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Home Equity Conversion Mortgages: Long Term Care Insurance; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 206

[Docket No. FR–4857–A–01; HUD–2004–0016]

RIN 2502–AI04

Home Equity Conversion Mortgages: Long Term Care Insurance; Advance Notice of Proposed Rulemaking

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

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This notice requests comments on issues related to the implementation of a statute that allows for the waiver of the collection of a home equity conversion mortgage (HECM) mortgagor's single up-front mortgage premium. The statute allows for the waiver provided that the HECM future payments to the homeowner are used to pay the premiums for a qualified long term care insurance contract.

DATES: *Comment Due Date:* February 1, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Interested persons may also submit comments electronically through either:

• The Federal eRulemaking Portal at: *www.regulations.gov;* or

• The HUD electronic Web site at: *www.epa.gov/feddocket*. Follow the link entitled ''View Open HUD Dockets.'' Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at *www.epa.gov/feddocket*.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Office of Single Family Housing, Department of Housing and Urban Development. Room 9278, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (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 Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 201 of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569, approved December 27, 2000) (AHEO Act) amended section 255 of the National Housing Act (12 U.S.C. 1715z–20) to add a new subsection (l) to provide for the waiver of up-front premiums for HECM mortgages used to fund long-term care insurance. Section 255 is the statutory authority for the creation of the HECM program. Under section 255, the Secretary is authorized to ''carry out a program of mortgage insurance designed to meet the special needs of elderly homeowners by reducing the effect of the economic hardship caused by the increasing costs of meeting health, housing, and subsistence needs at a time of reduced income, through the insurance of home equity conversion mortgages to permit the conversion of a portion of accumulated home equity into liquid assets.''

HUD regulations at 24 CFR part 206 govern the HECM program. Currently, a HECM mortgagor is required to pay to the mortgagee an initial or up-front mortgage insurance premium that is two percent of the maximum claim amount in addition to a monthly premium thereafter (see 24 CFR 206.105). The amendment by section 201 of the AHEO Act authorizes the Secretary to waive the two percent premium, provided that the HECM proceeds received by the mortgagor are applied to payment of the premiums for a ''qualified long-term care insurance contract that covers the mortgagor or members of the household residing in the property that is subject to the mortgage.'' The mortgagor would continue to be required to pay the monthly MIP prescribed in the regulations.

In accordance with new section 255(l)(3) of the National Housing Act, the term ''qualified long-term care insurance contract'' has the meaning given such term in section 7702B of the Internal Revenue Code of 1986 (26 U.S.C. 7702B), except that such contract also shall meet the requirements certain sections of the long-term care insurance model regulation promulgated by the National Association of Insurance Commissioners (NAIC), adopted as of September 2000. The applicable sections of the model regulation are: Section 9, Required Disclosure of Rating Practices to Consumer; Section 24, Suitability; and Section 26, Nonforfeiture Benefit Requirement. Additionally, the qualified long-term care insurance contract must meet the requirements of Section 8, Nonforfeiture Benefits of the Long-Term Care Insurance Model Act (model act) promulgated by the NAIC, adopted as of September, 2000.

The terms ''disclosure,'' ''suitability,'' and ''contingent nonforfeiture'' are technical terms addressed in the NAIC model regulation and model act, and in long-term care policies. For purposes of discussion in this notice, however, it is sufficient to describe these terms as follows:

''Disclosure'' in the model regulation pertains specifically to a long-term care policy that has the possibility of experiencing an increase in the amount of the premium rate. Thus, an insurer or agent of the long-term care insurance (LTCI) contract is required to provide a statement to an applicant indicating the possibility of a future premium rate increase, including information about any premium increases that have occurred over the past ten years.

''Suitability'' addresses the suitability of long-term care insurance for a prospective purchaser of a policy (*e.g.*, taking into account such factors as the person's age, health, assets, income, etc.). Various worksheets and disclosure forms are required to assist an applicant to understand better the nature and suitability of a LTCI policy. While the decision to purchase insurance ultimately rests with the applicant, the insurance carrier must offer guidance to the purchaser concerning suitability, as described here, before the decision is made.

