

# Proposed Rules

Federal Register

Vol. 75, No. 218

Friday, November 12, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 200 and 207

[Docket No. FR-5393-P-01]

RIN 2502-A195

### HUD Multifamily Rental Projects: Regulatory Revisions

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend certain Federal Housing Administration (FHA) regulations to update these regulations to reflect current HUD policy in the area of multifamily rental projects. On January 21, 2010, HUD issued for public comment a comprehensive set of closing documents for use in FHA multifamily rental projects. As noted in the January 21, 2010, notice, the issuance of revised multifamily rental project closing documents for public comments is HUD's effort to restart the update of these documents that first commenced in 2004, but was not completed. In 2004, HUD also issued a companion proposed rule that identified outdated language and policies that not only needed to be changed in closing documents but also in HUD's regulations. Consistent with the restart of the updating of multifamily rental project closing documents, HUD is once again issuing a corresponding proposed rule to remove outdated regulatory language and policies. Neither the closing documents issued for comment on January 21, 2010, nor this proposed rule include changes to regulations affecting health care forms for nursing homes, intermediate care facilities, board and care homes, and assisted living facilities. HUD will propose changes to those documents separately.

Through update of the multifamily rental project closing documents and the update of certain regulations as provided in this proposed rule, HUD

strives to have its documents and regulations reflect current terminology, lending laws, and practices with respect to multifamily projects.

**DATES:** *Comment Due Date:* December 13, 2010.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW., 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 to the public. Comments submitted electronically through the [regulations.gov](http://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:** John Daly, Associate General Counsel for Insured Housing, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410-0500; telephone 202-708-1274 (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 Information Relay Service at 800-877-8339.

### SUPPLEMENTARY INFORMATION:

#### I. Background

By notice published in the **Federal Register** on January 21, 2010 (75 FR 3544), HUD started anew the process for updating the multifamily rental project closing documents (closing documents), a process that first commenced with issuance of a notice published on August 2, 2004 (69 FR 46214). The update of the closing documents commenced in 2004 and restarted in 2010 does not include update of hospital closing documents. Many of these documents, as explained in both the 2004 and 2010 notices, have not been revised in years and need updating to ensure that the documents are consistent with modern real estate and lending laws.

In addition to the closing documents, the update effort that commenced in 2004 included a proposed rule published on August 2, 2004 (69 FR 46210) that would update certain FHA regulations, which like many of the closing documents, did not reflect current real estate and lending practices. This proposed rule issued in today's **Federal Register** restarts the process to update regulations first identified in 2004 as needing revisions to be consistent with revised closing documents. The regulatory changes proposed in this rule are similar to those proposed in 2004, and arise from HUD's review of the closing documents over the last several years.

This proposed rule identifies the changes that HUD intends to make to its regulations in 24 CFR parts 200 and 207. The preamble to this proposed rule also includes a discussion of the public comments formally submitted on the August 2, 2004 proposed rule, and provides HUD's response to those comments. While HUD addresses the prior public comments received, HUD emphasizes that it is starting anew with this proposed rule process and welcomes comments on all issues.

## II. This Proposed Rule

### Part 200

The requirements for commitment and endorsement of a mortgage note are provided in 24 CFR part 200, subpart A. Generally, where specific closing documents are referenced in 24 CFR part 200, subpart A, the regulations in this subpart provide that the referenced documents be in a form prescribed by HUD. The subpart also iterates other closing requirements that are reflected in the closing documents.

*Section 200.5.* Regulatory changes to part 200, subpart A, prompted by the review and updating of the closing documents pertain to natural persons and "tenants in common" as eligible mortgagor entities. In the August 2004 rule, HUD had proposed removing tenancies in common as eligible mortgagor entities, except for tenancies in common comprised only of natural persons. In this rule, HUD proposes to amend § 200.5, which defines an eligible mortgagor under HUD's multifamily mortgage insurance programs, to reflect the removal of natural persons and the complete removal of tenants in common as eligible mortgagor entities.

