DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 266

[Docket No FR–5881–F–02]

RIN 2502–AJ35

Section 542(c) Housing Finance Agency Risk Sharing Program

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

ACTION: Final rule.

SUMMARY: Through the Section 542(c) Housing Finance Agency (HFA) Risk Sharing program, HUD enters into risk-sharing agreements with qualified state and local HFAs so they can provide FHA (Federal Housing Administration) mortgage insurance and credit enhancement for new loans on multifamily affordable housing properties. This final rule amends the program's existing regulations, to better align with the policies of other HUD programs, reflect current industry and HUD practices, and conform to statutory amendments. Additionally, this rule provides HUD with greater flexibility to operate the Section 542(c) HFA Risk Sharing program more efficiently and provides HFAs which accept a greater share of the risk of loss on mortgages insured under the program with expanded program delegation. This rule also updates outdated references and terminology and clarifies other provisions.

DATES: Effective January 21, 2021.

FOR FURTHER INFORMATION CONTACT: Carmelita A. James, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 6146, Washington, DC 20410; telephone number (202)–402–2579 (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 542 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–22) (Section 542) directs HUD to carry out programs through FHA to demonstrate the effectiveness of providing new forms of Federal credit enhancement for loans on multifamily affordable housing properties which are underwritten, processed, serviced, and disposed of by HFAs. HUD and the HFAs share in the risk of loss, which enables the HFAs to provide more mortgage insurance and credit for new multifamily loans. Under the program, qualified state and local HFAs are delegated to originate and underwrite loans for new construction, substantial rehabilitation, acquisition, refinancing, and housing for the elderly. HFAs may elect to share from 10 to 90 percent of the loss on a mortgage with HUD. In the event of a claim, HFAs will reimburse HUD for their portion of the loss pursuant to their risk-sharing agreement's terms.

On March 8, 2016, HUD proposed a new rule to update the Section 542(c) HFA Risk Sharing regulations set out in 24 CFR part 266, which were last updated over fifteen years ago. Additional details about the proposed rule may be found at 81 FR 12051 (March 8, 2016).

II. This Final Rule

This final rule follows publication of the March 8, 2016 proposed rule and considers the public comments received. HUD is adopting the proposed rule as final with no substantive changes.

III. Discussion of Public Comments

HUD received eight public comments on the proposed rule from housing and finance agencies, a law firm, and other interested parties. One commenter did not discuss the proposed rule and therefore the comment will not be addressed here as it is outside the rulemaking's scope. In general, the comments received supported the rule, with no expressed opposition.

The comments largely contained requests for clarification, suggested technical changes, and provided additional recommendations. Several commenters stated the proposed rule's revisions were necessary updates that would help streamline the regulation, add flexibility, and make the program more effective. In addition, commenters stated they appreciated HUD's extensive outreach and exchanges with HFAs prior to issuing the proposed rule.

HUD appreciates the time that commenters took to provide helpful information and valuable suggestions.

A. Affordable Housing Definition

Comment: The revisions to the definition of ''affordable housing'' are helpful. Commenters supported HUD amending the proposed rule's definition of ''affordable housing.'' One commenter supported the proposed revisions because they would expand the Section 542(c) program to better support loans on projects with Federal low-income housing tax credits (LIHTC) and synchronize the risk sharing program with the LIHTC rules.

HUD Response: HUD appreciates the support but emphasizes that the revised definition of ''affordable housing'' is technical and does not expand the program's scope. As discussed in the proposed rule, the existing definition of ''affordable housing,'' as well as the definitions of ''gross rent'' and ''supportive services,'' are unnecessarily repetitive so the proposed change removes redundant verbiage and simplifies the regulatory language without substantively changing the program's scope. This rule amends the ''affordable housing'' definition to more closely conform to the statutory language in Section 542(c)(7) of the Housing and Community Development Act of 1992 and meet the requirements for a qualified low-income housing tax credit project under section 42(g) of the Internal Revenue Code.

Comment: The rule should clarify that cooperatives meet the proposed rule's definition of ''affordable housing,'' and that ''gross rent'' includes charges for the occupancy of a cooperative unit. A commenter stated that the existing Risk-Sharing regulations make it clear that loans for cooperatives with five or more units are eligible for Risk-Sharing mortgage insurance, but the rule's revision of the ''affordable housing'' definition makes that less clear. According to the commenter, the revision should incorporate all the requirements for a qualified low-income housing project that are set forth in I.R.C. Section 42(g) and not simply the gross rent rules that are required by the Section 542(c) Risk-Sharing statute.

The commenter stated further that Section 42(g) contains several LIHTC-specific concepts that may need to be disregarded when they are applied to non-LIHTC, Risk-Sharing projects. Further, Section 42(g) should not be interpreted as implying that cooperatives are not eligible for Risk Sharing. The commenter suggested clarifying the definition of affordable housing so that, for purposes of the Risk-Sharing regulations, any reference to a residential rental project in Section 42(g) includes cooperative projects.

In addition, the commenter stated that the proposed rule continues existing cooperative-related language from the current rule that is unnecessarily confusing because charges for a cooperative unit occupancy are said to be a form of utility allowance. Lastly, the commenter said it is awkward to refer to cooperative occupancy charges in such terms, which are otherwise known as ''maintenance fees,'' and the final rule should specify that gross rent,

and not just the utility allowance, is included in the charges for a cooperative unit occupancy.

HUD Response: HUD appreciates the comments on ensuring that the rule is clear that cooperative units are eligible as ''affordable housing'' for purposes of the Risk Sharing program, if they otherwise meet the Risk Sharing statute's other requirements. This rule continues to apply to cooperative housing units, and HUD does not believe any additional changes are necessary to confirm that.

B. Housing Finance Agency Requirements

Comment: Be consistent regarding rating requirements. A commenter stated the HFA qualifier with an ''overall rating of 'A' on general obligation bonds'' used in § 266.110(a) and § 266.120(e)(5) should also be used in § 266.100(a)(l). This commenter also indicated that while HFAs may qualify to participate in the program if they carry an issuer credit rating of ''A'' or better, the regulations do not provide that HFAs may qualify if they receive a rating of ''A'' or better for their general obligation bonds. In addition, the commenter said that, considering this, an ''AA'' or ''AAA'' rating would technically not be sufficient, and recommended that the rule specify in § 266.100(a)(1), § 266.110(a), and § 266.120(e)(5) that a HFA can qualify for the program if it receives a rating of ''A'' or better for its general obligation bonds.

The commenter also said it assumes that references to ''general obligation bonds'' in the rule mean bonds whose rating depends on the issuer's general ability to pay, and area proxy for an issuer rating, and are not intended to include general obligation bonds that also have pledged collateral that serves as the basis for the rating. The commenter said that the mere fact that loans are pledged does not necessarily mean they will be the basis for the bond rating, although they often are.

HUD Response: The commenter's requested language is already included in § 266.100(a)(2), which remains unchanged, and as such there is no need to change § 266.100(a)(l).

Comment: Reconsider reviewing underwriting standards, loan terms and conditions, and asset management and servicing procedures for HFAs with Level II approval every five years. A commenter suggested that reviewing Level II HFA underwriting standards every five years to align them with FHA standards is not necessary and should only apply to ''large claims made.''

HUD Response: HUD has the statutory authority to impose additional underwriting criteria, loan terms, and conditions when HUD assumes more than 50% of the risk of loss and may do so for a variety of risk management and program oversight reasons. HUD interprets the commenters reference to ''large claims made'' as intending to refer to mortgage insurance commitments issued for large loans. HUD disagrees that reviewing underwriting standards, loan terms and conditions only as they apply to large loans would be sufficient to manage risk and to protect the Risk Sharing program's safety and soundness.

Comment: Termination. One commenter objected to the proposed change allowing HUD to withdraw program approval for Level II HFAs that do not adopt new underwriting standards, loan terms and conditions, and asset management and servicing procedures that HUD may establish every five years. The comment stated that termination seems inappropriate for HFAs that are otherwise performing under the program. The commenter asked that HUD allow for a reasonable transition period and establish processes the HFAs can use to negotiate HUD's new standards and to appeal a possible termination.

