

FAA has, therefore, determined that this rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT’s Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.” To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule is necessary to avoid rerouting current air traffic. The rerouting will increase miles flown, increasing fuel and crew cost. While the rule will likely impact a substantial number of small entities, it will have a minimal economic impact.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub.

L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rule and determined that the rule will have the same impact on international and domestic flights and is a safety rule thus is consistent with the Trade Agreements Act.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155 million in lieu of \$100 million. This rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Environmental Review

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environment Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.5a and involves no extraordinary circumstances.

How To Obtain Additional Information

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (<http://www.regulations.gov>);

2. Visit the FAA’s Regulations and Policies Web page at http://www.faa.gov/regulations_policies/ or

3. Access the Government Printing Office’s Web page at <http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

■ 2. Amend § 71.33 by revising paragraph (a) to read as follows:

§ 71.33 Class A airspace areas.

(a) That airspace of the United States, including that airspace overlying the waters within 12 nautical miles of the coast of the 48 contiguous States, from 18,000 feet MSL to and including FL600 excluding the states of Alaska and Hawaii.

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Issued in Washington, DC, on March 29, 2016.

Leslie M. Swann,

Acting Manager, Airspace Policy Group.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 266

[Docket No. FR–5876–N–03]

Changes in Certain Multifamily Mortgage Insurance Premiums and Regulatory Waiver for the 542(c) Risk-Sharing Program

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

ACTION: Announcement and waiver.

SUMMARY: On January 28, 2016, HUD published a notice announcing

proposed changes to the Fiscal Year (FY) 2016 Mortgage Insurance Premiums (MIPs) for certain FHA Multifamily Housing Insurance programs, for commitments issued or reissued beginning April 1, 2016, and solicited public comments on the announced changes. This document announces that the FY 2016 MIP changes for certain FHA Multifamily Housing Insurance programs, including the 542(b) and 542(c) Risk-Sharing programs, proposed on January 28, 2016, are being implemented for commitments issued or reissued beginning April 1, 2016. These new MIP changes reflect the health of the FHA Multifamily portfolio, simplify the rate structure, and demonstrate HUD's commitment to promote its mission initiatives. The MIP rates for mortgage insurance programs under FHA's Office of Healthcare Programs, including health care facilities and hospital insurance programs, are not changed. This document also addresses the public comments received in response to the proposed MIP changes. Lastly, this MIP document also provides a regulatory waiver for the 542(c) Risk-Sharing program to participate in the FY 2016 MIP changes for commitments issued or reissued beginning April 1, 2016, for the remainder of FY 2016 and for FY 2017.

DATES: *Effective Date:* The revised MIP will be effective for any firm commitments issued or reissued on or after April 1, 2016. MIP rates will not be modified for any loans that close or reach initial endorsement prior to or on March 31, 2016. MIP rates will not be modified on FHA-insured loans initially or finally endorsed, in conjunction with interest rate reductions, or in conjunction with loan modifications. MIP rates for the 542(c) Risk-Sharing program will be eligible only through FY 2017.

FOR FURTHER INFORMATION CONTACT: Theodore K. Toon, Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410-8000; telephone number: 202-402-8386 (this is not a toll-free number). Hearing- or speech-impaired individuals may access these numbers through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 203(c)(1) of the National Housing Act (the Act) authorizes the Secretary to set the premium charge for insurance of mortgages under the

various programs in title II of the Act. The range within which the Secretary may set such charges must be between one-fourth of one percent per annum and one percent per annum of the amount of the principal obligation of the mortgage outstanding at any time. (see 12 U.S.C. 1709(c)(1)). HUD's Multifamily Housing Mortgage Insurance regulation at 24 CFR 207.254 provides that HUD must publish a notice of future premium changes in the **Federal Register**, and provide a 30-day public comment period for the purpose of accepting comments on whether the proposed changes are appropriate.

On October 2, 2015, HUD published a notice in the **Federal Register**, at 80 FR 59809, announcing that the MIPs for FHA Multifamily, Health Care Facilities, and Hospital mortgage insurance programs that have commitments to be issued or reissued in FY 2016 would be the same as those published for FY 2015. HUD then published a notice on January 28, 2016, at 81 FR 4926, announcing proposed MIP changes for FY 2016 in certain programs authorized under the Act (12 U.S.C. 1709(c)(1)), and certain other multifamily programs. The January 28, 2016, notice was proposed to promote two of HUD's mission priorities: affordable housing and energy efficiency. HUD sought public comment on the proposed changes, as required by 24 CFR 207.254.

