

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Parts 201 and 203

[Doc. No. FR-5075-P-01]

RIN 2502-AI45

**Federal Housing Administration:
Insurance for Manufactured Housing**

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's regulations governing manufactured homes that are to be the security for Federal Housing Administration (FHA) Title I loans and Title II insured mortgages. The proposed rule would permit, as eligible for FHA insurance, mortgages on manufactured homes to be installed in accordance with the Model Installation Standards, which were the subject of notice and rulemaking that resulted in a final rule published on October 19, 2007.

Acceptance of mortgages on these manufactured homes for FHA insurance will provide for greater flexibility of design, thereby permitting additional options for affordable housing. This proposed rule would apply to all newly installed manufactured homes that are to be security for Title I and Title II loans and any manufactured home that has been previously set up and erected at another location and that is to be security for a Title I loan. An existing manufactured home that secures a Title I loan and that has been installed or erected on a homesite in compliance with the manufacturer's requirements for anchoring, support, stability, and maintenance would be exempt from compliance with this proposed rule, unless it is relocated from the site of its original installation after the effective date of this proposed rule.

DATES: *Comment Due Date:* November 14, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of

Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0001.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available. Comments submitted electronically through the www.regulations.gov Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. *No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled 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. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Peter Gillispie, Home Valuation Policy Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9270, Washington, DC 20410-8000, telephone number (202) 708-2121 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the National Housing Act (12 U.S.C. 1703) (the NHA) authorizes the Secretary to insure approved lenders

against losses sustained as a result of borrower default on, among other things, manufactured home loans. The regulations implementing the Title I programs are found in 24 CFR part 201. Section 201.21 establishes the eligibility requirements for manufactured home loans. Section 201.21(c)(3) provides, in part, that any permanent foundation shall be constructed in accordance with the current edition of HUD's Permanent Foundations Guide for Manufactured Housing (HUD Handbook 4930.3).

Under Title II of the NHA, section 203 authorizes the Secretary to insure mortgages used to finance the purchase of single-family homes. HUD's regulations implementing section 203 of the Act are located at 24 CFR part 203 (entitled "Single Family Mortgage Insurance"). Section 203.43f contains the eligibility criteria for FHA-insured mortgages covering manufactured homes, describing the physical characteristics the home and foundation must possess, as well as required terms and conditions of the mortgage.

Specifically, the requirements currently contained in § 203.43f(c)(i) and (ii) provide that a manufactured home must be erected on a site-built permanent foundation that meets or exceeds the applicable requirements of the Minimum Property Standards (MPS) for One- and Two-Family Dwellings (24 CFR 200.929(b)(1)), among other requirements, and that the space beneath a manufactured home be enclosed by continuous foundation-type construction designed to resist all forces to which it is subjected without transmitting forces to the building superstructure. HUD has determined that satisfying the requirements of these regulations is not the only means of protecting the Mutual Mortgage Insurance Fund (MMIF) and that the regulations should reflect current developments in the installation of manufactured homes.

The Manufactured Housing Improvements Act of 2000 (the Act), which amended the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C. 5401-5426), established new requirements pertaining to the installation of manufactured homes. One of the provisions requires HUD to establish Model Manufactured Home Installation Standards.

On October 19, 2007 (72 FR 59338), HUD published its Model Manufactured Home Installation Standards final rule. HUD's final rule codified the Model Manufactured Home Installation Standards (Model Installation Standards) in a new part 3285 of Title 24 of the Code of Federal Regulations

(CFR). The Model Installation Standards contain both minimum acceptable nationwide standards for the installation and set-up of manufactured homes and detailed methods for the design and construction of foundations, based on site conditions and home design features that support manufactured housing. The Model Installation Standards also allow alternative foundation systems or designs that meet or exceed the requirements of the Model Installation Standards, provided the methods are approved by a professional engineer or a registered architect in accordance with acceptable engineering practice.

On June 20, 2008 (73 FR 35270), HUD published a final rule entitled, "Manufactured Home Installation Program," which established a federal manufactured home installation program in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Act of 2000. The installation program final rule is a companion rule to the Model Installation Standards final rule. The installation program sets out manufactured home installation requirements that are applicable in all states, requirements that are applicable in only those states in which HUD is administering the installation program, and requirements for states that choose to administer their own installation programs in lieu of the HUD program. The new elements required by the Manufactured Housing Improvement Act of 2000 to be integrated into an acceptable manufactured home installation program are the establishment of qualified installation standards, licensing and training of installers, and inspection of the installation of manufactured homes. The June 20, 2008, final rule established the HUD-administered installation program that operates in a state, unless that state certifies that it has its own qualifying program.