*Section 200.88.* A revision of the Note is included in the update of the closing documents (HUD 94001M) published on January 21, 2010. HUD is revising the Note with respect to late charges, to provide that the late charge applies when the lender does not receive payment within 10 days after the payment is due. The change responds to comment HUD received that suggested that standardizing the time when the late fee applies would facilitate compliance by Ginnie Mae issuers with their obligation to make payments to investors. HUD is revising 24 CFR 200.88 to reflect this change.

### Part 207

*Section 207.255.* Included in the update of the closing documents is a revision of the security instrument (HUD 94000M). As part of the revision to this document, HUD developed a new

two-tiered default scheme. Class A, as proposed in 2004 and now, on the basis of public comments, named "Monetary Event of Default" is for financial defaults, which give the lender an immediate right to an insurance fund claim. Class B, as proposed in 2004 and now, on the basis of public comments, named "Covenant Event of Default" is for all other bases for default, and requires the prior written approval of HUD for the lender to make an insurance fund claim. The Covenant Event of Default category would include several new bases for default derived, in part, from the Freddie Mac model. These include fraud or material misrepresentation or omission by the borrower, its officers, directors, trustees, general partners, members, managers, or guarantors (1) in the application for the HUD-insured loan; (2) in the application for financial assistance, other than the HUD-insured loan; (3) in any financial statement, rent roll, or other report or information provided by the borrower during the term of the Indebtedness; and (4) in any request for lender's consent to any proposed action. Other new bases for default would include the commencement of a forfeiture action or proceeding, which in the lender's reasonable judgment could result in the loss of the property or impairment of the lien. HUD has revised 24 CFR 207.255 to reflect this two-tiered default scheme. As provided in 24 CFR 207.255, once a default exists under the security instrument and continues for a minimum period of 30 days, the lender would become eligible to receive mortgage insurance benefits.

In addition to reflecting the new two-tiered default system, § 207.255 would be revised to clarify that the purpose of the section is to define "default" and "date of default" for purposes of filing an insurance claim with the FHA Commissioner. Also, editorial revisions would be made to improve the readability of this section.

*Section 207.256.* Minor editorial changes would also be made to § 207.256 to improve readability and to clarify which provisions in § 207.255 would be cross-referenced in § 207.256.

*Sections 207.256a, 207.256b, and 207.257.* Minor editorial changes would be made to these sections to improve readability, and some changes have been made to correspond to changes made to the closing documents that were published in the January 21, 2010 Notice.

*Section 207.258.* HUD is also proposing to amend § 207.258, which provides insurance claim requirements, to provide, consistent with existing HUD practice and policy, that the

mortgagee request a three-month extension of the 45-day deadline prescribed by § 207.258 for a mortgage funded with the proceeds of state or local bonds, Government National Mortgage Association (Ginnie Mae) mortgage-backed securities, or other bond obligations specified by HUD, any of which contains a lock-out or penalty provision.

*Section 207.259.* HUD is proposing to amend § 207.259 by adding a new paragraph (b)(2)(vi). This proposed amendment would pertain to cases of a covenant default when the Commissioner, pursuant to § 207.257, has requested the mortgagee to accelerate payment of the outstanding principal balance due under an insured mortgage, and the mortgagee does not comply promptly with such request. In such cases, mortgage insurance benefits, if requested, will be reduced by an amount equal to the difference between the project's market value as of the date of the Commissioner's request and the project's market value on the date the mortgagee makes an election to assign the mortgage, or convey title to the project, as determined by appraisal procedures established by the Commissioner.

## III. Discussion of Public Comments on 2004 Proposed Rule

The public comment period on the August 2, 2004, proposed rule closed on October 2, 2004. HUD received 10 public comments on the proposed rule. Comments were submitted by lenders, home builders, and realty organizations. The following discussion presents the significant issues, questions, and suggestions submitted by public commenters, and HUD's response to these issues, questions and suggestions. Citations to specific sections of the closing documents in the summaries of public comment, below, refer to the versions of closing documents originally published for public comment on August 2, 2004.