HUD Response: The language in the proposed rule states that, every five years, HUD will review the underwriting standards, loan terms and conditions, and asset management and servicing procedures for HFAs with Level II approval, under which HFAs assume less than 50% of the risk of loss and that HUD may require changes to these standards and procedures as a condition of continued Level II approval. The rule does not state that HUD will necessarily establish new procedures every five years, but only that HUD will review the standards and procedures of HFAs with Level II approval every five years. Under this regulation, HUD may require changes to these standards and procedures to ensure they are updated and that they conform to HUD's standards and requirements, but the rule does not state that HUD will necessarily terminate an HFA's approval. As noted in the proposed rule's preamble, many of the standards used by HFAs with Level II approval have been in place for more than 20 years without being reviewed by HUD, and may likely be outdated.

C. Program Requirements

Comment: Clarify eligibility requirements for existing projects and projects receiving Section 8 rental subsidies or other rental subsidies. A commenter indicated that § 266.200(c)(4), (5), and (7) of the proposed rule, which describe eligibility requirements for existing projects, relate to projects with Section 8 contracts, but none of them states that explicitly, and that beginning each of these paragraphs with a phrase such as ''If the project is the subject of a Housing Assistance Payments (HAP) contract . . .'' would provide clarity. Alternatively, this commenter said that § 266.200(c)(4), (5), and (7) could be consolidated into a single subsection that addresses Section 8 assisted projects.

HUD Response: HUD agreed with the suggestions. Sections 266.200(c)(4), (5) and (7) were consolidated into a single subsection (5) for Section 8 assisted projects which begins with the phrase ''If the project is subject to a Housing Assistance Payment (HAP) contract . . . .'' This paragraph was moved to clarify the circumstances to which this applies, after the general provisions in § 266.200.

Comment: Differences between § 266.200(c)(7) and § 266.200(d). Under Section 266.200(d), for projects that receive rental subsidies, the HUD insured mortgage may not exceed an amount supported by the lower of the contract rents under the rental assistance agreement or market rents, except for Section 202 projects. Under Section 266.200(c)(7), the HUD-insured mortgage may not exceed an amount supported by the lower of the unit rents under the rental assistance agreement or unit rents at unassisted projects in the market area, except for Section 202 projects. The commenter asked why both provisions were necessary and how they differed.

HUD Response: HUD agreed with the commenter that the language in both Sections is similar, however, the difference is intentional. Section 266.200(c)(7) has requirements for existing projects which may or may not have Section 8 subsidies, whereas Section 266.200(d) has requirements exclusively for projects receiving Section 8 subsidies.

Comment: Exception for 202 projects. The exception for 202 projects in the revised § 266.200(d) seems to contradict the preamble's explanation that the amendment to this Section would result in Level I HFAs being subject to the same underwriting standards as for other Section 202 projects, in that the loans may be underwritten to contract rents. The commenter stated that the ''same underwriting standard'' refers to the program allowing Section 202 projects to obtain Risk Sharing loans which are underwritten based on contract rents, regardless of market

rents, and asked that HUD provide clarity.

HUD Response: HUD reviewed the proposed § 266.200(b)(7) and § 266.200(d) and determined that Level I participants may underwrite Section 202 projects to contract rents, regardless of market comparable.

Comment: Clarify § 266.200(c)(4). Commenters asked HUD to clarify that § 266.200(c)(4), which requires that property owners agree to renew the HAP contract for a 20-year term, applies only to Section 8 Project-Based Rental Assistance (PBRA) and not Section 8 Project-Based Vouchers (PBV). The commenters said that administering agencies are not obligated to extend PBV contracts and can let them expire, unlike PBRA. Furthermore, even if administering agencies were willing to extend PBV contracts, uncertainty regarding third-party consent requirements could deter owners from using the Section 542(c) program to preserve affordable housing. Additionally, commenters said the regulatory requirements for the term of the PBV contracts could make compliance with the requirement in this rule problematic, as the regulations impose limitations on the total, aggregate term allowed for a PBV contract. *See* 24 CFR 983.205.

Commenters also asked HUD to clarify whether the requirement for a 20-year renewal of a HAP contract is deemed satisfied for projects with an existing HAP contract if the owner commits to a future extension upon the existing HAP contract's expiration, or if it requires that the owner enter into a new 20-year HAP contract at the closing on the loan. Commenters said the former should achieve HUD's policy goals and will avoid any potential detrimental impact on a project's appraised value that could result from extending HUD's use agreement now, as would be required upon certain types of HAP contract extensions.

HUD Response: The PBV program permits 20-year contract extensions at any time during the contract term, effectively creating a 40-year contract option. Extensions are at the PHA's discretion, so a PHA could decide not to extend a PBV contract, since PBVs are not like PBRA, where owners have a general right to renewal under the Multifamily Assisted Housing Reform and Affordability Act. However, even if the administering agencies were willing to extend a PBV contract at some point during its term, HUD recognizes that uncertainty regarding third-party consent requirements could deter owners from using the Risk Sharing program to preserve the affordable housing. However, as noted above, a contract extension could be agreed to at the time of loan closing with the mortgagee's consent requested at that time. The commenter stated that the regulatory requirements for the PBV contract's term (24 CFR 983.205) could make compliance with the requirement in this rule problematic, as the regulations impose limitations on the total, aggregate term allowed for a PBV contract. Section 983.205 has been modified by the Housing Opportunity Through Modernization Act (HOTMA), with the initial and extension term language contained in the FR Implementation Notice dated 1–18–17, with further guidance provided in Notice PIH 2017–21. Eventually, HUD will codify these changes. However, HOTMA allows the agency to initially implement by FR Notice, which is what has occurred.

Comment: Residual receipts. Further, commenters asked whether the provision in the proposed rule regarding residual receipts to fund future Housing Assistance Payments in § 266.200(c)(5) only applies to so-called ''New Regulation'' HAP contracts, pursuant to HUD Notice 2012–14 and the FAQ memo of October 2, 2012, and asked that the rule be specific as to which HAP contracts it applies in order to avoid restricting distributions where the HAP contract itself has no limit.

HUD Response: Notice 2012–14 applies to contracts subject to the revised Section 8 regulations. HUD will specify the applicable HAP contracts in the final rule, in accordance with Notice 2012–14, which states: ''For projects subject to 24 CFR part 883, in effect as of February 29, 1980, the State Housing Agency, rather than HUD, is entitled to make the determination that project funds are more than the amount needed and to require that the excess be deposited into an interest-bearing account to be used for project purposes.'' *See* 24 CFR 883.306(e).

Comment: Expand the underwriting exception. Commenters requested that the rule's exception regarding underwriting to the lower of market or HAP rents be expanded. Commenters said that § 266.200(c)(7) and § 266.200(d) generally require underwriting rents to be the lower of market or Section 8 rents, but there is an exception to underwrite at higher HAP contract rents on Section 202 refinances. Commenters said there are other exceptions available for other multifamily loans insured by FHA, specifically, if the long-term HAP contract rents are above market rents and are not subject to being reset to market (for example, Mark-to-Market (M2M), Option 4, or some Option 5 Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA) projects). The FHA Multifamily Accelerated Processing (MAP) program allows rents to be underwritten to the above-market HAP contract rents for the full term of the contract. Commenters suggested that the proposed rule incorporate comparable provisions for the HFA Risk-Sharing Program.

Another commenter asked that HUD extend the flexibility provided for Section 202 projects to situations in which Risk-Sharing is used to finance loans for projects under other programs, such as M2M, Option 4 and some Option 5 LIHPRHA deals.

HUD Response: Under M2M, once a property has gone through an M2M restructuring (which sets the Section 8 rents at market), the only permitted rent increase is an annual Operating Cost Adjustment Factors increase. HUD is unable to act on the commenter's suggestion regarding Section 202 projects since that program is governed by its own statutory and regulatory structure, which is beyond the scope of the Risk Sharing regulation.