II. This Proposed Rule

This proposed rule would revise the existing requirements contained in 24 CFR parts 201 and 203, which pertain to eligibility of mortgages on manufactured homes for FHA insurance, by removing all requirements for site-built permanent foundations and perimeter enclosures designed in compliance with the Permanent Foundations Guide for Manufactured Housing (HUD Handbook 4930.3G). In place of the current requirements, the proposed rule would allow FHA insurance for mortgages on

manufactured homes that are installed in a manner that meets or exceeds the requirements set forth in the Model Installation Standards, which HUD has codified at 24 CFR part 3285.

This proposed rule would prevent HUD from having two different foundation standards for the installation of manufactured homes that are security for FHA-insured mortgages. The Model Installation Standards will establish the minimum acceptable standards nationwide for the installation and set up of new manufactured homes and also serve as the basis for qualifying a state's installation program under the Manufactured Home Installation Program. HUD believes that the benefits of this proposed rule significantly outweigh its costs, especially in light of the recently adopted Model Installation Standards and the Manufactured Home Installation Program.

The Model Installation Standards will protect FHA's interest in manufactured homes financed with HUD-insured loans, and the MMIF will not be exposed to any additional risk by the Department's adoption of these standards as the eligibility requirements for FHA-insured financing. In developing the Model Installation Standards, the Department was required to consider proposed standards recommended by a consensus committee. Both the consensus committee and the Department were required to consider relevant data, including research, development, and testing activities by private and government organizations, to determine how to protect the interests of the public, as well as the Department. The resulting Model Installation Standards provide greater clarity, precision, and objectivity for requirements that apply to the set-up of manufactured homes. They require that foundations for manufactured home installations be based on site conditions, home design features, and the loads the home was designed to withstand as evidenced on the home's data plate. The standards have been evaluated by HUD and have been determined to provide adequate resistance to the design loads established by the Manufactured Home Construction and Safety Standards. With these uniform, minimum standards, supported by a rigorous program of licensing and training of installers and inspections of manufactured home installations, HUD believes the result will be a more reliable set of benchmarks and that risk to the MMIF would be reduced, not increased.

Similarly, HUD believes the benefits for homebuyers will also outweigh any

increased costs they face. On June 14, 2006, HUD published estimated costs of compliance with installation program requirements for states in which HUD administers an installation program, as well as for states that choose to administer their own installation programs. (See 71 FR 34483, left column.) The cost of complying with the installation program in states that administer their own programs was estimated at \$17 per manufactured home. In states where HUD administers the installation program, the cost was estimated at \$1,126 per single-wide manufactured home and \$1,176 per double-wide manufactured home. HUD assumes that a portion of these costs would be passed on to the consumer. Nonetheless, by making manufactured homes installed in compliance with the Model Installation Standards eligible for FHA financing, HUD will provide financing alternatives for homeowners whose options might otherwise be limited to the subprime market. Homeowners will also benefit by knowing that their homes have been installed by trained, licensed installers and that installations are subject to inspection. By replacing FHA's current foundation requirements with the Model Installation Standards, HUD would promote affordable housing by reducing set-up costs. Through the same measure, HUD would provide for the quality and safety of manufactured homes by applying minimum nationwide standards and deferring to the states for establishment of additional requirements for the set-up and installation of manufactured homes by licensed installers overseen by inspectors who meet HUD qualifications.

This proposed rule would require all new and existing manufactured homes that are to be security for Title II FHA-insured mortgages and all new manufactured homes that are to be security for Title I loans to be in compliance with the Model Installation Standards. A manufactured home that is to be security for a Title I loan and that has been relocated from the original homesite upon which it had been installed and set-up must be in compliance with the Model Installation Standards. A manufactured home that has been installed or erected on a homesite in compliance with the manufacturer's requirements for anchoring, support, stability, and maintenance would be exempt from compliance with this rule, unless it is relocated from the site of its original installation after the effective date of this proposed rule.

Even with the changes proposed by this rule, in order to qualify for FHA mortgage insurance, manufactured homes in some states may have to be installed or erected in accordance with requirements beyond those in the Model Installation Standards. FHA is authorized to insure loans under Title II of the National Housing Act only if the loan is secured by "real estate." If a manufactured home installed in accordance with the Model Installation Standards would be classified and taxed as personal property under state or local law, then the installation or erection would have to meet such additional requirements as necessary for it to be classified as real property. The determination whether a manufactured home is classified and taxed as real property, and therefore eligible for insurance under Title II, may depend on the foundation and the manner of attachment of the home to the foundation.