### Eligible Mortgagor (24 CFR 200.5)

*Comment:* Commenters stated that tenants in common (TICs) should not be eliminated as eligible mortgagors and that the option should remain open. Commenters pointed out that at the time comments were solicited in 2004 Fannie Mae and Freddie Mac were seeing an increasing number of TICs borrowers due to a growing number of Like-Kind exchanges. They suggested that HUD require a Tenants-in-Common Agreement dealing with such issues as serial bankruptcy, dispute resolution and forced sale and partition and that failure to comply with the Agreement

would be an event of default under the Security Instrument.

**HUD response:** HUD notes the concerns raised by the commenters. Based on comments received in 2004 and subsequently on the closing documents, HUD is now proposing in the closing documents, namely the Security Instrument, that the borrower be a single asset entity. Ownership by an individual has been abandoned by the commercial lending industry, is not a sound practice and is not a current practice in the insurance programs. Both the natural person and tenants in common structure of ownership is generally inconsistent with HUD's proposed requirements that borrowers should be an entity that can qualify as a single asset mortgagor. FHA's financing requirement (non-recourse, single-asset mortgagor entity) and asset management capabilities are different from Fannie Mae and Freddie Mac.

*Late Charge (24 CFR 200.88)*

**Comment:** During the 2010 solicitation of comments on HUD's multifamily closing documents, HUD received a comment that standardizing the time when the late fee applies would facilitate compliance by Ginnie Mae issuers with their obligation to make payments to investors.

**HUD response:** HUD concurs with this comment and consequently is proposing a corresponding change to the regulations, making the late charge applicable 10 days in arrears.

*Defaults for Purposes of Insurance Claim (Two-Tiered Default) (24 CFR 207.255)*

**Comment:** A commenter stated that the regulatory language provides that if a default continues for a minimum period of 30 days, the mortgagee shall be entitled to receive the benefits of the insurance provided for the mortgage. The commenter suggested that the regulatory language be revised to make the period of default in the regulation consistent with the language in the Security Instrument to ensure that the 30-day time period in the regulations is the 30-day grace period that exists under the Security Instrument and the Note, and is not sequential to that grace period.

**HUD response:** HUD reviewed this language, but believes there is no confusion on the time period, and therefore has not made a change to the language.

**Comment:** One commenter suggested that allowing HUD to require a lender to declare a default and accelerate the Security Instrument due to a default

under the Regulatory Agreement is overly broad.

**HUD response:** HUD has, in the companion Notice published on January 21, 2010, addressed issues raised by commenters on the proposed rule. Namely, HUD concurred that the bases for Class B/Covenant Event of Defaults were overly broad, and has added a "materiality" standard to breach of the covenants under the mortgage as a criterion for Class B/Covenant Event of Defaults. HUD has added that change into the proposed regulation as well.

**Comment:** One commenter suggested that language be added to 24 CFR 207.255, to cover acceleration required by the FHA Commissioner, as that new authority is provided under 24 CFR 207.257 of the proposed regulation.

**HUD response:** HUD believes the language in the regulation is already sufficiently broad to cover this provision.

**Comment:** One commenter suggested that HUD should publish for comment specific criteria that would be used in determining whether to grant approval for an insurance claim.

**HUD response:** HUD believes the criteria is already quite specific and needs no further clarification.

*Modification of Mortgage Terms (24 CFR 207.256b)*

**Comment:** One commenter suggested that HUD add language to make it clear that if, as is common practice, the mortgage is modified and the default is simultaneously cured, technically entering default for the purposes of an insurance claim would be automatically withdrawn.

**HUD response:** HUD did not make this change. It is HUD's view that a modified mortgage would not be considered to be in default after the modification was put in place.

**Comment:** One commenter suggested that cash flow generated during a workout should be held by the mortgagor in trust for disposition, as existing regulations provide, rather than by the mortgagee.

**HUD response:** HUD recognizes the concerns raised by this commenter and has adopted a change in the regulation to allow the mortgagor or the mortgagee, as may be appropriate in the particular situation to hold the cash flow generated during a work out.

*Commissioner's Right To Require Acceleration (24 CFR 207.257)*

**Comment:** One commenter noted that there should be no mandatory acceleration.

**HUD response:** The regulation does not require mandatory acceleration, but

rather reserves to HUD the right to require the mortgagee to accelerate.