Comment: Expand the Risk-Sharing program. A commenter recommended that HUD expand project eligibility to include financing workforce housing projects where the resident could earn up to 80–100 percent of Area Median Income (AMI). This commenter said that, currently, workforce transactions where rents are above 60 percent of AMI and do not meet the minimum set-aside defined in the Handbook cannot be financed under Risk Sharing. This commenter also recommended that HUD expand the definition of senior properties for the Risk Sharing program to include renters age 55 and older in order to provide greater flexibility for HFAs and to align with current industry practices defining a senior property. Further, the commenter asked that the regulation clarify whether manufactured housing rental communities can be insured under the Section 542(c) program, assuming they meet other program requirements.

HUD Response: Expanding project eligibility to include residents earning up to 80 to 100 percent of AMI would not conform to the program's statutory requirements, under which the affordability restriction must meet the requirements of I.R.C. § 42(g). Projects restricted to renters age 55 and older are required to comply with the Fair Housing Act's exemption and HUD's Housing for Older Person regulations in 24 CFR part 100, subpart E. Manufactured housing rental

communities are eligible for Risk Sharing in accordance with 24 CFR 266.200(a)—Eligible Projects, if all other statutory and regulatory requirements of the Risk Sharing program are met.

Comment: Revise HFA environmental review requirements. A commenter said HFAs that serve as a Responsible Entity (RE) for conducting the environmental assessment for Risk-Sharing mortgages must follow 24 CFR part 58 regulations, but that HUD follows 24 CFR part 50 for mortgage insurance applications processed under the MAP program. The commenter suggested changing the Risk-Sharing regulations to allow HFAs that take at least 50 percent risk of loss to utilize 24 CFR part 50 for the environmental reviews in order to align Risk-Sharing loans with the same standards as the MAP program, which will result in more streamlined reviews and a more expedited process.

HUD Response: The National Environmental Policy Act required environmental reviews are lengthy and create an additional responsibility for already overburdened HUD field offices. To lessen this burden and to facilitate more expeditious processing of applications for mortgage insurance, HUD will continue to serve in a monitoring role for environmental reviews performed by the HFAs. Assumption of this authority is critical to giving the HFAs the maximum authority to carry out the Risk Sharing program's intent.

D. Mortgage Requirements

Comment: Provide further information about the rule's fully amortizing loan requirement and exceptions. A commenter stated that § 266.410(e) provides that the rule's fully amortizing loan requirement does not apply to Level I participants, where the loan can have a minimum 17-year term and the HFA's underwriting standards have been approved by HUD. This commenter stated that the industry standard for a LIHTC first mortgage loan is 30-year amortization with a 17-year term, and the commenter said it presumed this provision is intended to apply to properties of this type. The commenter also said the rule does not require a specific amortization period since HUD has the ultimate veto of the HFA's underwriting criteria. Another commenter suggested giving HFAs the ability to extend the maximum amortization period to 40 years for loans that will have a shorter term. This commenter also suggested the rule clarify HUD's flexibility to extend the mortgage insurance at the time a term loan balloon payment is due provided the HFA is willing to extend the loan term.

HUD Response: HUD agreed with the comment and the language was changed accordingly.

Comment: Provide specificity regarding HUD's authority to adjust the amount of mortgage insurance. Commenters said that the current § 266.417 allows HUD to modify the insured loan amount up until final endorsement but does not specify the factors that HUD would consider in doing so. Commenters said this potential reduction is separate from HUD's right to challenge the cost certification under § 266.310(d)(4) and to deny endorsement based on a finding of fraud or misrepresentation under § 266.300(e). The uncertainty regarding how HUD might exercise its discretion to adjust the amount of insurance under § 266.417 can be problematic for Low Income Tax Credit equity investors and developers. As a result, commenters said it would be helpful if the rule could be revised to limit HUD's discretion to reduce the insured loan amount to certain specific factors.

HUD Response: HUD reserves the right to mitigate the risks posed by delegation of underwriting, servicing, and processing of Risk Sharing loans to HFAs. By retaining final authority to adjust the insured mortgage amount up to and including the final endorsement, HUD is not suggesting that it will, as a matter of policy, routinely review all decisions about insured advances or cost certification.

E. Claim Procedure

Comment: Permit more time for HFAs to use initial claim payments to retire bonds. A commenter said that the proposed § 266.628(a)(3) requires that an HFA use the initial claim payment's proceeds to retire bonds within 30 days of the claim payment, but this may not be realistic in many instances and cannot always be accomplished under the controlling bond documents. Commenter suggested that the proposed rule require redemption as soon as reasonably permitted by the bond resolution or indenture, and that the claim payment be returned if not used to call bonds within 60 days instead of 30 days.

HUD Response: The 30-day requirement is in the existing regulations and the only change made in this rule is to clarify that 30 days means 30 calendar days. HUD did not believe that this requirement was problematic for HFAs when the existing regulations were issued, and HUD will not change the requirement at this time.

Comment: Revise the current regulation's termination of insurance effective date provisions. Commenters said that the current § 266.622 does not contemplate a refinancing that involves the payoff or cancellation of an existing Risk Sharing loan with the proceeds from a new Risk-Sharing (or other FHA-insured) loan. Additionally, commenters said the Form 9807 instructions, which state that voluntary insurance terminations are effective on the date that all requirements are met, seems inconsistent with § 266.620, which refers to a termination being effective at the end of the month when the requirements are met. Commenters suggested that § 266.622 provide that ''The termination shall be the last day of the month in which one of the events specified in § 266.620 occurs except in the case of a prepayment termination under § 266.620(a) or voluntary termination under § 266.620(d), which shall be effective at the time or upon the conditions requested by the HFA in the request to terminate, provided that in the event such prepayment termination or voluntary termination is in coordination with the issuance of Risk-Sharing (or other FHA) insurance on new financing for the subject project, the prepayment termination or voluntary termination shall in no event be effective later than the date of the initial disbursement of funds under such new insured loan.''

HUD Response: Section 266.620(d) states if ''[t]he HFA notifies the Commissioner of Termination of Insurance (voluntary termination);'' then § 266.622 specifies ''[t]he termination shall be the last day of the month in which one of the events specified in § 266.620 occurs.'' Voluntary termination, by submitting HUD Form 9807, must be completed before the initial endorsement of a new refinancing loan can proceed. Therefore, it is vital that the Form 9807 is submitted in a timely manner to ensure that the existing project is terminated in HUD's systems before the new project can be added. HUD agrees that the requirements of the Form 9807 are inconsistent with regulations in § 266.622. Form 9807 was primarily designed for mortgage terminations insured under the National Housing Act and does not include any instructions on Risk Sharing terminations. HUD will explore revising the Form 9807 to include instructions for terminating Risk Sharing loans. However, HFAs are instructed that when submitting terminations, Block #5 of the Form 9807 should indicate the ''official''

termination date (the last day of the month).

F. Endorsement and Approval

Comment: No requirement that large loans require the FHA Commissioner's approval. A commenter said that calling for the FHA Commissioner to review a ''large loan'' under Risk Sharing is not necessary and could delay the loan process.

HUD Response: As explained in the rule, FHA currently requires a National Loan Committee to approve all large loans under the MAP Guide for risk management purposes. Risk-sharing loans where the HFA assumes less than 50 percent of the risk of loss pose a similar risk to FHA as do MAP loans that are fully insured. The National Loan Committee large loans review requirement does not impact the time it takes to process loans. Loans are usually reviewed and completed within 1–2 days. Furthermore, this ensures that the FHA insurance fund is protected from potential losses on large loans. Therefore, this final rule maintains the revision that amends § 266.305(a) that establishes the underwriting standards for HFAs accepting less than 50 percent of the risk, to add a provision that large loans processed by these HFAs under Risk Sharing also requires the FHA Commissioner's prior approval.

