

# Proposed Rules

Federal Register

Vol. 77, No. 9

Friday, January 13, 2012

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 Part 203

[Docket No. FR-5462-P-01]

RIN 2502-AJ02

### Federal Housing Administration (FHA) Single-Family Mortgage Insurance: Elimination of Requests for Alternative Mortgage Limits

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would eliminate the process for requesting alternative FHA maximum mortgage amounts. HUD currently sets the area-based loan limits on a yearly basis and permits appeals of these loan limits. At the time the regulations permitting appeals were promulgated, there were no comprehensive, national databases of home sales transactions. As a result, HUD relied on sales data provided by interested parties in determining loan limits for certain areas. Today, however, HUD has available comprehensive direct sales transaction data and indirect home value data at the county level. In addition, since HUD began this new information collection on price trends at a county level, the number of parties utilizing the appeals process has gone from 105 for the 2008 loan limits to zero for the 2011 loan limits. For these reasons, HUD has determined that the regulations governing requests for alternative maximum mortgage amounts are outdated and unnecessarily disrupt HUD's loan limit determination process. The elimination of this appeals process would allow HUD to release its annual loan limits one month earlier than it has for the past three calendar years. This difference would provide more certainty in the mortgage lending market.

**DATES:** *Comment Due Date:* March 13, 2012.

**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 7th 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 7th Street SW., Room 10276, Washington, DC 20410-0500.

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 <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 appointment to review the public comments must be scheduled in advance 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 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:

Arlene N. Nunes, Director, Home Mortgage Insurance Division, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9266, Washington, DC 20410-8000; telephone number (202) 708-2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

### SUPPLEMENTARY INFORMATION:

#### I. Background

Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) (NHA) limits the principal obligation of FHA-insured single-family mortgages. As amended by the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, approved July 30, 2008) (HERA), section 203(b)(2) of NHA states that an FHA maximum mortgage amount is the greater of: (1) 115 percent of the median house price for a single-family home in the "area," as determined by the Secretary of HUD, or (2) 65 percent of the national conforming limit, the dollar amount determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) (FHLMC Act) (this 65 percent multiple is referred to as the "floor").<sup>1</sup> Section 203(b)(2) of NHA, as amended by HERA, also states that in no case may area loans limits exceed 150 percent of the national conforming limit (this 150 percent multiple is referred to as the "ceiling"), unless it is a special exception area—Alaska, Hawaii, Guam, and the Virgin Islands—in which case the limit is 150 percent of the ceiling.

However, in early 2008, Congress established temporary rules for FHA loan limits in the Economic Stimulus Act of 2008 (Pub. L. 110-185, approved February 13, 2008) (ESA). ESA permits FHA to calculate loan limits based on 125 percent of the area median price (instead of the 115 percent under NHA as amended by HERA), with an upper limit ceiling based on 175 percent (instead of 150 percent permitted under NHA as amended by HERA) of the national conforming loan limit for one-

<sup>1</sup> The national conforming limit under FHLMC Act for a 1-family home is \$417,000.

family properties, equal to \$729,750. ESA, like section 203(b)(2) of the NHA, as amended by HERA, sets the “floor” for such one-family properties at 65 percent of the national conforming loan limits, equal to \$271,050. Since the enactment of ESA, both the national ceiling and the national floor have remained static, because the conforming limit has not changed from \$417,000.<sup>2</sup> For each year starting with 2009, Congress passed temporary measures that required HUD to set the loan limits at the greater of what was established under ESA and what would otherwise be calculated under NHA. The last of those expired on September 30, 2011. FHA issues a Mortgagee Letter each year setting forth the calculated limits applicable to the upcoming fiscal year, depending on the expiration of the most recent temporary measure passed by the Congress.<sup>3</sup>

In no case, however, may the individual-insured-mortgage amount exceed the appraised value of the property used as security for the mortgage. Moreover, section 203(b)(2) of the NHA specifies that, for purposes of the statutory limitation, the term “area” means a metropolitan statistical area as established by the Office of Management and Budget (OMB). The loan limits for all counties within an OMB-designated metropolitan area are based upon that county with the highest median price within the area. OMB categorizes “metropolitan areas” into Core Based Statistical Areas, Metropolitan Statistical Divisions, and Micropolitan Areas. HUD recognizes all three types in the designation of “areas.”