*Mortgagee Notice of Election To Assign for Insurance Benefits (24 CFR 207.258)*

**Comment:** One commenter noted that the proposed regulation unnecessarily elevates policies promulgated in Mortgage Letters and Certificates to regulatory language.

**HUD response:** HUD has included these provisions in the regulation because codification offers, among other things, an easily identifiable location for these requirements.

**Comment:** Commenters suggested that the proposed language does not specify the length of the required extension of the deadline to assign.

**HUD response:** HUD notes that it has retained current regulatory language that allows the Commissioner to extend the 30 day period during which the mortgagee may file its application for insurance for a period not to exceed 60 days.

**Comment:** A commenter stated that in situations where the mortgagee believes it would be futile to delay assignment, it may be in the best interest of HUD, the investors, and the mortgagee to assign promptly rather than seek the extension.

**HUD response:** HUD agrees with this comment, and notes that 24 CFR 207.257 provides that the Commissioner reserves the right to require the mortgagee to accelerate payment in order to protect the interests of the Commissioner upon receipt of notice of violation of a covenant. The Commissioner can exercise this discretion to take an assignment.

**Comment:** A commenter stated that if the requirement to seek an extension is made mandatory by regulation, it would be more onerous for a mortgagee to obtain a waiver in instances warranting one.

**HUD response:** HUD notes that this new language does not mandate an extension. Section 207.258 of HUD's regulations (24 CFR 207.258) allows the mortgagee to assign the mortgage or to acquire and convey title to the Commissioner. Further, it will not be more onerous for a mortgagee to obtain a waiver simply because this language is in regulatory form rather than in a mortgagee letter.

**Comment:** One commenter noted that there is no definition of "other bond obligations" here, although "other bond obligation" is defined in Mortgage Letter 87-9 Mortgage Prepayment Provisions for HUD-Insured and Coinsured Multifamily Projects (Mortgage Letter 87-9) and in Chapter 12 of the Multifamily Accelerated

Processing (MAP) Guide. At least “participation certificates,” a commonly used arrangement, should be added.

*HUD response:* HUD agrees and has added “participation certificates” and other bond obligations to the definition.

*Comment:* A commenter stated that the mortgagee community is concerned that elevating the contractual duties between HUD and mortgagees to regulatory obligations may be construed by aggressive litigants as creating third-party benefits to them.

*HUD response:* There is no change in the substance of the mortgagee’s obligations if the provisions are found in the Mortgagee Letter or in the regulation, so there are no additional third party benefits beyond the notice provided in regulatory format.

*Comment:* One commenter noted that rather than requiring the mortgagee to “assist” in obtaining refinancing, it would be more prudent for the mortgagee to be obligated to “cooperate.”

*HUD response:* HUD’s position is that “assist” is the appropriate terminology in Mortgagee Letter 87–9, and that consistency in the rule should assure that HUD will continue to interpret this provision as it has in the past.

*Comment:* One commenter noted that the parenthetical clause at the end of the introductory paragraph should be revised from “Prior to the date on which prepayments may be made with penalty” to “prior to the date on which prepayments may be made without penalty” to conform to Mortgagee Letter 87–9 and the new draft Lender’s Certificate. (Document No. HUD–92434M (Rev. XX/06))

*HUD response:* The language quoted in the comment is incorrect. Mortgagee Letter 87–9, and the Mortgagee Certificate (69 FR 46269) proposed in August 2004 both state: “Prior to the date on which prepayments may be made with a penalty of one percent or less.” HUD has also retained the “with penalty” language in Section 24(a) of the new Lender’s Certificate proposed January 21, 2010.

*Comment:* Paragraph (a)(1) of 24 CFR 207.258 should provide for an automatic 90-day extension of the deadline for filing notice of the mortgagee’s election upon request. An automatic 90-day extension will allow a servicer to stop wasting time and money to obtain an extension and provides investors some knowledge and certainty as to the status of the assignment process for the loan.

*HUD response:* HUD declined this recommendation as the mortgagee currently has the option of selecting a 30 day extension, and additional, if requested and approved, 60-day extension.

*Comment:* Paragraph (a)(5) of 24 CFR 207.258 requiring a successor to certify compliance with regulations is not necessary, since the regulations are part of the Contract of Insurance.