Comment: Provide that HUD may accept an indemnification from the HFA in lieu of refusing to endorse a mortgage note for insurance at final endorsement due to fraud or material misrepresentation. Commenters stated that they approve of the rule's new provision in § 266.620(b) that allows HUD, in its discretion, to accept an indemnification from the HFA to avoid insurance cancellation for fraud or misrepresentation. Commenters asked that the rule be clarified or extended to specify that, for substantial rehabilitation or new construction, HUD also has the discretion to accept an indemnification from the HFA in lieu of refusing to endorse the mortgage note at final endorsement due to fraud or material misrepresentation under § 266.300(e). Commenters further said that conceptually, the issue is the same, and they believe that HUD would be covered by the indemnification.

HUD Response: The new provision in § 266.620(b) is designed to provide flexibility for HUD to accept indemnification from an HFA in lieu of terminating an existing contract of insurance for the reasons stated in the provision and applies to all Risk Sharing transactions, including for new construction and substantial rehabilitation. For clarification purposes, HUD will specify that all Risk Sharing transactions would be subject to this rule. Note that § 266.620 governs only the potential termination of mortgage insurance for the reasons stated in the provision but does not contain any provisions governing the Final Endorsement of loans for mortgage insurance. This provision gives HUD the flexibility to accept an indemnification from an HFA based on the circumstances of a transaction, but does not necessarily require that HUD do so.

G. Non-Regulatory Actions

Comment: Update the Firm Approval and the Closing Docket submission process. A commenter asked if HUD considered updates to the submission process for both Firm Approval and the Closing Docket to remove obsolete references such as utilizing a diskette, as well as an amortization schedule for loans ''Insured of Advances'' when being submitted for the initial endorsement. The commenter said that the current practice is to submit an electronic package as well as a hard copy to the local office for review. The commenter said the amortization schedule is useful when the note is modified as part of the final endorsement but not during the construction period, when loan payment is interest only.

HUD Response: HUD agreed with the commenter and will eliminate all obsolete references when the HFA Risk Sharing Handbook 4590.1 is revised. The amortization schedule at initial and final endorsement submission is used by the Department's Office of Financial Analysis and Controls Division and the Office of Insurance Operations to record the Department's collections, receivables, and payables.

Comment: Consider creating an Applicability Matrix for Risk-Sharing Loans. A commenter said an ''Applicability Matrix'' is currently used for transactions financed under the MAP LIHTC Pilot program and having a similar matrix for Risk Sharing loans will ensure consistency among HFAs as part of underwriting and loan closing due diligence involving LIHTC properties.

HUD Response: HFA Risk Sharing lenders are granted the maximum range of processing responsibilities and flexibilities. Program regulations provide for primary decision-making by participating HFAs in selecting projects to finance. An Applicability Matrix would be inconsistent with the program's basic principles, which is delegating the underwriting, including loans' terms and conditions, to the HFA.

IV. 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 order's requirements. 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.''

This final rule updates HUD's regulations pertaining to Housing Finance Agency Risk Sharing Program for Insured Affordable Multifamily Project Loans, codified in 24 CFR part 266. The program regulations were initially promulgated in 1994, with the last updates undertaken in 2000, but only to a few regulatory sections. This update is undertaken to reflect statutory changes and revise outdated references and older terminology. The rule also better aligns HUD's regulations with current industry and current HUD practices and policies. These changes would not create additional significant burdens for the public. As a result, this rule was determined not to be a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by the Office of Management and Budget.

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 regulatory amendments would update the regulations governing HUD's HFA Risk-Sharing program to conform to current industry practices and FHA policies with which HFAs and other program participants are already familiar. Other regulatory changes will provide greater flexibility for HFAs, alleviating administrative burdens and related program operating costs. While there may be some costs for HFAs to update their practices and procedures to reflect some of the regulatory changes, these costs are minimal in comparison to the streamlining benefits provided by the revised program regulations.

For the reasons presented, the undersigned certifies that this 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 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.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made prior to publication of the proposed rule 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 remains applicable and is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding 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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (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 does not impose any Federal mandates on any state, local, or tribal government, or on the private sector, within UMRA's meaning.

Information Collection Requirements

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0500. In accordance with the Paperwork Reduction Act of 1995, 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.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number for the Housing Finance Agencies Section 542(c) Risk Sharing Program is 14.188.

List of Subjects in 24 CFR Part 266

Intergovernmental relations, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD amends 24 CFR part 266 as follows:

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

■ 1. The authority citation for part 266 is revised to read as follows:

Authority: 12 U.S.C. 1715z–22.; 42 U.S.C. 3535(d).

■ 2. Amend part 266 by removing the words ''Contract of Insurance'' and add in their place the words ''contract of insurance'' wherever they occur.

■ 3. Revise § 266.1 to read as follows:

§ 266.1 Purpose and scope.

(a) *Authority and scope.* (1) Section 542 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–22), directs the Secretary of the Department of Housing and Urban Development (HUD), acting through the Federal Housing Administration (FHA), to carry out programs that will provide new forms of Federal credit enhancement for multifamily loans. Section 542, entitled, ''Multifamily Mortgage Credit Programs,'' provides insurance authority independent from that provided by the National Housing Act.

(2) Section 542(c) of the Housing and Community Development Act of 1992 specifically directs HUD to carry out a program of risk-sharing with qualified State and local housing finance agencies (HFAs). The qualified HFAs are authorized to underwrite and process loans. HUD provides full mortgage insurance on affordable multifamily housing projects processed by such HFAs under this program. Through risk-sharing agreements with HUD, HFAs contract to reimburse HUD for a portion of the loss from any defaults that occur while HUD insurance is in force.

(3) The extent to which HUD directs qualified HFAs regarding their underwriting standards, loan terms and conditions, and asset management and servicing procedures is related to the proportion of the risk taken by an HFA.

(b) *Purpose.* The primary purpose of this program is to provide credit enhancement for multifamily loans, *i.e.,* utilization of full insurance by HUD, pursuant to risk-sharing agreements with qualified housing finance agencies, for the development of affordable housing. The utilization of Federal credit enhancements increases access to capital markets and, thereby, increases the supply of affordable multifamily housing. By permitting HFAs to underwrite, process, and service loans and to manage and dispose of properties that fall into default, affordable housing is made available to eligible families and individuals in a timely manner.

■ 4. Amend § 266.5 by:

■ a. Removing '', as amended'' from the definition of ''Act'';

■ b. Revising the definition of ''Affordable housing'';

■ c. Removing from the definition of ''Commissioner'' the words ''his or her'' and adding in their place the words ''the Commissioner's'';

■ d. Revising the definition of ''Credit subsidy'';

■ e. Removing from the definition of ''Designated offices'' the words ''HUD Field Offices'' and adding in their place the words ''local HUD offices'';

■ f. Removing the definition of ''Gross rent'';

■ g. Removing from the definition of ''Multifamily housing'' the word ''Secretary'' and add in its place the word ''Commissioner''; and

■ h. Removing the definition of ''Supportive services''.

The revisions read as follows:

§ 266.5 Definitions.

* * * * *

Affordable housing means a project that meets the requirements for a qualified low-income housing project under section 42(g) of the Internal Revenue Code of 1986 (26 U.S.C. 42(g)). For purposes of this part, the reference to a utility allowance in 26 U.S.C. 42(g) includes charges for the occupancy of a cooperative unit.

* * * * *

Credit subsidy means the cost of a direct loan or loan guarantee under the

Federal Credit Reform Act of 1990 (subtitle B of title XIII of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, approved Nov. 5, 1990).

* * * * *

§ 266.10 [Removed]

■ 5. Remove § 266.10.

■ 6. Revise § 266.30 to read as follows:

§ 266.30 Nonapplicability of 24 CFR part 246.

The regulations at 24 CFR part 246, pertaining to local rent control, do not apply to projects that are security for mortgages insured under this part.

■ 7. Amend § 266.100 by:

■ a. Revising the first sentence of paragraph (a) introductory text;

■ b. Revising paragraphs (a)(1), (a)(6)(i), (b)(1), (b)(2) introductory text, and (b)(3); and

■ c. Adding paragraph (b)(4).