HUD’s regulations implementing section 203(b)(2) of NHA are codified at 24 CFR 203.18. Recognizing that there may be additional data or other information not available to HUD, the regulations at § 203.18b provide a process by which a party may submit documentation in support of an alternative mortgage limit. Paragraph (a) of § 203.18b provides that “[i]f any party believes that a mortgage limit established by the Secretary \* \* \* does not accurately reflect the median house prices in an area, the party may submit documentation in support of an alternative mortgage limit.” Paragraph (b) of § 203.18b specifies that this data

must be in the form of “a listing of actual sales prices in the area for all or nearly all” single-family properties sold in the area for a period of time that varies from one to three months, depending on sales volume. For example, paragraph (b)(1)(i) states that if the number of monthly closed sales in an area is 500 or more, the request need provide only one month’s worth of data. Paragraph (b)(1)(iii) states that if the number of monthly home sales in the area is below 250, the required data period is three months. Paragraph (c) of § 203.18b specifies the manner in which the FHA Commissioner may calculate home sales prices if the Commissioner determines that the median one-family house price does not reasonably reflect the sales prices of newly constructed homes because of an existing stock whose values is static or declining. HUD has never implemented paragraph (c) of § 203.18b.

HUD’s current regulations for loan limit appeals and determination of home sale prices were promulgated in the early 1980s. At that time, there were no comprehensive national databases of home sales transactions. As a result, HUD relied upon appeals by interested parties, primarily local boards of realtors, as part of its loan limit determination process. The appeals process started when a party provided one month of sale transaction data (or multiple months if sales were low) to their respective HUD Home Ownership Center to show that the median price for that month or months was higher than the median in use by HUD. Appeals were typically based on Multiple Listing Service (MLS) listings. MLS listings are incomplete for sales in any county, and even the National Association of Realtors (NAR) is unable to obtain data from all independent MLSs when it compiles data for its existing-home median price estimates. In addition, reliance on short-term data is problematic, because, first, the data can have seasonal variations. Second, short-term data can have aberrations as a result of its smaller sample size. For example, there could be a large number of new home sales in a given month (or three-month period) that greatly skew the local median price upward. Third, permitting continuous appeals, as in the former regime, may exacerbate housing booms, as sharply increasing housing prices continuously generate higher mortgage limits that increase the number of FHA-insured loans.

Over time, HUD adopted a secondary, end-of-year sweep of loan limits. Relying upon the Mortgage Interest Rate Survey (MIRS) performed by the Federal Housing Finance Board (FHFB), HUD

would create county-level estimates of area median prices. If the median price from this data (for a 12-month period ending in October) was higher than what was currently being used for limit determination, then the median price and limits in the HUD database would be updated. MIRS was a national survey that included around 25,000 loans but was never intended to be accurate at the county level. Data records have ZIP Code but not county identifiers. However, this was a national source of data available to HUD that could be used to limit the necessity of relying upon uncertain and irregular appeals to assure that increases in local area home prices were being reflected in updated FHA loan limits.

Starting in 2008, HUD developed a new centralized procedure for managing and updating FHA loan limits. HUD contracts with a data aggregator, CoreLogic, to compile comprehensive sales transaction information from county deed recorders for the defined look-back period (January through August) on nondistress sales of single-family residential properties (no condominiums). HUD uses those data to compute median home sale prices. Through CoreLogic, HUD has available comprehensive sale transaction data for more than 2,000 counties, representing population centers. For the remaining approximately 1,200 counties with smaller populations, which tend to have few transactions, HUD relies upon indirect data sources in determining home values. The first indirect method is to use NAR existing home sale median prices at the metropolitan area level augmented with American Community Survey (ACS) data, in order to create county-specific price estimates. The next indirect method is to use median home values from the most recent ACS indexed by Federal Housing Finance Agency (FHFA) home price indices to create median price estimates for the subject look-back period. For additional areas with very small populations and housing stock, HUD uses Decennial Census median value estimates, updated to the subject look-back period with price indices published by the FHFA.

