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Part III

Department of Housing and Urban Development

24 CFR Part 206

**Revision of Home Equity Conversion
Mortgage Regulations; Proposed Rule**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 206

[Docket No. FR-4956-P-01; HUD-2005-0015]

RIN 2502-AI30

**Revision of Home Equity Conversion
Mortgage Regulations**

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's Home Equity Conversion Mortgage (HECM) Insurance program regulations to accommodate any state law that may prohibit the line-of-credit payment option currently available to HECM mortgagors. The amendments made by this rule would accommodate any such state law by making HECMs available within the parameters of the state law.

DATES: *Comment Due Date:* October 4, 2005.

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

- The Federal eRulemaking Portal <http://www.regulations.gov>; or
- The HUD Web site at <http://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 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 <http://www.epa.gov/feddocket>.

FOR FURTHER INFORMATION CONTACT: Margaret Burns, Acting Director, Office of Single Family Program Development, Office of the Deputy Assistant Secretary for Single Family Housing, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9172, 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 (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 255 of the National Housing Act (12 U.S.C. 1715z-20) (NHA) authorizes the Secretary to establish the Home Equity Conversion Mortgage (HECM) program. The HECM program was designed to provide persons age 62 or older an opportunity to convert home equity into monthly streams of income or lines of credit. Section 255(b)(3) of the NHA defines "home equity conversion mortgage" as a first mortgage, which provides for future payments to the homeowner based on accumulated equity and which a housing creditor is authorized to make under any state constitution, law, or regulation. The Department promulgated regulations at 24 CFR part 206 pursuant to section 255 that implemented an insurance program for HECMs.

HUD is aware that state law, e.g., Texas, may prohibit the line-of-credit payment option to HECM mortgagors. As a result of HUD's HECM program regulations at 24 CFR part 206, HUD-insured HECMs could be made only where such state law exists if HUD waived applicable regulations. This proposed rule is intended to address this problem. Specifically, this proposed rule would amend HUD's program regulation to broaden the circumstances under which HUD can insure HECMs in any state whose state law prohibits the line-of-credit payment available to HECM mortgagors.

II. This Proposed Rule

This proposed rule would amend the regulations at 24 CFR 206.17 to add a new paragraph (d). New paragraph (d) would apply where a state prohibits the use of a line-of-credit payment option as required by § 206.19(c), whether as a single option or in combination with other financing options, as provided in § 206.25(d), thus reducing the payment options available to the mortgagor. The proposed rule would allow a mortgagor residing in a state that prohibits the use of a line-of-credit reverse mortgage to change payment options between tenure and term options. The change is permissible provided that the provisions of § 206.26, relating to a change in payment options, are met except those provisions in § 206.26 with respect to line-of-credit payment options.

III. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, entitled "Regulatory Planning and Review." OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the Regulations Division, Office of General Counsel, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332 *et seq.*). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500.

Regulatory Flexibility Act

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. Rather, the rule would broaden the availability of HECMs in states where state law may limit payment options. HUD anticipates that mortgagees in states that limit the line-of-credit payment option will experience an increase in business as HUD-insured HECMs become more readily available as a result of this rule. More importantly, this rule does not place any new requirements on mortgagors as a result of this rule. Notwithstanding HUD's determination that this rule would not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

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 Order. This proposed 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 Order. This proposed rule would not preempt state law. Rather, this proposed rule would amend HUD's regulations to accommodate the restrictions and limitations on HECMs and thereby make HECMs available in such states within the parameters imposed by state law.

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 government, or on the private sector, within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.183.

List of Subjects in 24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 206 as follows:

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

1. The authority citation for part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b; 1715z–1720; and 42 U.S.C. 3535(d).

2. Amend § 206.17 by adding a new paragraph (d) to read as follows:

§ 206.17 General.

* * * * *

(d) *States where lines of credit are prohibited.* If a state, as defined in section 201 of the National Housing Act (12 U.S.C. 1707), in its constitution, statute, or other laws, prohibits the use of a line of credit payment option, as a single option or in combination with other financing options (see §§ 206.19(c) and 206.25(d)), then the mortgagor shall have only payment options in accordance with §§ 206.19(a) and (b). A mortgagor in a state that prohibits the use of a line of credit reverse mortgage may change payment options between tenure and term options provided the requirements of § 206.26 are met, except those requirements with respect to lines of credit.

Dated: July 8, 2005.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

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