*HUD response:* The certification is required. There is no change in policy, and the notice provided by including this provision in the regulations improves the probability that potentially affected parties are aware of this requirement.

*Comment:* One commenter noted that paragraph (a)(6) of 24 CFR 207.258 was unclear with respect to “after completion of any refinancing.” The commenter recommended that “after commencement of amortization of the mortgage” should be used, as similar language is used with respect to “Improvements” in the Building Loan Agreement documents, and because the project could actually be refinanced with a non-HUD program.

*HUD response:* HUD has adopted the recommendation.

*Comment:* One commenter noted that paragraph (a)(6) of 24 CFR 207.258 should be changed to require the mortgagee to notify HUD if payment was not received by the 16th day after the date on which such payment is due.

*HUD response:* HUD has modified this provision to be consistent with the late charge established under 24 CFR 200.88. HUD is revising the Note (HUD 94001M) with respect to late charges, to provide that the late charge applies when the lender does not receive payment within 10 days after the payment is due. That change responds to comment HUD received that suggested that standardizing the time when the late fee applies would facilitate compliance by Ginnie Mae issuers with their obligation to make payments to investors. HUD is consequently revising 24 CFR 207.258 to be consistent with the late charge in the Note and with the proposed changes in 24 CFR 200.88 previously described.

*Comment:* One commenter noted that a clause should be added at the end of paragraph (a) of 24 CFR 207.258 to provide the mortgagee with reasonable notice of a decision not to grant an extension in order to prepare the necessary documents and to provide for denial of an extension request when such a denial is warranted.

*HUD response:* HUD is sympathetic to the concern expressed by the commenter. To address this issue, HUD proposed to add a sentence to § 207.258(b) providing that a mortgagee may consider failure to receive an extension notice within 30 days, a denial of the request for an extension. In addition, HUD has taken the

opportunity afforded by this proposed rule to reorganize § 207.258(b) by breaking down the lengthy paragraph into several shorter paragraphs. The reorganization does not affect the substance of § 207.258(b) but will clarify and improve the readability of the regulatory provision.

#### IV. Justification for Shortened Comment Period

For HUD rules issued for public comment, it is HUD’s policy to afford the public “not less than sixty days for submission of comments” (24 CFR 10.1). In cases in which HUD determines that a shorter public comment period may be appropriate, it is also HUD’s policy to provide an explanation of why the public comment period has been abbreviated.

In this case, with one exception and minor changes, HUD is resubmitting for public comment the same regulatory amendments presented in HUD’s proposed rule published on August 2, 2004 (69 FR 46210). The one regulatory amendment not proposed in 2004, was the proposed amendment to § 200.88. All other regulatory provisions presented for public comment in this rule are the same as those proposed for amendment in 2004, with minor changes, in a few places, with some of the proposed language changes. As discussed in this preamble, HUD received only 10 public comments on the proposed regulatory amendments in the 2004 proposed rule.

Given that this is the second time that HUD is issuing for comment, almost the identical amendments, HUD believes that a 30-day public comment period is sufficient.

#### V. Findings and Certifications

##### *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 mandate on any State, local, or tribal government or the private sector within the meaning of UMRA.

##### *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, Room 10276, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., 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 202-402-3055 (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.

#### *Impact on Small Entities*

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. The proposed rule is limited to making certain conforming amendments to FHA regulations that address multifamily rental projects to ensure their consistency with the recent update and revision of the documents used for multifamily rental project and health care facility closings. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

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

#### *Federalism Impact*

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.

#### *Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance number for Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Projects is 14.155.

#### **List of Subjects**

##### *24 CFR Part 200*

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

##### *24 CFR Part 207*

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons discussed in this preamble, HUD proposes to amend 24 CFR parts 200 and 207 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. 1702–1715z–21; 42 U.S.C. 3535(d).

2. Revise § 200.5 to read as follows:

##### **§ 200.5 Eligible mortgagor.**

The mortgagor shall be a single asset mortgagor entity acceptable to the Commissioner, as limited by the applicable section of the Act, and shall possess the powers necessary and incidental to operating the project. Natural persons and tenancies in common are not eligible mortgagor entities.