II. Public Comments

The public comment period on the January 28, 2016, notice closed on February 29, 2016, and HUD received 19 public comments by the close of the public comment period. Comments were submitted by mortgage lenders, organizations representative of the health care industry and of the home building industry, private citizens, and other interested parties. All public comments can be found on www.regulations.gov under the docket number FR-5876-N-01. The following presents the key issues raised by commenters and HUD's response to these issues.

Authority

Comment: One commenter stated that HUD had not demonstrated its authority to implement these MIP changes, and another commenter asked if HUD would be issuing additional regulations to confirm the appropriate MIP.

HUD Response: We disagree; section 203(c)(1) of the Act authorizes the Secretary to set the premium charge for insurance of mortgages under the various programs in the Act, and 24 CFR 207.254 provides that HUD will implement future multifamily premium

changes by publishing a notice in the **Federal Register** and soliciting public comment for 30 days. HUD has complied with those requirements and no additional regulations must be issued to implement these changes.

Comment: One commenter observed that MIPs "must be determined based on the prudent management of risk to the government of the potential and severity of mortgage losses." In other words, the MIPs should be set at levels that are actuarially sufficient to cover expected credit losses and other costs.

HUD Response: HUD agrees; portfolio and actuarial analysis of the new rate structure demonstrated that premium revenues will exceed losses for the foreseeable future.

Applicability of New Rates

Comment: Commenters urged HUD to extend MIP changes to programs under FHA's Office of Healthcare Programs, including the health care facilities and hospital insurance programs, in order to further promote these programs. These commenters suggested that by excluding properties financed under Section 232 and Section 242 programs, HUD misses the opportunity to further the Administration's healthcare objectives.

HUD Response: HUD will continue to evaluate MIP rates, but is not at this time extending MIP changes to programs under FHA's Office of Healthcare Programs, including the health care facilities and hospital insurance programs under sections 232 and 242, respectively.

Comment: Commenters asked that the new MIP rates be made available to existing FHA-insured loans on properties that meet or will meet the required standards, to loans undergoing interest rate reductions through HUD's Multifamily Office of Asset Management and Portfolio Oversight (OAMPO), to loan modifications through OAMPO, to loans initially endorsed (closed) but not finally endorsed, and to loans on recently built housing (within the past 5 years) that have or could obtain Energy Star building certification.

HUD Response: New MIP rates cannot be applied retroactively; each of these scenarios represents already-closed loans. Therefore, the MIP new rates will become effective only for FHA firm commitments issued or reissued, and closed, on or after April 1, 2016.

Affordability

Comment: Commenters asked for a change to the requirements to qualify for the MIP rate for Broadly Affordable housing: Properties must have "achievable and underwritten tax credit rents at least 10 percent below

comparable market rents.” Commenters recommended that “achievable and” be deleted because of the confusion it could cause.

HUD Response: HUD disagrees. The phrase (“achievable and underwritten tax credit rents at least 10 percent below comparable market rents”) is necessary in order to differentiate from the maximum or ceiling tax credit rents, and is widely understood in the industry.

Comment: Commenters recommended that properties with greater than 90 percent affordable units, but without a 10 percent underwritten market rent advantage necessary to qualify as Broadly Affordable, should qualify for the Affordable mixed-income MIP rate of 35 basis points.

HUD Response: HUD agrees, and has made the change in the final notice.

Comment: Commenters asked if a property will qualify for the MIP reduction if it has a project-based Section 8 that runs less than 15 years or is not renewed but the owner honors the full 15-year use restriction.

HUD Response: HUD will be providing the MIP reduction only to properties that have a Section 8 contract and use restriction that run a minimum of 15 years after final endorsement.

Comment: Commenters recommended that the new MIP rates be available in situations where the property owner accepts Section 8 voucher holders for just the affordable units, rather than an unlimited requirement for the entire property, due to potential property owners’ concerns about converting an entire property to Section 8, over time, in what is intended as a mixed-income property. Another commenter stated that in the MIP definition of Affordable there is a requirement that the property owner agree to accept Section 8 voucher holders for the life of the loan, and the commenter requested that this be limited to the 15-year affordability period rather than the life of the loan.

HUD Response: HUD disagrees, and continues to require that for a property owner to access the MIP rate under the Affordable rate category the property owner must agree to accept voucher holders as residents for all vacancies and for the life of the regulatory agreement.

Lender Fee Restrictions for Certain MIP Rate Categories (Broadly Affordable and Green/Energy Efficient)

Comment: Commenters requested that the 5 percent cap on total loan fees be removed, or the threshold significantly increased. The commenters stated that small loans are challenging to originate, underwrite, and service, due to certain

fixed lender costs and time requirements, and asked HUD to assess the impact for loans that fall into the \$2–5 million range; commenting that the market is familiar with the \$5 million small loan limit set by the Federal Housing Finance Agency for the Fannie Mae and Freddie Mac small loan programs. One commenter asked that HUD provide underlying information on the need for such a broad limitation.