HUD has direct price data for the counties with a high number of sale transactions. Appeals from any counties for which HUD has direct price data would be rejected, because there is no new information that could be provided in an appeal. An appeal for a county where HUD uses indirect data sources would have to meet four conditions to be considered: (1) The county is either designated as “non-metro” by OMB or, if the county is within a designated

<sup>2</sup> Pursuant to HERA, the limits will go down to the lesser of 115 percent of area median home prices or 150 percent of the national conforming limit, which would be \$625,500.

<sup>3</sup> Most recently, HUD Mortgage Letter 2010–40, issued on December 1, 2010, announced the maximum mortgage limits in effect from January 1, 2011, until September 30, 2011. Mortgage Letter 2010–40 may be downloaded from <http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/10-40ml.pdf>.

metropolitan area, it is the county with the highest median price high-cost in that area; (2) there must be a sufficient number of transactions (in practice, HUD considers ten or more transactions to be a sufficient number) in the county in question and during the defined look-back period; (3) the loan limit must be already above the national floor or would be if the appeal were valid; and (4) the loan limit must not be already at the national ceiling. Few counties could meet this four-part test. The 2010 median price across the counties for which HUD currently uses indirect sources of data is under \$85,000, and the 95th percentile is under \$175,000.

There are currently only ten counties out of 3,234 that could possibly make an appeal based upon HUD-estimated home prices being near or above the national floor and their being in non-metro areas. Four of those are in the Northern Marianas Island, and one is in Guam. The remaining counties are: a rural county in Colorado (population 800), a resort area in the Virgin Islands (St. John), two fishing village jurisdictions in Alaska, and a Northern Neck county in Virginia (Lancaster County) where the median home price fluctuates widely each quarter because of the small number of sale transactions. Over the past seven years, FHA has insured no loans in any of the four municipalities of the Northern Marianas Islands. In only one of the other six jurisdictions has FHA insured loans each year since 2005 and has insured ten or more in any year—Lancaster County, Virginia. Thus, at this time only one county could qualify for the appeals process. HUD seeks comment on whether any other counties could qualify or will soon qualify for the appeals process.

In addition, since these new procedures for establishing median prices took effect in 2008, the number of appeals received and accepted by HUD has dropped to zero. The number of requests for an alternative mortgage amount reached an all-time high for the 2005 loan limits, 203 appeals, of which 180 were accepted. For the 2008 loan limits in effect before the passage of ESA, there were 105 appeals (in 2007), of which 83 were accepted. This number dropped to nine appeals under the 2009 loan limits, of which seven were accepted. For the 2010 loan limits, only one appeal was received. That appeal was rejected, because HUD already had comprehensive sales price data for the subject county. For the 2011 loan limits, for which the open appeals period was November through December 2010, and during which

HUD's data coverage had significantly increased, no appeals were received.

## II. This Proposed Rule

This proposed rule would remove § 203.18b, "Increased mortgage amount," in its entirety. As noted, the current regulation requires an individual who is appealing the maximum mortgage amount for an area to provide documentation to support the request for the increase. Although HUD recognizes that home values have declined in many areas, the loan floor and ceiling have remained static since 2008; in some areas where the limit is between the floor and the ceiling, the limit has increased. The current appeals process is unnecessary and outdated for two reasons: (1) HUD either has complete sales transaction data (in the case of counties covered by direct price data, for which appeals would be rejected immediately); (2) the county's median home price falls below the national floor or has too few transactions to make a valid appeal based on these transactions. Related to these two reasons, the number of appeals in 2011 dropped to zero. HUD seeks comment on whether any other reasons contributed to the drop in the number of appeals.

HUD anticipates that if this rule were not changed, there would be very few, if any, successful appeals in the future. This projection would be true even if local economies improve and home prices rise. A valid appeal must provide better data than HUD already has compiled on home sale transactions or home values in a given county, and a successful appeal must actually impact the area loan limits. As discussed above, since HUD's access to county-level home sale data began in 2008, the coverage rate has improved each year and has limited the number of potentially valid appeals. Further, most areas with small populations are not eligible to file an appeal as a result of low home sale prices or low numbers of transactions. Nevertheless, in future years, if a county currently covered by HUD's indirect median price estimates has a basis for filing an appeal under the current procedures, HUD will work with sources in that county to obtain more data on home sale transactions and will move to the use of direct data for that jurisdiction. Thus, HUD concludes that the removal of this regulation would not have any impact on the calculation of area loan limits now or in the future.