3. Revise § 200.88 to read as follows:

##### **§ 200.88 Late charge.**

The mortgage may provide for the collection by the mortgagee of a late charge in accordance with terms, conditions and standards of the Commissioner for each dollar of each payment to interest or principal more than 10 days in arrears to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

#### **PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE**

4. The authority citation for part 207 continues to read as follows:

**Authority:** 12 U.S.C. 1701z–11(e), 1713, and 1715b; 42 U.S.C. 3535(d).

5. Revise § 207.255 to read as follows:

##### **§ 207.255 Defaults for purposes of insurance claim.**

This section defines “default” and “date of default” for purposes of a mortgagee filing an insurance claim with the Commissioner.

(a) The following shall be considered a default under the terms of a mortgage insured under this subpart:

(1) Failure of the mortgagor to make any payment due under the mortgage (also referred to as a “Monetary Event of Default” in certain mortgage security instruments); or

(2) A material violation of any other covenant under the provisions of the mortgage, if because of such violation, the mortgagee has accelerated the debt, subject to any necessary HUD approval (also referred to as a “Covenant Event of Default” in certain mortgage security instruments).

(b) For purposes of a mortgagee filing an insurance claim with the Commissioner, the failure of the mortgagor to make any payment due under an operating loss loan or under the original mortgage shall be considered a default under both the operating loss loan and original mortgage.

(c) If a default as defined in paragraphs (a) or (b) of this section continues for a minimum period of 30 days, the mortgagee shall be entitled to receive the benefits of the insurance provided for the mortgage, subject to the procedures in this subpart.

(d) For the purposes of this section the date of default shall be:

(1) The date of the first failure to make a monthly payment that subsequent payments by the mortgagor are insufficient to cover when those subsequent payments are applied by the mortgagee to the overdue monthly payments in the order in which they became due; or

(2) The date of the first uncorrected violation of a covenant or obligation for which the mortgagee has accelerated the debt.

6. Revise § 207.256 to read as follows:

##### **§ 207.256 Notice to the Commissioner of default.**

(a) If a default as defined in § 207.255(a) or (b) is not cured within the grace period of 30 days provided under § 207.255(c), the mortgagee must,

within 30 days after the date of the end of the grace period, notify the Commissioner of the default, in the manner prescribed in 24 CFR part 200, subpart B.

(b) The mortgagee must give notice to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B, of the mortgagor's violation of any covenant, whether or not the mortgagee has accelerated the debt.

7. Revise § 207.256a to read as follows:

**§ 207.256a Reinstatement of defaulted mortgage.**

If, after default and prior to the completion of foreclosure proceedings, the mortgagor cures the default, the insurance shall continue on the mortgage as if a default had not occurred, provided the mortgagee gives notice of reinstatement to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B.

8. Revise § 207.256b to read as follows:

**§ 207.256b Modification of mortgage terms.**

(a) The mortgagor and the mortgagee may, with the approval of the Commissioner, enter into an agreement that extends the time for curing a default under the mortgage or modifies the payment terms of the mortgage.

(b) The Commissioner's approval of the type of agreement specified in paragraph (a) of this section shall not be given, unless the mortgagor agrees in writing that, during such period as payments by the mortgagor to the mortgagee are less than the amounts required under the terms of the original mortgage, the mortgagor or mortgagee, as may be appropriate in the particular situation will hold in trust for disposition, as directed by the Commissioner, all rents or other funds derived from the secured property that are not required to meet actual and necessary expenses arising in connection with the operation of such property, including amortization charges under the mortgage.

(c) The Commissioner may exempt a mortgagor from the requirement of paragraph (b) of this section in any case where the Commissioner determines that such exemption does not jeopardize the interests of the United States.

9. Revise § 207.257 to read as follows:

**§ 207.257 Commissioner's right to require acceleration.**

Upon receipt of notice of violation of a covenant, as provided for in § 207.256(b), or otherwise being apprised of the violation of a covenant,

the Commissioner reserves the right to require the mortgagee to accelerate payment of the outstanding principal balance due in order to protect the interests of the Commissioner.