HUD Response: The intent is to ensure that the benefits of these MIP rates directly benefit the properties and residents. In FHA’s experience, Multifamily Accelerated Processing (MAP) lenders today are generally not charging fees in excess of 5 percent on loans under \$5 million, even though they may do so. According to aggregated lender disclosures, just 6 percent of FHA-insured loans under \$5 million, originated between FY 2013 and FY 2016, year-to-date, charged fees in excess of 5 percent, and most of these were concentrated in loans under \$2 million. Accordingly, HUD does not believe that this limitation will present a burden to MAP lenders.

Comment: One commenter said that it may be counterproductive to have a loan fee limit on loans over \$2 million at precisely the time HUD is encouraging MAP lenders to participate in its Small Building Risk Share Initiative (SBRS).

HUD Response: Loans originated under Risk Share programs, including SBRS, are exempt from the fee limitations.

Comment: One commenter asked that loans with firm commitments issued prior to the January 28, 2016, publication of the proposed MIP rates be excluded from the fee limitations.

HUD Response: The loan fee limitations only apply to loans with FHA firm commitments issued or reissued on or after April 1, 2016. Firm commitments issued prior to that date are exempt from the loan fee limitation (though still subject to disclosure), unless requesting reissuance or modification to utilize the new rates. Any loan accessing the lower rates will also be subject to the loan fee limitation.

Inclusionary Zoning

Comment: Commenters wrote that properties subject to inclusionary zoning agreements are only eligible for the reduced MIP rate if the term of the affordability agreement is 30 years or longer, compared to Low Income Housing Tax Credit (LIHTC) or Project-Based Rental Assistance (PBRA) properties in this same rate category, which have minimum compliance periods of 15 years. They asked that the

inclusionary zoning compliance period be reduced from 30 years to 15 years.

HUD Response: The affordability requirements under LIHTC or PBRA/Section 8 are much deeper than those generally required under inclusionary zoning laws. HUD believes, therefore, that the longer affordability requirement (30 years) is reasonable.

Comment: One industry association opposed using the FHA multifamily insurance programs “to incentivize complicated and controversial inclusionary zoning laws at the local level.” One commenter stated that some studies have shown inclusionary zoning may not be the most cost effective way to address affordability, and can actually lead to fewer units being delivered.

HUD Response: HUD is not incentivizing inclusionary zoning or other set-aside laws through these rates. Rather, the new structure recognizes affordability in its many forms. HUD will study the effects of these rates for future rate considerations.

Green/Energy Efficient

Comment: A number of commenters pointed out that the requirement for a property owner to report building performance 12 months after new construction/substantial rehabilitation is unreasonable, as the property must be occupied, and operate for a full 12 months, before collecting and reporting the data. Further, the requirement may preclude properties from one or more of the performance-based green building certifications recognized for the green/energy efficient MIP rate.

HUD Response: HUD agrees, and has amended the notice to require reporting of complying building performance “. . . no more than 15 months after completion of new construction, substantial rehabilitation or renovations, or 15 months after break-even occupancy.”

Comment: Commenters stated that small properties make up the majority of all apartment buildings and often provide housing affordability. Yet properties under 20 units are excluded from getting a 1–100 EnergyStar score from Portfolio Manager, effectively blocking them from taking advantage of the reduced MIP rate. Commenters asked that HUD consider, for the purpose of accessing the Green/Energy Efficient MIP rate, exempting smaller properties from the requirement of a 75+ score on Portfolio Manager, as long as they are or will be certified by one of the recognized, independent green building standards.

HUD Response: HUD agrees, and has modified the notice. Small properties

(under 20 units) must meet one of the recognized independent green building/energy efficiency standards in order to access the Green/Energy Efficient MIP rate, but are exempt from the 75+ Portfolio Manager score requirement.

Comment: One commenter recommended that HUD consider tiered or graduating MIP rates for varying levels of energy efficiency to encourage all property owners to undertake efficiency retrofits to the extent feasible.

HUD Response: While HUD agrees with the intent, such a rate structure would be overly complex and challenging to administer. HUD will continue to review rates and opportunities to promote its mission objectives.

Comment: Multiple commenters presented alternative green building certification standards for consideration, and/or asked what the process will be for approval of green building certification standards beyond those listed in the notice.