Additionally, this proposed rule would revise the eligibility requirements for Title II manufactured homes that are located in areas designated by the Federal Emergency Management Agency (FEMA) as floodplain areas having special flood hazards. Specifically, this proposed rule would require that the elevation of the lowest floor of the manufactured home must be at or above the FEMA-designated base flood elevation and eliminate the requirement that the finished grade level beneath the manufactured home be at or above the base flood elevation. This change will align the flood hazard requirements for manufactured homes with that of stick-built homes.

HUD expects and invites comments in response to this proposed rule on the suitability of using the Model Installation Standards for FHA insurance eligibility purposes. With the Model Installation Standards having now been issued in final form (with an effective date of October 20, 2008), the public has an opportunity to submit comments in response to this proposed rule for HUD's consideration that may result in appropriate changes to the final, effective version of this rule. However, extensive comments on the technical aspects of the Model Installation Standards have already been received and were considered by HUD in the development of the final rule on Model Installation Standards, and such comments do not need to be resubmitted in response to this proposed rule. Comments submitted to HUD on the Model Installation Standards also recommended that any references by HUD in any housing

program only use the Model Installation Standards adopted under part 3285 or a state equivalent, and this proposed rule would be responsive to such comments.

III. Findings and Certifications

Executive Order 12866

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 economically significant, as provided in section 3(f)(1) of the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

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 the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal government, or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the executive order are met. 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.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) generally requires an agency to conduct 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, which are the FHA-approved lenders that are directly affected by this rule. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would remove, from its regulations governing mortgages on manufactured homes that are eligible for FHA insurance, those prescriptive foundation requirements for manufactured homes and would establish the minimum acceptable standards nationwide for the installation and set-up of manufactured homes. The removal of prescriptive requirements eases the burden on FHA-approved lenders of having to ensure that manufactured homes for which homebuyers are seeking FHA insurance for their mortgages meet standards different from the more widely used Model Installation Standards. Therefore, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment 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 the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the finding must be scheduled by calling the Regulations Divisions at (202) 708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number (CFDA) for Manufactured Home Loan Insurance is 14.110, and the CFDA for Mortgage Insurance (Homes) is 14.117.

List of Subjects

24 CFR Part 201

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

24 CFR Part 203

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

Accordingly, HUD proposes to amend 24 CFR parts 201 and 203, as follows:

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 1703 and 3535(d).

2. Revise § 201.21(c)(3), to read as follows:

§ 201.21 Manufactured home loan eligibility.

* * * * *

(c) * * *

(3) Except for an existing manufactured home that has not been relocated from the homesite upon which it was originally erected or installed, the installation or erection of a manufactured home on the homesite must meet or exceed the requirements set forth in 24 CFR part 3285, the Model Manufactured Home Installation Standards, and all applicable state and local requirements governing the installation and construction of the manufactured home foundation system. An existing manufactured home that has not been relocated from the homesite upon which it was originally erected must have been installed in compliance with the manufacturer's requirements for anchoring, support, stability, and maintenance.

* * * * *

3. Revise § 201.26(b)(4)(iii), to read as follows:

§ 201.26 Conditions for loan disbursement.

* * * * *

(b) * * *

(4) * * *

(iii) Except for an existing manufactured home that has not been relocated from the homesite upon which it was originally erected or installed, the installation or erection of a manufactured home on the homesite meets or exceeds the requirements set forth in 24 CFR part 3285, the Model Installation Standards, and all applicable state and local requirements governing the installation and construction of the manufactured home foundation system. An existing manufactured home that has not been relocated from the homesite upon which it was originally erected has been installed in compliance with the manufacturer's requirements for anchoring, support, stability, and maintenance.

* * * * *

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

2. Amend § 203.43f as follows:

- a. Remove paragraph (c)(ii);
- b. Redesignate paragraph (b) as paragraph (b)(1) and add paragraph (b)(2),
- c. Redesignate paragraph (c)(i) as paragraph (c)(1) and paragraphs (c)(iii) through (vi) as (c)(2) through (5), and
- d. Revise paragraph (a) and newly redesignated paragraphs (c)(1) and (c)(5), and paragraph (d).

The amendments read as follows:

§ 203.43f Eligibility of mortgages covering manufactured homes.

* * * * *

(a) The manufactured home, when erected on site, shall have floor space area of not less than 400 square feet and shall have been constructed in conformance with the National Manufactured Home Construction and Safety Standards, as evidenced by a certification label affixed thereto in accordance with 24 CFR 3280.8. A manufactured home that has been moved from the site upon which it was originally installed is not eligible for insurance.