10. Amend § 207.258, as follows:

a. Revise paragraph (a);

b. Redesignate paragraphs (b)(1) through (b) (5) as (b)(2) through (b)(6) respectively;

c. Redesignate the undesignated introductory paragraph of paragraph (b) as paragraph (b)(1); and

d. Revise newly designated paragraph (b)(1), to read as follows:

**§ 207.258 Insurance claim requirements.**

(a) *Alternative election by mortgagee.* When the mortgagee becomes eligible to receive mortgage insurance benefits pursuant to § 207.255(c), the mortgagee must, within 45 days after the date of eligibility, give the Commissioner notice, in the manner prescribed in 24 CFR part 200, subpart B, of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner, as provided in paragraph (b) of this section, or to acquire and convey title to the Commissioner, as provided in paragraph (c) of this section. For mortgages funded with the proceeds of State or local bonds, GNMA mortgage-backed securities, participation certificates, or other bond obligations specified by HUD (such as an agreement under which the insured mortgagee has obtained the mortgage funds from third party investors and has agreed in writing to repay such investors at a stated interest rate and in accordance with a fixed repayment schedule), any of which contains a lock-out or penalty provision, the mortgagee must, in the event of a default during the term of the prepayment lock-out or penalty (i.e., prior to the date on which prepayments may be made with a penalty):

(1) Request an extension of the deadline for filing notice of the mortgagee's intention to file an insurance claim and the mortgagee's election to assign the mortgage or acquire and convey title in accordance with the mortgage certificate;

(2) Assist the mortgagor in arranging refinancing to cure the default and avert an insurance claim, if HUD grants the requested (or a shorter) extension of notice filing deadline;

(3) Report to HUD at least monthly on any progress in arranging refinancing;

(4) Cooperate with HUD in taking reasonable steps in accordance with prudent business practices to avoid an insurance claim;

(5) Require successors or assigns to certify in writing that they agree to be

bound by these conditions for the remainder of the term of the prepayment lock-out or penalty; and

(6) After commencement of amortization of the refinanced mortgage, notify HUD of a delinquency when a payment is not received by the 10th day after the date the payment is due.

(b) *Assignment of mortgage to Commissioner.* (1) *Timeframe; request for extension.*

(i) If the mortgagee elects to assign the mortgage to the Commissioner, the mortgagee shall, at any time within 30 days after the date of notice of the election, file its application for insurance benefits and assign to the Commissioner, in such manner as the Commissioner may require, any applicable credit instrument and the realty and chattel security instruments.

(ii) The Commissioner may extend this 30-day period by written notice that a partial payment of insurance claim under § 207.258b is being considered. A mortgagee may consider failure to receive a notice of an extension approval by the end of the 30-day time period a denial of the request for an extension.

(iii) The extension shall be for such term, not to exceed 60 days, as the Commissioner prescribes; however, the Commissioner's consideration of a partial payment of claim, or the Commissioner's request that a mortgagee accept partial payment of a claim in accordance with § 207.258b, shall in no way prejudice the mortgagee's right to file its application for full insurance benefits within either the 30-day period or any extension prescribed by the Commissioner.

(iv) The requirements of paragraphs (b)(2) through (b)(6) of this section shall also be met by the mortgagee.

\* \* \* \* \*

11. In § 207.259, add a new paragraph (b)(2)(vi) to read as follows:

**§ 207.259 Insurance benefits.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vi) When there is a covenant default as defined in § 207.255(a)(2) and a mortgagee refuses to comply promptly with the Commissioner's request to accelerate payment pursuant to § 207.257, an amount equal to the difference between the project's market value as of the date of the Commissioner's request and the project's market value as of the date the mortgagee makes an election to assign the mortgage, or convey title to the project, as determined by appraisal

procedures established by the Commissioner.

\* \* \* \* \*

Dated: October 25, 2010.

**David H. Stevens,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 2010-28420 Filed 11-10-10; 8:45 am]

BILLING CODE 4210-67-P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1910

[Docket No. OSHA-2007-0072]

RIN 1218-AB80

#### Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Proposed rule; notice of informal public hearings.

