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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200 and 232

[Docket No. FR-5632-F-02]

RIN 2502-AJ27

Federal Housing Administration (FHA): Updating Regulations Governing HUD Fees and the Financing of the Purchase and Installation of Fire Safety Equipment in FHA-Insured Healthcare Facilities

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

ACTION: Final rule.

SUMMARY: This rule updates HUD fees for multifamily housing and residential healthcare facilities, and updates and streamlines the Section 232 program regulations that govern the financing of the purchase and installation of fire safety equipment in insured healthcare facilities, which have not been substantially updated in over 20 years. This final rule gives HUD flexibility in raising or lowering fees, and for residential healthcare facilities, streamlines the loan application process by eliminating unnecessary requirements, conforming needed requirements to current industry practices, and allowing for HUD to centralize the loan application process.

DATES: Effective Date: **[Insert date 30 days from the date of publication in the Federal Register]**.

FOR FURTHER INFORMATION CONTACT: For information about: HUD's Multifamily Housing program, contact Dan Sullivan, Deputy Director, Office of Multifamily Housing Development, Office of Housing, Department of Housing and Urban Development, 451 7th

Street, SW, Room 6148, Washington, DC 20410-8000; telephone number 202-708-1142; HUD's Healthcare program, contact Vance Morris, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 6134, Washington, DC 20410-8000; telephone number 202-402-2419. The telephone numbers listed above are not toll-free numbers. Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Relay Service at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION

I. Background—the January 14, 2015, Proposed Rule

On January 14, 2015, HUD published a proposed rule in the Federal Register, at 80 FR 1855, to update HUD fees for multifamily housing and residential healthcare facilities, and update and streamline the Section 232 program regulations that govern the financing of the purchase and installation of fire safety equipment in insured healthcare facilities. See the January 14, 2015, proposed rule for a more detailed listing of the proposed changes.

Update HUD Fees

HUD's January 14, 2015, rule proposed to amend HUD's general fee regulations in 24 CFR 200.40, which contain the fees that apply to most mortgages insured by FHA, including Section 232 mortgages. To bring consistency and conformity to HUD's regulations, the amount of the application fee for Section 232 programs would be moved to a new § 200.40(d)(2), and only cross-referenced in the Section 232 program regulations. The current § 200.40(d), setting the general application fee, would be redesignated as § 200.40(d)(1). In addition, paragraphs (d)(1) and (d)(2) would allow the Secretary flexibility in setting the respective fees, up to a maximum fee of \$5.00 per thousand dollars of the requested mortgage amount to be insured.

The rule proposed to eliminate the commitment fee in HUD's regulations at 24 CFR part 232, subpart C, and therefore also proposed to eliminate the requirement in § 232.515 that the commitment fee be refunded. The provisions allowing for refund of the application fee remained unchanged. In addition, instead of being set out in the Section 232 program regulations, the maximum fees and charges and the inspection fee in §§ 232.520 and 232.522, respectively, would cross-reference the §§ 200.40 and 200.41 regulations.

Update and Streamline 24 CFR 232, Subpart C, Regulations

HUD's January 14, 2015, rule proposed to update and streamline the requirements of HUD's regulations at 24 CFR part 232, subpart C, and primarily focused on removing or revising several fees required in these regulations that HUD has determined are no longer needed or, alternatively, are not set at sufficient levels.

Health and Human Services (HHS) requirements and involvement. The rule proposed to streamline HUD's regulations by eliminating duplicative and unnecessary involvement by HHS. For example, the rule proposed to revise the definition of "equipment cost" in § 232.500(e) to eliminate the involvement of the Secretary of HHS in estimating the reasonable cost of the fire safety equipment installation. HUD has determined that the estimate by the Secretary of HHS is an unnecessary step.

The rule proposed to remove the requirement at § 232.505(a) that an application for insurance of a fire safety loan under part 232 be considered in connection with a proposal approved by the Secretary of HHS. Section 232.615 would still require, however, that the facility requesting the loan meet HHS fire safety requirements.