HUD Response: In addition to the recognized standards listed in the notice, HUD will accept “other industry-recognized green building standards in the sole discretion of HUD’s Office of Multifamily Production.” Lenders should submit such requests to the Director of Multifamily Production, in HUD headquarters. A committee will review such requests for consideration. In response to the specific requests submitted with public comments, HUD has revised the notice to recognize Passive House certifications, LEED for Existing Buildings: Operations & Maintenance, and Living Building Challenge Certification.

Comment: Commenters asked about notice references to Real Estate Assessment Center (REAC) protocols for properties not achieving their proposed green building standard or the 75+ Portfolio Manager score. One commenter stated that the REAC protocol should not be unilaterally changed to incorporate tests on whether properties are eligible for MIP reductions. Others asked what actions HUD would pursue for a property’s failure to achieve green building certification and a score of 75+ in Portfolio Manager (for example, might actions include 2530 flags or MIP changes).

HUD Response: HUD is not changing REAC protocols. The intent is not to be punitive, but to ensure compliance with the specified green building certification and efficiency performance standards. Properties that fail to achieve their designated green building standard or the 75+ Portfolio Manager score will be

required to submit to HUD a compliance plan and timeline for achieving the required certification and performance, acceptable to HUD. An owner working in good faith and demonstrating progress toward compliance in HUD’s discretion will not be flagged in HUD’s 2530 previous participation system.

Comment: Commenters asked that the notice clarify that the person certifying the green building standard be appropriately credentialed, and stated that a Capital Needs Assessment (CNA) provider may or may not be able to provide an energy design certification, unless they are licensed/accredited per the Energy Auditor requirements.

HUD Response: HUD agrees, and has struck CNA provider as a qualified certifier of a green building standard or energy design certification. The CNA provider may certify, if appropriately credentialed, in their capacity as architect, engineer, energy auditor, and/or approved certifier under the specified green building standard.

Comment: Commenters recommended that HUD delete the phrase “and maintain” in reference to recognized green building certifications, because the notice requires a property to not only achieve, but to maintain one of the recognized, independent green building certification standards, yet the named green building rating systems are all design and construction standards and do not include provisions for maintaining the certification.

HUD Response: HUD agrees, and has modified the notice to strike “and maintain” from the green building certification requirement.

Comment: A commenter asked for clarification on the requirement for a property accessing the Green/Energy Efficient MIP rate to achieve and maintain the 75+ Portfolio Manager score.

HUD Response: A property accessing the Green/Energy Efficient MIP rate will be required to maintain its efficiency performance. The property owner will submit its 1–100 ENERGY STAR score from EPA’s Portfolio Manager report to HUD, annually.

Comment: Commenters stated the notice’s required score of 75+ on EPA’s Portfolio Manager will be a “moving target” as the underlying database of properties recalibrates the scores, and asked how an owner can certify to this target.

HUD Response: The Portfolio Manager data set and underlying algorithm, and therefore the resulting scores, will not be changed for the foreseeable future, according to EPA. The objective is to ensure sustained property performance. If, in the future,

the 1–100 ENERGY STAR score is recalibrated, properties may demonstrate ongoing compliance by providing a copy of the Portfolio Manager report showing building consumption/performance has been maintained, even if the resulting score under a recalibrated scale is less than 75. Properties applying for the MIP rate will have to comply with the current standard score requirement that is applicable at that time.

Comment: One commenter asked why a property that can meet both the Broadly Affordable and the Green/Energy Efficient requirements is not rewarded through a further rate reduction.

HUD Response: The rates offered under those two rate categories are the lowest allowed by statute, so not further reductions can be offered at this time.

Comment: One commenter asked whether the reduction in MIP for Green/Energy Efficient buildings have to be from private investment, or if the energy upgrades can be paid for from a government program such as DOE Weatherization or a similar State program.

HUD Response: While it is anticipated that many property owners may utilize the additional mortgage proceeds made possible by the lower MIP to retrofit properties to meet the stringent efficiency standards required, an owner is not required to do so. Energy efficiency retrofits can be paid from any public or private source of funds, subject to limitations on other debt established by the FHA MAP program.

General

Comment: One commenter asked that HUD’s posted data identify current loans in its portfolio in the new MIP rate categories, to allow a viewer to determine which loans in the portfolio would qualify for which rates.

HUD Response: HUD does not have the level of detail in its dataset to allow this identification. All loans originated under the new rate structure will be identified by rate category.

Comment: One commenter suggested that the new MIP rate structure would disadvantage market rate properties, disproportionately harming rental properties in secondary and tertiary markets.