The revisions and addition read as follows:

§ 266.100 Qualified housing finance agency (HFA).

(a) *Qualifications.* To participate in the program, an HFA must apply and be specifically approved for the program described in this part, in addition to being approved as a mortgagee under § 202.10 of this part. * * *

(1) Carry an issuer credit rating of ''A'' or better, or an equivalent as evaluated by Standard and Poor's or any other nationally recognized rating agency; or

* * * * *

(6) * * *

(i) The Department of Justice has not brought a civil rights suit against the HFA, and no suit is pending;

* * * * *

(b) * * *

(1) Level I approval to originate, service, and dispose of multifamily mortgages where the HFA uses its own underwriting standards, loan terms and conditions, and asset management and servicing procedures, and assumes 50 to 90 percent of the risk of loss (in 10 percent increments).

(2) Level II approval to originate, service, and dispose of multifamily mortgages where the HFA uses underwriting standards, loan terms and conditions, and asset management and servicing procedures approved by HUD, and:

* * * * *

(3) For HFAs who plan to use Level I and Level II processing, the underwriting standards, loan terms and conditions, and asset management and servicing procedures to be used on Level II loans must be approved by HUD.

(4) Every five years, HUD will review the underwriting standards, loan terms and conditions, and asset management and servicing procedures for HFAs with Level II approval. HUD may require changes to these procedures as a condition for continued Level II approval.

■ 8. Amend § 266.105 by revising paragraph (b) to read as follows:

§ 266.105 Application requirements.

* * * * *

(b) *Applications for participation in program.* Applications from HFAs for approval to participate in the program under this part may be submitted at any time, and must be submitted in the form and manner established by HUD.

■ 9. Amend § 266.110 by revising the paragraph (a) subject heading, the first sentence of paragraph (a), and the third sentence of paragraph (b)(1) introductory text to read as follows:

§ 266.110 Reserve requirements.

(a) *HFAs with an issuer credit rating of ''A'' or better or overall rating of ''A'' or better on general obligation bonds.* An HFA with an issuer credit rating of ''A'' or better, or an equivalent designation, or an HFA with an overall rating of ''A'' or better on its general obligation bonds, is not required to have additional reserves so long as the HFA maintains that designation or rating, unless the Commissioner determines that a prescribed level of reserves is necessary. * * *

(b) * * *

(1) * * * The account must be established prior to the execution of any risk-sharing agreement under this part in an initial amount of not less than $500,000. * * *

* * * * *

§ 266.115 [Amended]

■ 10. Amend § 266.115 by removing the words ''his or her'' from the first sentence in paragraph (a) and from paragraph (c).

■ 11. Amend § 266.120 by revising paragraphs (d) and (e)(5) to read as follows:

§ 266.120 Actions for which sanctions may be imposed.

* * * * *

(d) Actions or conduct for which sanctions may be imposed against the HFA by HUD's Mortgagee Review Board under 24 CFR 25.9, which pertains to ''notice of administrative action''.

(e) * * *

(5) Maintain an issuer credit rating of ''A'' or better, or an equivalent designation, or overall rating of ''A'' on general obligation bonds (or if such rating is lost, comply with paragraph (e)(6) of this section);

* * * * *

■ 12. Amend § 266.125 by revising paragraph (a)(6), adding paragraph (a)(8), and revising the first sentence of paragraph (d)(1) to read as follows:

§ 266.125 Scope and nature of sanctions.

(a) * * *

(6) Recommend to the Commissioner that the HFA's mortgagee approval be withdrawn pursuant to 24 CFR part 25 (regulations of the Mortgagee Review Board) and/or that penalties be imposed pursuant to 24 CFR part 30 (regulations pertaining to Civil Money Penalties; Certain Prohibited Contact);

* * * * *

(8) Require the HFA to revise any or all of its underwriting, processing, asset management, or servicing policies and procedures as directed by the Commissioner.

* * * * *

(d) * * *

(1) Any sanction imposed by a designated office in writing will be immediately effective, will state the grounds for the action, and provide for the HFA's right to an informal hearing before the designated office representative or designee in the designated office. * * *

* * * * *

■ 13. Amend § 266.200 by:

■ a. Revising paragraphs (b)(2), (c), (d), (e), and (g);

■ b. Redesignating paragraph (h) as paragraph (i); and

■ c. Adding new paragraph (h).

The revisions and addition read as follows:

§ 266.200 Eligible projects.

* * * * *

(b) * * *

(2) *Substantial rehabilitation* occurs when the scope of work to improve an existing project exceeds in aggregate cost a sum equal to the base per dwelling unit limit times the applicable high cost factor established by the Commissioner, or when the scope of work involves the replacement of two or more building systems. *Replacement* is when the cost of replacement work exceeds 50% of the cost of replacing the entire system. The base per dwelling unit limit is $15,933 for 2019, and will be adjusted annually based on the percentage change in the consumer price index.

(c) *Existing projects.* Financing of existing properties for acquisition or refinancing without substantial rehabilitation is allowed.

(1) If the financing will result in the preservation of affordable housing,

where the property will be maintained as affordable housing for a period of at least 20 years, regardless of whether the loan is prepaid; and

(2) Project occupancy is not less than 93 percent (to include consideration of rent in arrears), based on the average occupancy in the project over the most recent 12 months; and

(3) The loan to be refinanced has not been in default within the 12 months prior to the date of the application for refinancing; and

(4) A capital needs assessment is performed, and funds escrowed for all necessary repairs and replacement reserves funded for future capital repairs; and

(5) If the project is subject to a Housing Assistance Payment (HAP) contract, and is not a project financed under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) by a Level I participant, then:

(i) The owner of the property agrees to renew the HAP contract for a 20-year term;

(ii) Existing and post-refinance HAP residual receipts are set aside to be used to reduce future HAP payments; and

(iii) The HUD-insured mortgage does not exceed an amount supportable by the lower of the unit rents being collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market area that are similar in amenities and location to the project for which insurance is being requested; and

(6) For Level II participants only, the HUD-insured mortgage may not exceed the sum of the existing indebtedness, cost of refinancing, or acquisition, the cost of repairs and reasonable transaction costs as determined by the Commissioner. (This paragraph does not apply to Level I participants.)

(d) *Projects receiving section 8 rental subsidies or other rental subsidies.* Projects receiving project-based housing assistance payments under section 8 of the U.S. Housing Act of 1937 (42 U.S.C.1437f) or other rental subsidies and meeting the requirements of this part may be insured under this part only if the mortgage does not exceed an amount supportable by the lower of the unit rents being or to be collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market that are similar in amenities and location to the project for which insurance is being requested. This paragraph does not apply to projects of Level I participants if those projects are financed under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q).

(e) *SRO projects.* Single room occupancy (SRO) projects, as defined in § 266.5, are eligible for insurance under this part. Units in SRO projects must be subject to 30-calendar day or longer leases; however, rent payments may be made on a weekly basis in SRO projects.

* * * * *

(g) *Elderly projects.* Projects or parts of projects specifically designed for the use and occupancy by elderly families. An elderly family means any household where the head or spouse is 62 years of age or older, including children under 18, and also any single person who is 62 years of age or older.

(h) *Housing for older persons.* Projects eligible for and in compliance with 42 U.S.C. 3607(b) and 24 CFR part 100, subpart E.

* * * * *

§ 266.205 [Amended]

■ 14. Amend § 266.205 in paragraph (a)(1) by adding the word ''calendar'' after the number ''30'' and in paragraph (b)(2) by adding the letters ''U.S.'' before the term ''Department of Defense''.

■ 15. Amend § 266.210 by:

■ a. Removing paragraph (b);

■ b. Redesignating paragraphs (c), (d) and (e) as paragraphs (b), (c) and (d), respectively; and

■ c. Revising newly redesignated paragraphs (c) and (d).

The revisions read as follows:

§ 266.210 HUD-retained review functions.