In § 232.510(b), the rule proposed to replace the responsibility of the Secretary of HHS to determine the satisfactory completion of installation of fire safety equipment with that of the

Commissioner.

In § 232.570, the rule proposed to eliminate the requirement that the Secretary of HHS submit a statement that the fire safety equipment has been satisfactorily installed. The rule proposed to replace this provision with a requirement of a certification that the improvements were installed as required by § 232.500(c). As stated earlier in regard to other proposed changes, § 232.615 would still require the facility to meet HHS fire safety requirements in order for HUD to insure the loan.

The rule proposed to eliminate the requirement in § 232.620 that an application for insurance under 24 CFR part 232, subpart C, be accompanied by a statement from HHS or the HHS Secretary's designee, such as a State, that the facility will meet pertinent health and safety requirements of HHS—other than the fire safety equipment requirements—once the fire safety equipment has been installed. Instead of this requirement, the rule proposed to substitute a reference to certification of compliance with HHS, Federal, State, and local requirements for fire safety equipment to be provided prior to endorsement.

Definitions. The rule proposed to update the outdated standard in § 232.500(c)(1) which required “fire safety equipment” to meet the standards for applicable occupancy of any edition of the Life Safety Code¹ (LSC) of the National Fire Protection Association after 1966 (§ 232.500(c)(1)(i)); or a standard mandated by a State, under the provisions of section 1616(e) of the Social Security Act (§ 232.500(c)(1)(ii)); or any appropriate requirement approved by the Secretary of HHS for providers of services under title XVIII or title XIX of the Social Security Act (§ 232.500(c)(1)(iii)). For § 232.500(c)(1)(i), the rule proposed instead to require that “fire

¹ The Life Safety Code addresses those construction, protection, and occupancy features necessary to minimize danger to life from the effects of fire, including smoke, heat, and toxic gases created during a fire. The code also addresses protective features and systems, building services, operating features, maintenance activities, and other provisions in recognition of the fact that achieving an acceptable degree of life safety depends on additional safeguards to provide adequate egress time or protection for people exposed to fire.

safety equipment” meet the applicable provisions of the edition of the LSC adopted by the Secretary of HHS. For § 232.500(c)(1)(ii), HUD proposed no change. HUD proposed to remove § 232.500(c)(1)(iii), because approval by the Secretary of HHS is achieved through the change to § 232.500(c)(1)(i).

The rule also proposed to revise the definition of “eligible borrower” in § 232.615 to eliminate all references to the requirement that the facility meet HHS health and safety requirements, although the facility would still have to meet HHS fire safety requirements.

Applications. HUD proposed to remove the requirement in § 232.505(b) to submit applications to HUD’s local offices.

Method of loan payment and amortization period. Instead of being set out in the 232 program regulations, the method of loan payment and amortization period in § 232.540 would cross-reference § 200.82.

Maximum loan amount. In § 232.565, the rule proposed to revise the maximum loan amount to allow for the financing of fees, similar to the regulations governing fees in other Section 232 loan insurance programs.

Contract requirements. The rule proposed to remove the limitation in § 232.605 that contracts be either lump sum or cost plus contracts and instead proposed to allow such contracts as may be specified by the FHA Commissioner.

Certification of cost requirements. In § 232.610, the rule proposed to require that a certification of actual cost be made for all forms of contract, instead of only when a cost plus form of contract is used. Further, it proposed to eliminate the requirement that the amount of the loan be adjusted to reflect the actual cost to the borrower of the improvements.

II. This Final Rule

This final rule follows publication of the January 14, 2015, proposed rule and adopts that proposed rule without change. The public comment period for the proposed rule closed on March 16, 2015, and HUD received one public comment.

Comment: This rulemaking is the appropriate solution to an outdated and burdensome loan application process. Commenter is supportive of HUD's proposed rule to update outdated and burdensome requirements. Commenter states that updating the rules that govern the financing of the purchase and installation of fire safety equipment in insured healthcare facilities will save lives and streamlining the loan application process will reduce administrative burdens and costs.

HUD Response: HUD appreciates the commenter's support for this rule and adopts the proposed rule without change.