The ''contingent nonforfeiture'' benefit is more readily understood by reference to the nature of a ''nonforfeiture'' benefit. Typically, an applicant will receive the option to pay an increased premium rate for ''nonforfeiture'' coverage. In exchange for what is, relatively speaking, a very expensive premium rate, the applicant can receive a substantial benefit, such as the return of all premiums paid, if the policy is surrendered after a requisite period of time. NAIC defines the nonforfeiture benefit as a policy feature that returns at least a part of the premiums to a policyholder if he or she cancels the policy or allows it to lapse. However, if an applicant chooses not to purchase the nonforfeiture option, under the NAIC model act and regulation, the contingent nonforfeiture benefit must become effective automatically. In essence, the nonforfeiture benefit recognizes the possibility of a huge and unanticipated increase in a premium schedule that could force a policyholder to surrender his or her policy. In such a case, the NAIC model Act and regulation are designed to assure that the policyholder receives some reimbursement for premiums already paid, albeit a much lesser amount than that which the policyholder would have received if he or she had purchased the nonforfeiture benefit.

Issues for Consideration

1. Who Is Covered by an LTCI Contract?

An initial question stems from language in the statutory amendment to section 255 that pertains to who can be covered by a LTCI contract. The statute refers to a LTCI contract that covers ''*the mortgagor or members of the household residing in the property that is subject to the mortgage*'' (emphasis added). This language is very broad, in that it invites the possibility of any person, irrespective of relationship to the mortgagor, being covered by the long term care policy, provided that the person is a ''member of the mortgagor's household'' and ''residing in the property subject to the mortgage.'' Accordingly, should HUD limit this eligibility requirement so that being a member of the mortgagor's household means having a particular relationship to the mortgagor (*e.g.*, a spouse or child)? For practical and programmatic reasons, HUD is inclined to limit the eligible ''member of the mortgagor's household'' to a person who is part of the mortgagor's immediate family.

A further question is, should a non-mortgagor member of the household be required to remain in the household for at least a specified minimum amount of time in order to maintain eligibility? Conversely, should the HECM loan be used to pay for long term care premiums for a non-mortgagor member of the household even after he or she has ceased to reside in the property securing the HECM loan? Additionally, should HUD regulate the amount of time that a mortgagor, or other member of the household, covered by the LTCI policy can receive care outside the home before the HECM becomes due and payable? HUD is interested in receiving comments on these and related questions before it proposes any standards.

2. What Are the Required Features or Options of an LTCI Contract?

A second issue arises from the fact that the benefits offered in long-term care policies are not standardized. Benefits offered under a policy will vary depending upon a purchaser's discretion and the amount of the premium payments that he or she is willing and able to make. For the very reason that premiums rise in accordance with enhanced benefits, HUD is reluctant to impose additional requirements upon a policyholder's choices when he or she is selecting a benefit package. Notably, the statutory requirements described above, applicable to a ''qualified long-term care insurance policy'' (*i.e.*, disclosure, suitability, and contingent nonforfeiture), help to protect the consumer but come at a cost (*i.e.*, an increased premium for the enhanced protection required). There are certain consumer protection features or options that HUD is considering requiring in a qualified LTCI policy, even though these options result in increased premiums. For example, HUD is considering including a requirement for ''comprehensive coverage,'' recognizing that a policyholder will pay a greater premium amount for this coverage (that allows for care in one's own home, a nursing home, an assisted living facility and/or an adult day-care facility) as opposed to coverage that limits care to a particular kind of facility (*i.e.*, ''facility-based'' care, such as care provided in a nursing home).

HUD is also considering requiring ''portability,'' a feature that ensures the policyholder will receive the benefits of a policy regardless of whether that (non-mortgagor) policyholder moves to another jurisdiction that has different requirements from the one in which the policy originally was issued.