* * * * *

(c) *Subsidy layering.* The Commissioner, or Housing Credit Agencies as defined by section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42), through such delegation as may be in effect by regulation hereafter, shall review all projects receiving tax credits and some form of HUD assistance for any excess subsidy provided to individual projects and reduce subsidy sources in accordance with outstanding guidelines.

(d) *Davis-Bacon Act.* The Commissioner shall obtain and provide to the HFA the appropriate U.S. Department of Labor wage rate determinations under the Davis-Bacon Act, where they apply under this part.

■ 16. Amend § 266.215 by revising paragraph (e) to read as follows:

§ 266.215 Functions delegated by HUD to HFAs.

* * * * *

(e) *Lead-based paint.* The HFA will perform functions related to Lead-based paint requirements as set forth in 24 CFR part 35, subparts A, B, G, and R.

■ 17. Add § 266.217 to read as follows:

§ 266.217 Environmental review requirements.

The responsible entity, as defined in 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities), assumes legal responsibility for compliance with the requirements of the National Environmental Policy Act of 1969 and related laws and authorities. The responsible entity will visit each project site proposed for insurance under this part and prepare the applicable environmental reviews as set forth in 24 CFR part 58. HUD may make a finding in accordance with 24 CFR 58.11, Legal Capacity and Performance, and may perform the environmental review itself under 24 CFR part 50 (Protection and Enhancement of Environmental Quality). In all cases the environmental review must be completed before HUD may issue the firm approval letter.

■ 18. Revise § 266.220 to read as follows:

§ 266.220 Nondiscrimination in housing and employment.

The mortgagor must certify to the HFA that, so long as the mortgage is insured under this part, the mortgagor will:

(a) Not use tenant selection procedures that discriminate against families with children, except in the case of a project qualifying for and complying with the requirements of the ''housing for older persons'' exemption, as defined in section 807(b)(2) of the Fair Housing Act (42 U.S.C. 3607(b)) and further described in 24 CFR part 100, subpart E. Projects receiving Federal financial assistance in which elderly families include minor children may not avail themselves of the housing for older persons exemption;

(b) Determine eligibility for admission and continued occupancy without regard to actual or perceived sexual orientation, gender identity, or marital status and refrain from inquiries about sexual orientation and gender identity in accordance with 24 CFR 5.105(a)(2);

(c)(1) Comply with:

(i) The Fair Housing Act (42 U.S.C. 3601 through 3619), as implemented by 24 CFR part 100;

(ii) Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 through 12213), as implemented by 28 CFR part 35;

(iii) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135;

(iv) The Equal Credit Opportunity Act (15 U.S.C. 1691–1691f), as implemented by 12 CFR part 202;

(v) Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1958–1963 Comp., p. 652 and 3 CFR 1980 Comp., p. 307), and implemented by 24 CFR part 107;

(vi) Executive Order 11246 (3 CFR 1964–1965 Comp., p. 339), as implemented by 41 CFR part 60; and

(vii) Other applicable Federal laws and regulations issued pursuant to these authorities; and applicable State and local fair housing and equal opportunity laws.

(2) In addition to the authorities listed in paragraph (c)(1) of this section, a mortgagor that receives Federal financial assistance must also certify to the HFA that, so long as the mortgage is insured under this part, it will comply with:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), as implemented by 24 CFR part 1;

(ii) The Age Discrimination Act of 1975 (42 U.S.C. 6101 through 6107), as implemented by 24 CFR part 146; and

(iii) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by 24 CFR part 8.

■ 19. Amend § 266.225 by revising paragraphs (a)(1) introductory text, (a)(1)(i), (b), (c), (d)(1), and the second sentence of paragraph (e) to read as follows:

§ 266.225 Labor standards.

(a) * * *

(1) All laborers and mechanics employed by contractors or subcontractors on a project insured under this part shall be paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed in construction of a similar character, as determined by the Secretary of the U.S. Department of Labor (Secretary of Labor) in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 3141 *et seq.*), where the project meets all of the following conditions:

(i) Advances for construction of the project are insured under this part;

* * * * *

(b) *Volunteers.* The provisions of this section shall not apply to volunteers under the conditions set out in 24 CFR part 70 (Use of Volunteers on Projects Subject to Davis-Bacon and HUD-Determined Wage Rates). In applying 24 CFR part 70, insurance under this part shall be treated as a program for which there is a statutory exemption for volunteers.

(c) *Labor standards.* Any contract, subcontract, or building loan agreement executed for a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall comply with all labor standards and provisions of the U.S. Department of Labor regulations in 29 CFR parts 1, 3, and 5 that would be applicable to a mortgage insurance program to which Davis-Bacon wage rates are made applicable by statute, provided, that regulatory provisions relating to investigations and enforcement by the U.S. Department of Labor shall not be applicable, and enforcement of Davis-Bacon labor standards shall be the responsibility of the Commissioner in accordance with paragraph (e) of this section.

(d) * * *

(1) No advance under a mortgage on a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall be eligible for insurance under this part unless the HFA determines (in accordance with the Commissioner's administrative procedures) that the general contractor or any subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest was not, on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General of the United States, pursuant to 29 CFR 5.12, issued by the Secretary of Labor.

* * * * *

(e) * * * Where routine administration and enforcement functions are delegated to the HFA, the HFA shall bear financial responsibility for any deficiency in payment of prevailing wages or, where applicable under 29 CFR part 1 (Procedures for Predetermination of Wage Rates), any increase in compensation to a contractor, that is attributable to any failure properly to carry out its delegated functions. * * *

■ 20. Amend § 266.300 by:

■ a. Revising paragraph (b)(1);

■ b. Redesignating paragraphs (b)(3), (4), and (5) as paragraphs (b)(4), (5), and (6), respectively;

■ c. Adding new paragraph (b)(3);

■ d. Revising newly redesignated paragraph (b)(5); and

■ e. Revising paragraph (c).

The revisions and addition read as follows:

§ 266.300 HFAs accepting 50 percent or more of risk.

* * * * *

(b) * * *

(1) Determine that a market for the project exists, taking into consideration any comments from the local HUD office relative to the potential adverse impact the project will have on existing or proposed Federally insured and assisted projects in the area.

* * * * *

(3) Arrange for the performance of an environmental review in accordance with § 266.217;

* * * * *

(5) Approve the Affirmative Fair Housing Marketing Plan, required by § 266.215(a); and

* * * * *

(c) *HUD-retained reviews.* After positive completion of the HUD-retained reviews specified in § 266.210(a) and (b) the local HUD office will issue a firm approval letter.

* * * * *

■ 21. Amend § 266.305 by:

■ a. Revising paragraphs (a) and (b)(1);

■ b. Redesignating paragraphs (b)(3), (4), and (5) as paragraphs (b)(4), (5), and (6), respectively;

■ c. Adding new paragraph (b)(3);

■ d. Revising newly redesignated paragraph (b)(5), and

■ e. Revising paragraph (c).

The revisions and additions read as follows:

§ 266.305 HFAs accepting less than 50 percent of risk.

(a) *Underwriting standards.* The underwriting standards and loan terms and conditions of any HFA electing to take less than 50 percent of the risk on certain projects are subject to review, modification, and approval by HUD in accordance with § 266.100(b). These HFAs may assume 25 percent or 10 percent of the risk depending upon the loan-to-replacement-cost or loan-to-value ratios of the projects to be insured as specified in § 266.100(b)(2)(i) and (ii). Large loans, as defined by HUD for its insured multifamily mortgage programs, require prior approval by the Commissioner.

(b) * * *

(1) Determine that a market for the project exists, taking into consideration any comments from the local HUD office relative to the potential adverse impact the project will have on existing or proposed Federally insured and assisted projects in the area;

* * * * *

(3) Arrange for the performance of an environmental review in accordance with § 266.217;

* * * * *

(5) Approve the Affirmative Fair Housing Marketing Plan, required by § 266.215(a); and

* * * * *

(c) *HUD-retained reviews.* After positive completion of the HUD-retained reviews specified in

§ 266.210(a) and (b), the local HUD office will issue a firm approval letter.