**SUMMARY:** OSHA is convening an informal public hearing to receive testimony and documentary evidence on the Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems) proposed rule (29 CFR part 1910, subparts D and I), published on May 24, 2010 (73 FR 28862).

**DATES:** *Informal public hearings:* OSHA will hold an informal public hearing in Washington, DC, beginning at 9:30 a.m., January 18, 2011. If necessary, the hearing will continue on subsequent days at the same time and location.

*Notice of intention to appear to provide testimony at the informal public hearing:* Parties who intend to present testimony or question witnesses at the informal public hearing must notify OSHA in writing of their intention to do so by November 30, 2010.

*Hearing testimony and documentary evidence:* Parties requesting more than 10 minutes to present their testimony, or who will be submitting documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence to OSHA by December 21, 2010.

**ADDRESSES:** *Informal public hearing:* The hearing will be held in the auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

*Notices of intention to appear, hearing testimony, and documentary*

*evidence:* Submit notices of intention to appear, hearing testimony, and documentary evidence, identified by the docket number (OSHA-2007-0072) or the regulation identifier number (RIN 1218-AB80) using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions online for electronically submitting materials, including attachments,

- *Fax:* Send written submissions not exceeding 10 pages in length, including attachments, to the OSHA Docket Office at (202) 693-1648. Hard copies of these documents are not required. Instead of transmitting facsimile copies of attachments that supplement these documents (e.g., studies, journal articles), submit these attachments in hard copy to the OSHA Docket Office, Technical Data Center, Room N-2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. These attachments must clearly identify the sender's name, date, subject, and docket number (i.e., OSHA-2007-0072) so that OSHA can attach them to the appropriate document.

- *Regular mail, express delivery, hand delivery, and messenger and courier service:* Send materials to the OSHA Docket Office, Docket No. OSHA-2007-0072, Technical Data Center, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2350 (TTY number (877) 889-5627). Note that security-related problems may result in significant delays in receiving submissions by regular mail. Please contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, or courier service. Deliveries (express mail, hand delivery, and messenger and courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal hours of operation, 8:15 a.m. to 4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and docket number (OSHA-2007-0072). All submissions, including any personal information, are placed in the public docket without change, and will be available online at <http://www.regulations.gov>. Therefore, OSHA cautions members of the public against submitting information and statements that should remain private, including comments that contain personal information (either about themselves or others) such as Social Security numbers, birthdates, and medical information. For

additional information on submitting notices of intention to appear, hearing testimony, or documentary evidence, see the **SUPPLEMENTARY INFORMATION** section of this notice below.

*Docket:* To read or download comments and other material in the docket, go to Docket No. OSHA-2007-0072 at <http://www.regulations.gov> or to the OSHA Docket Office at the address above. While all submissions to the docket are listed in the <http://www.regulations.gov>, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. However, all submissions, including copyrighted material, are available for inspection and copying in the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions, including notices of intention to appear, the text of testimony, and documentary evidence. The hours of operation for the OSHA Docket Office are 8:15 a.m. to 4:45 p.m., e.t.

#### FOR FURTHER INFORMATION CONTACT:

*Press inquiries:* MaryAnn Garrahan, Office of Communications, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999.

*Technical inquiries and inquiries about the hearing:* Virginia Fitzner, Office of Safety Systems, Directorate of Standards and Guidance, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2052.

*Copies of this Federal Register notice:* Electronic copies of this **Federal Register** notice are available at <http://www.regulations.gov>. This notice, as well as news releases and other relevant information regarding the hearing, also are available at OSHA's Web page at <http://www.osha.gov>.

#### SUPPLEMENTARY INFORMATION:

*Background.* On May 24, 2010, OSHA published a proposed rule to update, revise, and reorganize the standards on walking-working surfaces and to add personal fall protection systems to the Personal Protective Equipment standard (73 FR 28862). OSHA invited written comments and requests for hearings on the proposed rule. The deadline for submitting comments and hearing requests was August 23, 2010. During this period, a number of commenters submitted requests for an informal public hearing (see, e.g., Ex. OSHA-2007-0072-0150.1). Accordingly, OSHA