Other requirements could include optional features that impose (1) a minimum benefit amount of daily dollar coverage (*e.g.*, at least one hundred dollars per day); (2) a minimum care term under the policy (*e.g.*, at least five years, as opposed to three years or some other minimum term); or (3) an inflation factor, *e.g.*, that the daily amount of benefit coverage increases annually by five (or some other) percent; or all of these requirements.

HUD is interested in public comment on what options, if any, should be required under the program, given that increased options may offer greater protections for the consumer, but also may result in increased premiums that can affect the actuarial soundness of the HECM program.

HUD is also interested in comments on the relationship between potential requirements and existing requirements under federal and state regulation of long-term care insurance. Specifically, HUD would like comments that explore if existing requirements are sufficient to protect the consumer and if imposing new requirements would limit the availability of insurance to be used under this program.

3. What Standards Should Govern an Insurer of an LTCI Contract?

A related consumer protection issue concerns the viability of the carrier that is offering long-term care insurance. How can HUD be certain that the insurer is a qualitatively sound entity? What minimum standards, if any, should HUD impose regarding the qualifications of the carrier?

HUD welcomes comments suggesting possible additional safeguards.

4. What Requirements Should Govern the Lender?

Another area of interest pertains to the responsibility of HUD and/or the mortgage lender for making sure that the LTCI policy meets the requirements in the statute (*i.e.*, provisions of the model act and model regulation promulgated by the NAIC) as well as any requirements that may be imposed by HUD. What requirements should HUD reasonably impose upon the mortgagee in this area? Should the mortgage lender be responsible for making premium payments directly to the long-term care insurer on behalf of the HECM mortgagor, given that the statutory amendment requires the entire HECM benefit be applied to the LTCI policy premium (other than amounts used to satisfy outstanding mortgage obligations ''in accordance with such limitations as the Secretary shall prescribe'' and to pay various fees described in the statutory amendment)?

5. How Should HECM Proceeds Be Addressed To Ensure Sufficient Funds Remain for LTCI?

The use of the HECM proceeds gives rise to additional questions. First, how can HUD best comply with the statutory amendment that imposes limits on the amount that can be used to retire outstanding mortgage obligations, thereby assuring that adequate funds remain available to fund long-term care insurance? Is it practical or even possible for HUD to devise a standard, by formula or otherwise, to determine an appropriate amount?

Second, once any outstanding debt and other permissible fees are paid off by the HECM proceeds, the statute requires all remaining payments be applied to the LTCI policy premiums. Thus, under this particular program, and unlike the existing HECM program, the mortgagor will not have access to any HECM proceeds for discretionary spending purposes. Will this requirement in the statutory amendment affect consumer interest in the HECM/long term care program?

6. How Should the Program Handle Defaults?

Another area of concern upon which HUD seeks comment pertains to default events and consequences. HUD proposes to make the HECM loan due and payable upon a mortgagor's voluntary termination of the LTCI policy. However, it is conceivable that a policy could lapse through no fault of the HECM mortgagor. For example, the termination of the policy may reflect an unanticipated or inappropriate action on behalf of the LTCI carrier. In such an event, HUD is considering that the HECM loan should be deemed due and payable unless, within 90 days of the date that (1) the HECM mortgagor purchases a new LTCI policy or (2) reimburses the Department an amount equal to the two-percent upfront mortgage insurance premium that was waived at the time that the HECM was issued. There is also the question of the source of the funds for the new policy if it would cost more than the undisbursed mortgage proceeds.

7. What Is the Likely Demand for This Program?

As this would be a new program, HUD is interested in comments that discuss or estimate (or both) the likely volume of potential consumer demand for these loans. HUD is also interested in comments on factors that could positively or negatively influence demand for this new product.

General Solicitation of Comments

HUD seeks comments on how the issues described in this notice should be addressed. HUD also invites commenters to raise any other areas that should be addressed in implementing a HECM LTCI policy and to provide suggestions on how these additional areas should be addressed.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this advance notice of proposed rulemaking (ANPR) under Executive Order 12866, *Regulatory Planning and Review,* issued by the President on September 30, 1993. Any changes made in this ANPR subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–5000.

Dated: November 5, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

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