## III. Findings and Certifications

### *Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). A determination was made that this proposed 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 7th 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 Regulation 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 Relay Service at (800) 877-8339.

The benefits of this rule come from providing the mortgage industry with firm loan limits as early as possible each year. The data HUD uses for loan limit determination is not available until mid-October, and the preliminary loan limits are completed in early-to-mid November. Requiring a 30-day appeals period for the sake of a possible appeal from one of the very small number of counties that could possibly make a valid appeal creates a cost in terms of delays in final limit determination for the national housing market. Mortgage lenders require certainty in order to take loan applications in the November and December time frame, and loans that may not close until the next calendar year would be subject to new loan limits. HUD strives for direct sale transaction price data from any or all of the counties for which HUD currently uses indirect sources and which meet the four-part test outlined above. HUD would welcome a relationship with entities that could provide direct data, if any deviations between HUD's indirect median price estimate and actual home prices become material for FHA insurance in such areas. Having a national appeals period that delays implementation of final loan limits across the entire nation each year is not an effective means of addressing a very small number of localized needs in the future.

The President's Executive Order (EO) 13563, entitled "Improving Regulation and Regulatory Review," was signed by the President on January 18, 2011, and

published on January 21, 2011, at 76 FR 3821. This EO requires executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” For the reasons discussed in this preamble, HUD has determined that the regulations regarding the appeals process for FHA maximum mortgage amounts are now outmoded. The appeals were once an important source of data collection for HUD, but the new comprehensive nationwide data sources have negated the need for the appeals process and the corresponding regulations. HUD therefore proposes to remove the regulations. HUD seeks comment on any of the benefits or costs of the proposed removal of the regulations.

#### *Regulatory Flexibility Act*

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 will not impose any economic burdens. As indicated in the Background section of this preamble, entities (typically local boards of realtors that gather data from local MLSs) no longer utilize this appeals process and therefore do not, and will not in the future, incur expenses as a result of this proposed rule.

Notwithstanding HUD’s determination that this rule will not have a significant effect 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 the preamble to this rule.

#### *Environmental Impact*

This 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. This rule is limited to the procedures governing the submission of requests for alternative maximum mortgage amounts under the FHA single-family programs. In addition, part of this rule changes a statutorily required and/or discretionary establishment and review of loan limits.

Accordingly, under 24 CFR 50.19(c)(1) and (c)(6), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

#### *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 would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

#### *Catalogue of Federal Domestic Assistance*

The Catalogue of Federal Domestic Assistance Number for the principal FHA single-family mortgage insurance program is 14.117.

#### **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.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 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, 1715z–1716, and 1715u; 42 U.S.C. 3535(d).

2. Remove section 203.18b.

Dated: December 28, 2011.

**Carol J. Galante,**

*Acting Assistant Secretary for Housing—  
Federal Housing Commissioner.*

[FR Doc. 2012–581 Filed 1–12–12; 8:45 am]

**BILLING CODE 4210–67–P**

## **DEPARTMENT OF THE TREASURY**

### **Alcohol and Tobacco Tax and Trade Bureau**

#### **27 CFR Part 9**

[Docket No. TTB–2011–0009; Notice No. 123A; Re: Notice No. 123]

RIN 1513–AB67

#### **Proposed Establishment of the Middleburg Virginia Viticultural Area; Comment Period Reopening**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau is reopening the comment period for Notice No. 123, Proposed Establishment of the Middleburg Virginia Viticultural Area, a notice of proposed rulemaking published in the **Federal Register** on November 8, 2011. TTB is taking this action in response to a request from a local wine industry organization.

**DATES:** Written comments on the proposed Middleburg Virginia viticultural area are now due on or before February 27, 2012.

**ADDRESSES:** You may send comments on Notice No. 123 to one of the following addresses:

- <http://www.regulations.gov>: To submit comments via the Internet, use the comment form for Notice No. 123 as posted within Docket No. TTB–2011–0009 on “Regulations.gov,” the Federal e-rulemaking portal;
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of the petitions, supporting materials, published notices, and all public comments associated with this proposal within Docket No. TTB–2011–0009 at <http://www.regulations.gov>. You also may view copies of the petitions, supporting materials, published notices, and all public comments associated with this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. Please call 202–453–2270 to make an appointment.