 203.478(a)(5) are amended to provide that upon an acceptable mortgage assignment, the Federal Housing Commissioner shall pay the unpaid principal balance of the loan at the time of assignment and an amount determined by, in part, an amount equivalent to the new debenture interest rate as it is set forth in section 224 of the NHA, as amended.

III. Findings and Certifications

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 at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is “impracticable, unnecessary, or contrary to the public interest.” HUD finds that good cause exists to publish this final rule for effect without first soliciting public comment, as public comment would be unnecessary and contrary to the public interest.

This final rule implements a statutory amendment to the National Housing Act that sets forth a mandatory change in the calculation of all debenture interest on mortgage insurance claims paid in cash. This amendment is prescriptive and allows no agency discretion in promulgating implementing regulations. The required revisions to the regulations incorporate the statutory amendment and do not make additional substantive changes. HUD must revise the single family mortgage insurance regulations in order to incorporate this amendment and to ensure that the regulations accurately reflect the statutory method of calculating debenture interest rates.

Since the statutory amendment is self-implementing, public comment is unnecessary. HUD is only updating its existing regulations to conform to the amendment. Accordingly, HUD believes that it is in the public interest to publish this final rule to make the statutory amendment effective as soon as possible and that prior public procedure is unnecessary.

Environmental Impact

This rule revises existing regulations to conform to the regulations to a recent statutory change. The rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, in accordance with 24 CFR 50.19(c)(1), this rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

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, nor 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 will 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 no unusual procedures that would need to be complied with by small entities.

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, HUD amends 24 CFR part 203 to read 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. Revise § 203.402, paragraph (k) to read as follows:

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

* * * * *

(k)(1) Except as provided in paragraphs (k)(1)(i) and (ii) of this section, for properties conveyed to the Secretary and endorsed for insurance on or before January 23, 2004, an amount equivalent to the debenture interest that would have been earned, as of the date such payment is made, on the portion of the insurance benefits paid in cash, if such portion had been paid in debentures, and for properties conveyed to the Secretary and endorsed for insurance after January 23, 2004, debenture interest at the rate specified in § 203.405(b) from the date specified in § 203.410, as applicable, to the date of claim payment, on the portion of the insurance benefits paid in cash.

(i) When the mortgagee fails to meet any one of the applicable requirements of §§ 203.355, 203.356(b), 203.359, 203.360, 203.365, 203.606(b)(l), or 203.366 within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended;

(ii) When the mortgagee fails to meet the requirements of § 203.356(a) within the specified time and in a manner satisfactory to the Secretary (or within

such further time as the Secretary may specify in writing), the interest allowance in such cash payment shall be computed to a date set administratively by the Secretary.

(2)(i) Where a claim for insurance benefits is being paid without conveyance of title to the Commissioner in accordance with § 203.368 and was endorsed for insurance on or before January 23, 2004, an amount equivalent to the sum of:

(A) The debenture interest that would have been earned, as of the date the mortgagee or a party other than the mortgagee acquires good marketable title to the mortgaged property, on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(B) The debenture interest that would have been earned from the date the mortgagee or a party other than the mortgagee acquires good marketable title to the mortgaged property to the date when payment of the claim is made, on the portion of the insurance benefits paid in cash if such portion had been paid in debentures, except that if the mortgagee fails to meet any of the applicable requirements of §§ 203.355, 203.356, and 203.368(i)(3) and (5) within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(ii) Where a claim for insurance benefits is being paid without conveyance of title to the Commissioner in accordance with § 203.368 and was endorsed for insurance after January 23, 2004, an amount equivalent to the sum of:

(A) Debenture interest at the rate specified in § 203.405(b) from the date specified in § 203.410, as applicable, to the date that the mortgagee or a party other than the mortgagee acquires good marketable title to the mortgaged property, on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(B) Debenture interest at the rate specified in § 203.405(b) from the date the mortgagee or a person other than the mortgagee acquires good marketable title to the mortgaged property to the date when payment of the claim is made, on the portion of the insurance

benefits paid in cash, except that if the mortgagee fails to meet any of the applicable requirements of §§ 203.355, 203.356, and 203.368(i)(3) and (5) of this chapter within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(3)(i) Where a claim for insurance benefits is being paid following a pre-foreclosure sale, without foreclosure or conveyance to the Commissioner in accordance with § 203.370, and the mortgage was endorsed for insurance on or before January 23, 2004, an amount equivalent to the sum of:

(A) The debenture interest that would have been earned, as of the date of the closing of the pre-foreclosure sale on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(B) The debenture interest that would have been earned, from the date of the closing of the pre-foreclosure sale to the date when payment of the claim is made, on the portion of the insurance benefits paid in cash, if such portion had been paid in debentures; except that if the mortgagee fails to meet any of the applicable requirements of § 203.365 within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(ii) Where a claim for insurance benefits is being paid following a pre-foreclosure sale, without foreclosure or conveyance to the Commissioner, in accordance with § 203.370, and the mortgage was endorsed for insurance after January 23, 2004, an amount equivalent to the sum of:

(A) Debenture interest at the rate specified in § 203.405(b) from the date specified in § 203.410, as applicable, to the date of the closing of the pre-foreclosure sale, on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(B) Debenture interest at the rate specified in § 203.405(b) from the date of the closing of the pre-foreclosure sale to the date when the payment of the

claim is made, on the portion of the insurance benefits paid in cash, except that if the mortgagee fails to meet any of the applicable requirements of § 203.365 within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

■ 3. Revise § 203.404, paragraph (a)(4) to read as follows:

§ 203.404 Amount of payment-assigned mortgages.

* * * * *

(a)(4) For mortgages endorsed for insurance on or before January 23, 2004, an amount equivalent to the debenture interest that would have been earned on the portion of the insurance benefits paid in cash, as of the date such payment is made, and for mortgages endorsed for insurance after January 23, 2004, debenture interest at the rate specified in § 203.405(b), from the date specified in § 203.410 to the date of claim payment on the portion of the insurance benefits paid in cash, except that when the mortgagee fails to meet any one of the requirements of §§ 203.350(e), 203.351, and 203.353 of this chapter within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

* * * * *

■ 4. Revise § 203.405 to read as follows:

§ 203.405 Debenture interest rate.

(a) Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the day the commitment was issued, or as of the date the mortgage was endorsed for insurance, whichever rate is higher. For applications involving mortgages originated under the single family Direct Endorsement program, debentures shall bear interest from the date of issue, payable semiannually on the first day of January and on the first day of July of each year at the rate in effect as of the date the mortgage was endorsed for insurance;

(b) For mortgages endorsed for insurance after January 23, 2004, if an insurance claim is paid in cash, the debenture interest rate for purposes of calculating such a claim shall be the

monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

■ 5. Revise § 203.478, paragraph (a)(5) to read as follows:

§ 203.478 Payment of insurance benefits.

(a) * * *

(5)(i) If payment is made in cash on a mortgage endorsed for insurance on or before January 23, 2004, an amount equivalent to the debenture interest that would have been earned, as of the date insurance settlement occurs, except that where the lender fails to meet any one of the requirements of §§ 203.476 and 203.477 and such failure continues for more than 30 days (or such further time as the Commissioner may approve in writing), the debenture interest shall be computed for 30 days or the extended period;

(ii) If payment is made in cash on a mortgage endorsed for insurance after January 23, 2004, debenture interest at the rate specified in § 203.479 from the date specified in § 203.486 to the date insurance settlement occurs, except that where the lender fails to meet any one of the requirements of §§ 203.476 and 203.477 and such failure continues for more than 30 days (or such further time as the Commissioner may approve in writing), the debenture interest shall be computed for 30 days or the extended period.

■ 6. Revise § 203.479 to read as follows:

§ 203.479 Debenture interest rate.

(a) Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and on the first day of July every year at the rate in effect as of the date the commitment was issued, or as of the date the loan was endorsed for insurance, whichever rate is higher. The applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

(b) For mortgages endorsed for insurance after January 23, 2004, if an insurance claim is paid in cash, the debenture interest rate for purposes of calculating such a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

Dated: June 14, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

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