* * * * *

■ 22. Amend § 266.410 by revising paragraph (e) to read as follows:

§ 266.410 Mortgage provisions.

* * * * *

(e) *Amortization.* The mortgage must provide for complete amortization (*i.e.,* be regularly amortizing) over the term of the mortgage. The complete amortization requirement does not apply to:

(1) Construction loans, or

(2) Level I participants where the loan has a minimum term of 17 years that would amortize over a maximum period of 40 years and the HFA's underwriting standards, loan terms and conditions, and asset management and servicing procedures have been approved by HUD.

* * * * *

■ 23. Amend § 266.420 by revising the second sentence of paragraph (a) and paragraphs (b)(3), (4), and (7) and adding paragraph (b)(13) to read as follows:

§ 266.420 Closing and endorsement by the Commissioner.

(a) * * * The note must provide that the mortgage is insured under section 542(c) of the Housing and Community Development Act of 1992 and the regulations set forth in this part that are in effect on the date of endorsement.

* * *

(b) * * *

(3) Certification that the loan has been processed, prudently underwritten (including a determination that a market exists for the project), cost certified (if the project is being submitted for final endorsement) and closed in full compliance with the HFA's standards and requirements (or where the mortgage is insured under Level II, in full compliance with the underwriting standards, loan terms and conditions, and asset management and servicing procedures, as approved by HUD).

(4) At the time of final endorsement, for periodic advances cases, a certification that the advances were made in accordance with the mortgage pursuant to § 266.310.

* * * * *

(7) A certification that the HFA has reviewed and approved the Affirmative Fair Housing Marketing Plan, required by § 266.215(a), and found it acceptable.

* * * * *

(13) Certification that housing claiming the housing for older persons exemption is eligible for and complies with 42 U.S.C. 3607(b) and 24 CFR part 100, subpart E.

■ 24. Revise § 266.500 to read as follows:

§ 266.500 General.

(a) *HFA responsibility for monitoring project owners.* The HFA will have full responsibility for managing and servicing projects insured under this part (in accordance with procedures disclosed and submitted with its application and the requirements of this part). The HFA is responsible for monitoring and determining the compliance of the project owner in accordance with the provisions of this subpart. HUD will monitor the performance of the HFA, not the project owner, to determine its compliance with the provisions covered under this subpart.

(b) *HUD review of procedures for HFAs with Level II approval.* Asset management and servicing procedures of any HFA electing to take less than 50 percent of the risk on certain projects are subject to review, modification, and approval by HUD in accordance with § 266.100(b).

§ 266.505 [Amended]

■ 25. Amend § 266.505:

■ a. In paragraph (b)(8), after the word ''Plan'' by adding the phrase '', required by § 266.215(a),'';

■ b. In paragraph (b)(10), by removing the words ''General Accounting'' and adding in their place ''U.S. Government Accountability''.

■ 26. Revise § 266.507 to read as follows:

§ 266.507 Maintenance requirements.

The mortgagor must maintain the project in accordance with the physical condition standards in 24 CFR part 5, subpart G (Physical Condition Standards and Inspection Requirements).

■ 27. Amend § 266.510 by revising paragraph (a) to read as follows:

§ 266.510 HFA responsibilities.

(a) *Inspections.* The HFA must perform inspections in accordance with the physical inspection procedures in 24 CFR part 5, subpart G (Physical Condition Standards and Inspection Requirements).

* * * * *

■ 28. Revise § 266.600 to read as follows:

§ 266.600 Mortgage insurance premium: Insurance upon completion.

(a) *Initial premium.* For projects insured upon completion, on the date of the final closing, the HFA shall pay to the Commissioner an initial premium in an amount established by the Commissioner under § 266.604.

(b) *Premium payable with first payment of principal.* On the date of the first payment of principal the HFA shall pay a second premium (calculated on a per annum basis) in an amount established by the Commissioner under § 266.604.

(c) *Subsequent premiums.* Until one of the conditions is met under § 266.606(a), the HFA on each anniversary of the date of the first principal payment shall pay to the Commissioner an annual mortgage insurance premium in an amount established by the Commissioner under § 266.604, without taking into account delinquent payments, or partial claim payment under § 266.630, or prepayments, for the year following the date on which the premium becomes payable.

■ 29. Amend § 266.602 by revising paragraph (a), the first sentence of paragraph (b), the first sentence of paragraph (c), and paragraph (d) to read as follows:

§ 266.602 Mortgage insurance premium: Insured advances.

(a) *Initial premium.* For projects involving insured advances, on the date of the initial closing, the HFA shall pay to the Commissioner an initial premium equal to an amount established by the Commissioner under § 266.604.

(b) *Interim premium.* On each anniversary of the initial closing, the HFA shall pay an interim mortgage insurance premium in an amount established by the Commissioner under § 266.604. * * *

(c) *Premium payable with first payment of principal.* On the date of the first principal payment, the HFA shall pay a mortgage insurance premium in an amount established by the Commissioner under § 266.604. * * *

(d) *Subsequent premiums.* Until one of the conditions is met under § 266.606(a), the HFA on each anniversary of the date of the first principal payment shall pay to the Commissioner an annual mortgage insurance premium in an amount established by the Commissioner under § 266.604, without taking into account delinquent payments, prepayments, or a partial claim payment under § 266.630, for the year following the date on which the premium becomes payable.

■ 30. Amend § 266.604 by revising paragraphs (a) and (b), the first sentence of paragraph (c), and the second and third sentences of paragraph (d) to read as follows:

§ 266.604 Mortgage insurance premium: Other requirements.

(a) *Premium calculations on or after first principal payment.* The premiums payable to the Commissioner on and after the first principal payment shall be calculated in accordance with the amortization schedule prepared by the HFA for final closing and an amount established by the Commissioner through a notice published in the **Federal Register** and providing a 30-day comment period. After the comments have been considered, HUD will publish a final notice announcing the premium and its effective date. The premium shall not take into account delinquent payments or prepayments.

(b) *Future premium changes.* Notice of future premium changes will be published in the **Federal Register**. The Commissioner will propose mortgage insurance premium changes for the Risk-Sharing Program and provide a 30-calendar day public comment period for the purpose of accepting comments on whether the proposed changes are appropriate. After the comments have been considered, HUD will publish a final notice announcing the premium and its effective date.

(c) *Closing information.* The HFA shall provide final closing information to the Commissioner within 15 calendar days of the final closing in a format prescribed by the Commissioner. * * *

(d) *Due date for premium payments.* * * * Any premium received by the Commissioner more than 15 calendar days after the due date shall be assessed a late charge of 4 percent of the amount of the premium payment due. Mortgage insurance premiums that are paid to the Commissioner more than 30 calendar days after the due date shall begin to accrue interest at the rate prescribed by the Treasury Fiscal Requirements Manual.

■ 31. Amend § 266.620 by:
■ a. Revising the section heading;
■ b. Redesignating the introductory text as paragraph (a) and redesignating paragraphs (a) through (g), as paragraphs (a)(1) through (7), respectively; and
■ c. Adding new paragraph (b).

The revision and addition read as follows:

§ 266.620 Termination of contract of insurance and indemnification.

* * * * *

(b) In lieu of termination of the mortgage insurance contract pursuant to paragraph (a)(5) of this section, the Commissioner may, in his or her full discretion, permit a Level I participant rated ''A'' or higher to indemnify HUD, or otherwise reimburse HUD in a manner acceptable to the Commissioner, for the full amount of the mortgage claim.

■ 32. Amend § 266.626 by revising the first sentence of paragraph (c) and revising paragraph (d) to read as follows:

§ 266.626 Notice and date of termination by the Commissioner.