(b) * * *

(2) In jurisdictions where compliance with the Model Manufactured Home Installation Standards, as set forth at 24 CFR part 3285, does not result in the classification and taxation of the manufactured home as real estate, the foundation of the home and the manner of its attachment to the foundation must be adapted in such a manner as to cause

the home to be classified and taxed as real estate, as well as meet or exceed the requirements of 24 CFR part 3285, in order for the home to be eligible for mortgage insurance.

(c) * * *

(1) The installation or erection of a manufactured home on the homesite must meet or exceed the requirements set forth in 24 CFR part 3285 and all applicable state and local requirements governing the installation and construction of the manufactured home foundation system, as determined by an inspection performed in accordance with 24 CFR part 3286. The requirement for an inspection performed in accordance with 24 CFR part 3286 does not apply to FHA-to-FHA refinancing transactions. The towing hitch or running gear, which includes axles, brakes, wheels, and other parts of the chassis that operate only during transportation, shall have been removed. The elevation of the lowest floor in structures with basements shall be at or above the Federal Emergency Management Agency (FEMA) designated base flood elevation (as defined in 44 CFR 59.1) and meet or exceed the requirements set forth in 44 CFR 60.3(a) through (e). The elevation of the lowest floor structures without basements shall be at or above the FEMA-designated base flood elevation and meet or exceed the requirements set forth in 44 CFR 60.3(a) through (e). Basements or any permanent enclosure of space below the lowest floor of a structure are prohibited for manufactured homes located in FEMA-designated "coastal high hazard areas." For purposes of this rule, the term "coastal high hazard area" has the meaning set forth in FEMA regulations at 44 CFR 59.1. The site, site improvements, and all other features of the mortgaged property not addressed by the Manufactured Home Construction and Safety Standards or the Model Installation Standards shall meet or exceed the Minimum Property Standards (see 24 CFR 200.926 through 200.926d) and applicable state and local government requirements governing the installation and construction of the manufactured home supporting foundation.

* * * * *

(5) Section 203.14 of this subpart is modified to the extent provided in this paragraph. Applications relating to insurance of mortgages under this paragraph (c) must be accompanied by an agreement in form satisfactory to the Commissioner executed by the seller or builder or such other person as the Commissioner may require agreeing that

in the event of any sale or conveyance of the dwelling within a period of one year beginning with the date of initial occupancy, the seller, builder, or such other person will at the time of such sale or conveyance deliver to the purchaser or owner of such property the manufacturer's warranty on a form prescribed by the Commissioner, which shall provide that the manufacturer's warranty is in addition to and not in derogation of all other rights and remedies the purchaser or owner may have, and a warranty in form satisfactory to the Commissioner warranting that the manufactured home, installation, and all site improvements are constructed in substantial conformity with the plans and specifications (including amendments thereof or changes and variations therein that have been approved in writing by the Commissioner) on which the Commissioner has based his valuation of the dwelling. The warranty shall also include provisions that the manufactured home sustained no hidden damage during transportation, and if the manufactured home is a

double-wide, that the sections were properly joined and sealed. Such agreement must provide that upon the sale or conveyance of the dwelling and delivery of the warranty, the seller, builder or such other person will promptly furnish the Commissioner with a conformed copy of the warranty establishing by the purchaser's receipt thereon that the original warranty has been delivered to the purchaser in accordance with this section.

(d) In the case of a manufactured home that has been permanently erected on a site for more than one year prior to the date of the application for mortgage insurance:

(1) The foundation shall meet or exceed the standards set forth in 24 CFR part 3285 and all applicable state and local government requirements.

(2) The site, site improvements, and all other features of the mortgaged property not addressed by the Manufactured Home Construction and Safety Standards or the Model Installation Standards shall meet or exceed applicable requirements of the Requirements for Existing Housing—One to Four Family Living Units (HUD

Handbook 4905.1). The elevation of the lowest floor in structures with basements as defined in FEMA regulations at 44 CFR 59.1 shall be at or above the FEMA-designated base flood elevation and meet or exceed the requirements set forth in 44 CFR 60.3(a) through (e). The elevation of the lowest floor in structures without basements shall be at or above the FEMA-designated base flood elevation and meet or exceed the requirements set forth in 44 CFR 60.3(a) through (e). Basements or any permanent enclosure of space below the lowest floor of a structure are prohibited for manufactured homes located in FEMA-designated "coastal high hazard areas."

(3) The manufactured home shall have been occupied only at the location subject to the mortgage sought to be insured.

Dated: August 14, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

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