III. Findings and Certifications

Regulatory Review - Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs 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." Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

At the proposed rule stage, this document was determined not to be a “significant regulatory action” as defined in section 3(f) of the Executive order. Because this final rule adopts the January 14, 2015, proposed rule, without change, the final rule is also not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and approved under OMB control numbers 2502-0605 and 2502-0541. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment for this rule was made at the proposed rule stage, 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 FONSI remains applicable, and is available for public inspection between 8 a.m. and 5 p.m., weekdays, in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-5000. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI 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 Relay Service at 800-877-8339 (this is a toll-free number).

Unfunded Mandates Reform Act

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

Regulatory Flexibility Act

The Regulatory Flexibility Act (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 final rule imposes no requirements on small businesses. In fact, streamlining the Fire Safety Equipment Loan Program requirements should ease an existing burden on those small businesses seeking to accommodate acute care patients and those needing to upgrade or install fire safety equipment to meet HHS requirements.

Accordingly, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either (i) imposes substantial direct compliance costs on State and local governments and is not required by statute or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rule does not have federalism implications and does not impose substantial direct

compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance Number for the Mortgage Insurance Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities is 14.129; for Mortgage Insurance-Rental Housing is 14.134; 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, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs-health, Loan programs-housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

Accordingly, for the reasons discussed in this preamble, HUD amends 24 CFR parts 200 and 232 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. Amend § 200.40 to:

- a. Redesignate paragraph (d) as paragraph (d)(1);
- b. Revise the paragraph heading and first sentence of newly redesignated (d)(1); and
- c. Add paragraph (d)(2).

The revisions and addition read as follows:

§ 200.40 HUD fees.

* * * * *

(d)(1) Application fee—firm commitment: General. An application for firm commitment shall be accompanied by an application-commitment fee in an amount determined by the Secretary, which when added to any prior fees received in connection with the same application, shall not exceed \$5.00 per thousand dollars of the requested mortgage amount to be insured.

* * *

(2) Application fee—Section 232 Programs. For purposes of mortgages insured under HUD's regulations in 24 CFR part 232, subpart C, an application for firm commitment shall be accompanied by an application fee in an amount determined by the Secretary, which shall not exceed \$5.00 per thousand dollars of the requested mortgage amount to be insured.

* * * * *

PART 232 –MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, BOARD AND CARE HOMES, AND ASSISTED LIVING FACILITIES

3. The authority citation for 24 CFR part 232 continues to read as follows:

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

Subpart C—Eligibility Requirements—Supplemental Loans to Finance Purchase and Installation of Fire Safety Equipment

4. In § 232.500, revise paragraphs (c)(1)(i) and (ii) and (e) to read as follows:

§ 232.500 Definitions.

* * * * *

(c) * * *

(1) * * *

(i) The edition of The Life Safety Code of the National Fire Protection Association as accepted by the Department of Health and Human Services in 42 CFR 483.70; or

(ii) A standard mandated by a State under the provisions of section 1616(e) of the Social Security Act.

* * * * *

(e) Equipment cost means the reasonable cost of fire safety equipment fully installed as determined by the Commissioner.

* * * * *

5. Revise § 232.505 to read as follows:

§ 232.505 Application and application fee.

(a) Filing of application. An application for insurance of a fire safety loan for a nursing home, intermediate care facility, assisted living facility or board and care home shall be submitted on an approved HUD form by an approved lender and by the owners of the project to the HUD office.

(b) Application fee. See 24 CFR 200.40(d)(2).

6. Amend § 232.510 to:

- a. Revise paragraphs (b), (c), and (d);
- b. Remove paragraph (e); and
- c. Redesignate paragraph (f) as paragraph (e) and revise newly designated paragraph (e)

to read as follows:

§ 232.510 Commitment and commitment fee.

* * * * *

(b) Type of commitment. The commitment will provide for the insurance of the loan after satisfactory completion of installation of the fire safety equipment, as determined by the Commissioner.

(c) Term of commitment. A commitment shall have a term as the Commissioner deems necessary for satisfactory completion of installation.