* * * * *

(c) *Notice of default.* If a default (as defined in paragraph (a) of this section) continues for a period of 30 calendar days, the HFA must notify the Commissioner within 10 calendar days thereafter, unless the default is cured within the 30-day period. * * *

(d) *Timing of claim filing.* Unless a written extension is granted by HUD, the HFA must file an application for initial claim payment (or, if appropriate, for partial claim payment) within 75 calendar days from the date of default and may do so as early as the first day of the month following the month for which a payment was missed. Upon request of the HFA, HUD may extend, up to 180 calendar days from the date of default, the deadline for filing a claim. In those cases where the HFA certifies that the project owner is in the process of transacting a bond refunder, refinancing the mortgage, or changing the ownership for the purpose of curing the default and bringing the mortgage current, HUD may extend the deadline for filing a claim beyond 180 calendar days, not to exceed 360 calendar days from the date of default.

■ 33. Amend § 266.628 by revising paragraph (a)(3) to read as follows:

§ 266.628 Initial claim payments.

(a) * * *

(3) The HFA must use the proceeds of the initial claim payment to retire any bonds or any other financing mechanisms securing the mortgage within 30 calendar days of the initial claim payment. Any excess funds resulting from such retirement or repayment shall be returned to HUD within 30 calendar days of the retirement.

* * * * *

■ 34. Amend § 266.630 by revising the second sentence of paragraph (c)(2), paragraphs (d)(1), (2), and (4), and the second sentence of paragraph (d)(5) to read as follows:

§ 266.630 Partial payment of claims.

* * * * *

(c) * * *

(2) * * * The HFA is granted an extension of 30 calendar days from the date of any notification for further action.

(d) *Requirements*—(1) *One partial claim payment.* Only one partial claim payment may be made under a contract of insurance.

(2) *Partial claim payment amount.* The amount of the partial claim payment is limited to 50% of the amount of relief provided by the HFA in the form of a reduction in principal and a reduction of delinquent interest due on the insured mortgage times the lesser of HUD's percentage of the risk of loss or 50 percent.

* * * * *

(4) *Partial claim repayment by HFA.* The HFA must remit to HUD a percentage of all amounts collected on the HFA's second mortgage within 15 calendar days of receipt by the HFA. The applicable percentage is equal to the percentage used in paragraph (d)(2) of this section to determine the partial claim payment amount. Payments made after the 15th day must include a 5 percent late charge plus accrued interest at the debenture rate.

(5) * * * The HFA must submit a final certified statement within 30 calendar days after the second mortgage is paid in full, foreclosed, or otherwise terminated.

§ 266.634 [Amended]

■ 35. Amend § 266.634 in paragraph (c) by adding the word ''calendar'' before the word ''days'' in the first sentence.

§ 266.638 [Amended]

■ 36. Amend § 266.638 by:
■ a. Adding the word ''calendar'' before the word ''days'' in the first sentence of paragraph (a);
■ b. Removing the word ''five'' from the second sentence of paragraph (b) and adding in its place the number ''5'';
■ c. Removing the words ''five year'' from the third sentence of paragraph (b) and adding in their place ''5-year''.

§ 266.642 [Amended]

■ 37. Amend § 266.642 in the third sentence of by removing the phrase ''45-day'' and adding in its place the phrase ''45-calendar-day''.

§ 266.644 [Amended]

■ 38. Amend § 266.644 in the introductory text by adding the word ''calendar'' before the word ''days''.

§ 266.648 [Amended]

■ 39. Amend § 266.648 in paragraph (c)(4) by removing the words ''the Office of General Counsel'' and adding in their place ''HUD''.

■ 40. Amend§ 266.650 by revising paragraph (a) to read as follows:

§ 266.650 Items deducted from total loss.

* * * * *

(a) All amounts received by the HFA on account of the mortgage after the date of default, including any partial payment of claim paid by HUD in the event a full claim follows a partial payment of claim;

* * * * *

§ 266.654 [Amended]

■ 41. Amend § 266.654 in paragraph (b) by adding the word ''calendar'' before the word ''days'' in the first sentence.

Dana T. Wade,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2020–27914 Filed 12–21–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9940]

RIN 1545–BP41

Misdirected Direct Deposit Refunds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: These final regulations provide the procedures under section 6402(n) of the Internal Revenue Code (Code) for identification and recovery of a misdirected direct deposit refund. The final regulations reflect changes to the law made by the Taxpayer First Act. The final regulations affect taxpayers who have made a claim for refund, requested the refund be issued as a direct deposit, but did not receive a refund in the account designated on the claim for refund.

DATES:

Effective date: These regulations are effective on December 22, 2020.

Applicability date: These regulations apply to reports to the IRS made after [date of publication] that a taxpayer never received a direct deposit refund.

FOR FURTHER INFORMATION CONTACT: Mary C. King at (202) 317–5433 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 301 under section 6402(n) of the Code and provides guidance on the procedures used to identify and recover tax refunds issued by electronic funds transfer (direct deposit) that were not delivered to the account designated to receive the direct deposit refund on the federal tax return or other claim for refund. Section 6402(n) was added to the Code by section 1407 of the Taxpayer First Act, Public Law 116–25, 133 Stat. 981 (2019) (TFA) on July 1, 2019. On December 23, 2019, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** (84 FR 70462) a notice of proposed rulemaking (REG–116163–19) providing the procedures under section 6402(n) for reporting, identification, and recovery of a misdirected direct deposit refund. The Treasury Department and the IRS received one comment responding to the proposed regulations. The comment is available at *www.regulations.gov* or upon request. No public hearing was requested or held on the proposed regulations.

After consideration of the written comment, this Treasury Decision adopts the proposed regulations as final regulations with minor modifications, as described in the Summary of Comments and Explanation of Provisions. A detailed explanation of these regulations can be found in the preamble to the proposed regulations.

Summary of Comments and Explanation of Provisions

The Treasury Department and the IRS received one comment regarding the proposed regulations. After consideration of the comment, the proposed regulations are adopted as final regulations without any substantive changes.

I. Applicability Date

A commenter expressed a concern that the procedures in these regulations would not apply to claims for refund from taxable years before the applicability date of the final regulations. The commenter requested that the procedures should be applied to refund claims for prior years. Consistent with the comment, the final regulations clarify that these procedures apply to any report of a misdirected direct deposit refund for a current or prior year submitted after the publication of the final regulations in the **Federal Register**.

II. Coordination With Financial Institutions

Section 301.6402–2(g)(1) of the proposed regulations defines ''misdirected direct deposit refund'' as any refund of an overpayment of tax that is disbursed as a direct deposit but is not deposited into the account designated on the claim for refund to receive the direct deposit refund. The proposed regulations include in the definition of a misdirected direct deposit refund only those refunds which are actually issued as a direct deposit. A misdirected direct deposit refund does not include an overpayment that is credited against another outstanding tax liability of the taxpayer pursuant to section 6402(a) or that is offset pursuant to the law. An overpayment that is offset or applied as mandated by law is not a misdirected direct deposit refund because these actions are mandated by law. Section 301.6402–2(g)(1) of the final regulations clarifies this by striking the last sentence from the proposed regulations, as it is not needed to define a ''misdirected direct deposit refund.'' Instead, the final regulations clarify in section 301.6402–2(g)(3)(i) that the offset or setoff of an overpayment occurs prior to the issuance of a direct deposit. The IRS will determine if a reported missing refund is setoff or offset as part of the procedure for the identification of the account that received the misdirected direct deposit refund. This reorganization simplifies the definition of a misdirected direct deposit refund and more accurately describes the process of identification of a misdirected direct deposit refund.

The final regulations reflect this clarification to the definition of a misdirected direct deposit refund and the identification procedure, but the proposed regulations are otherwise adopted without change.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

These regulations do not impose any additional information collection requirements in the form of reporting, recordkeeping requirements, or third-party disclosure requirements related to tax compliance. However, because a taxpayer or a taxpayer's representative may elect to report a missing refund using the procedures described in § 301.6402–2(g)(2)(ii)(B), some taxpayers may use a form to report a missing refund. The collection of information in § 301.6402–2(g)(2)(ii)(B) is through use of a Form 3911, ''Taxpayer Statement Regarding Refund,'' and is the sole collection of information requirement established by the final regulations.

For the purposes of the Paperwork Reduction Act, 44 U.S.C. 3501–3520, the reporting burden associated with the