(d) Commitment fee. See 24 CFR 200.40(d)(2).

(e) Increase in commitment prior to endorsement. An application, filed prior to endorsement, for an increase in the amount of an outstanding firm commitment shall be accompanied by an additional application fee. The additional application fee shall be in an amount determined by the Secretary as equal to the amount determined under 24 CFR 200.40(d)(2), which shall not exceed \$5.00 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. The additional inspection fee shall be paid prior to the date installation of fire safety equipment is begun, or, if installation has begun, it shall be paid with the application for increase.

7. Revise § 232.515 to read as follows:

§ 232.515 Refund of fees.

If the amount of the commitment issued or an increase in the loan amount prior to endorsement is less than the amount applied for, the Commissioner shall refund the excess amount of the application fee submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application fee or any portion thereof may be returned to the applicant.

8. Revise § 232.520 to read as follows:

§ 232.520 Maximum fees and charges by lender.

See 24 CFR 200.40 titled “HUD fees” and 200.41 titled “Maximum mortgage fees and charges” for maximum fees and charges applicable to mortgages insured under 24 CFR part 232.

9. Revise § 232.522 to read as follows:

§ 232.522 Inspection fee.

See 24 CFR 200.40 titled “HUD fees” and 200.41 titled “Maximum mortgage fees and charges” for maximum fees and charges applicable to mortgages insured under 24 CFR part 232.

10. Revise § 232.540 to read as follows:

§ 232.540 Method of loan payment and amortization period.

See 24 CFR 200.82 titled “Maturity” for loan payment and amortization period requirements applicable to mortgages insured under 24 CFR part 232.

11. In § 232.565, revise the first sentence to read as follows:

§ 232.565 Maximum loan amount.

The principal amount of the loan shall not exceed the lower of the Commissioner's estimate of the cost of the fire safety equipment, including the cost of installation and eligible fees, or the amount supported by ninety percent (90%) of the residual income, which is ninety percent (90%) of the amount of net income remaining after payment of all existing debt service requirements, as determined by the Commissioner. * * *

12. In § 232.570, revise paragraph (c) to read as follows:

§ 232.570 Endorsement of credit instrument.

* * * * *

(c) Certification that fire safety equipment was installed as required by § 232.500(c).

13. Revise § 232.605 to read as follows:

§ 232.605 Contract requirements.

The contract between the mortgagor and the general contractor may be in the form of a lump sum contract, a cost plus contract, or different or alternative forms of contract specified by the Commissioner.

14. In § 232.610, revise paragraph (a) to read as follows:

§ 232.610 Certification of cost requirements.

(a) Certificate and adjustment. No loan shall be insured unless a certification of actual

cost is made by the contractor.

* * * * *

15. In § 232.615, revise paragraph (a) to read as follows:

§ 232.615 Eligible borrowers.

(a) In order to be eligible as a borrower under this subpart the applicant shall be a profit or non-profit entity, which owns a nursing home or intermediate care facility for which the Secretary of Health and Human Services has determined that the installation of fire safety equipment in such facility is necessary to meet the applicable requirements of the Secretary of Health and Human Services for providers of services under Title XVIII and Title XIX of the Social Security Act and that upon completion of the installation of such equipment the nursing home or intermediate care facility will meet the applicable fire safety requirements of HHS. Until the termination of all obligations of the Commissioner under an insurance contract under this subpart and during such further period of time as the Commissioner shall be the owner, holder, or reinsurer of the loan, the borrower shall be regulated or restricted by the Commissioner as to methods of operation including requirements for maintenance of fire safety equipment.

* * * * *

16. Revise § 232.620 to read as follows:

§ 232.620 Determination of compliance with fire safety equipment requirements.

Prior to Endorsement, applicant must provide certification that the installed

improvements will meet HHS, as well as all other Federal, state and local requirements for fire safety equipment, if applicable.

Dated: August 6, 2015

Edward L. Golding, Principal Deputy
Assistant Secretary for Housing

Nani A. Coloretti, Deputy Secretary

[FR-5632-F-02]

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