HUD Response: The largest reduction from current rates to those effective April 1, 2016, is for market rate properties that are, or choose to, retrofit to a recognized green building/energy efficiency standard. This rate category was added specifically to recognize and promote green and energy efficient

properties, whether affordable or market rate.

Comment: A commenter observed that the negative subsidy rates for MIP since FY 2013 show that the multifamily programs are generating more than enough revenue to cover losses, and requested that HUD review the MIPs for all of its loan programs, and set the levels at the rate necessary to cover losses and costs to the program.

HUD Response: HUD has and will continue to review its MIP rates.

Comment: Commenters requested clarification with regard to the notice's reference to the upfront capitalized MIP for construction loans and the absence of a reference to a "look back" after final closing that recalculates MIP at 1 percent of the actual outstanding amount.

HUD Response: For New Construction and Substantial Rehabilitation transactions, the upfront capitalized MIP is the applicable annual MIP rate, times the loan amount, times the number of years of construction, rounded up to the nearest full year for partial years.

Comment: One commenter stated that there may be an advantage for risk-share lenders compared to MAP lenders, on tax credit projects in markets where tax credit rents are close to market rents (less than 10 percent advantage), and the rate for MAP lender originated loans will be 35 basis points, while risk-share loans qualify as Broadly Affordable at 25 basis points.

HUD Response: The risk share program is an affordable lending program by statute, and is therefore categorically qualified for the lowest MIP rate. In the limited cases where the described scenario may apply, we do not believe the 10 basis points differential will be enough to skew the market away from MAP lending. HUD will continue to explore the potential disparity raised by the commenter, and may consider changes to address the issue in a subsequent MIP notice.

Comment: One commenter raised concerns about the impact of Executive Order 13690 and the new Federal Flood Risk Management Standard (FFRMS) on housing affordability when implemented and applied to new FHA-insured loans for new construction and substantial rehabilitation, Community Development Block Grants (CDBG), and HOME Investment Partnerships Program funds.

HUD Comment: Executive Order 13690 and the new FFRMS are outside the scope of this notice. Any actions implementing the Executive order will be the subject of a separate publication.

III. Final Notice

This notice adopts the proposed changes in the January 28, 2016 notice. Specifically, HUD is adopting changes to FY 2016 MIPs for FHA-insured loans on properties under specific Multifamily Mortgage Insurance programs effective on April 1, 2016. The new annual multifamily mortgage insurance rates will be structured as four categories, as follows, and as illustrated on the table below. Under this rate structure, portfolio and actuarial analysis demonstrates that premium revenues will exceed losses for the foreseeable future. HUD has made minor changes in response to comments received, as discussed below.

A. Market Rate Housing

Upfront and annual MIP rates will remain unchanged for all FHA-insured multifamily loan types on market rate properties, except properties that meet the criteria below for green and energy efficient housing.

B. Broadly Affordable Housing

Annual MIPs will change from the current rates generally between 45 and 50 basis points,¹ to 25 basis points for all multifamily FHA-insured loan types that meet the criteria in this section.

All loans originated by Housing Finance Agencies under FHA's Section 542(c) Risk-Sharing program, and by Qualified Participating Entities including Fannie Mae and Freddie Mac under FHA's Section 542(b) Risk-Sharing program, will be eligible for this 25 basis points rate, multiplied by the percentage risk assumed by FHA (see table below). For all others to qualify, the property must have Section 8 assistance or another recorded affordability restriction, and/or Low-Income Housing Tax Credits (LIHTC).

These projects must either:

- Have at least 90 percent of units covered by a Section 8 PBRA contract or other State or Federal rental assistance program contract serving very low income residents, with a remaining term of at least 15 years; or
- Have at least 90 percent of its units covered by an affordability use restriction under the LIHTC program or a similar State or locally sponsored program, with achievable and underwritten tax credit rents at least 10 percent below comparable market rents, and with a recorded regulatory agreement in effect for at least 15 years after final endorsement and monitored by a public entity.

¹ Except in the case of a 207/223(f) refinance or purchase that has a current upfront capitalized MIP basis points of 100.

To ensure that the benefits of these MIP rates directly benefit the affordable housing properties and residents, lenders submitting applications for loans using this MIP rate are limited, in the total loan fees they may charge on any loan greater than \$2 million, to no more than 5 percent of the insured loan amount. Loan fees include (a) origination and placement fees as permitted by the Multifamily Accelerated Processing (MAP) Guide;² *plus* (b) trade profit, trade premium or marketing gain earned on the sale of the Government National Mortgage Association (GNMA) security at a value above par, even if the security sale is delayed until after endorsement; *minus* (c) loan fees applied by the mortgagee to its legal expenses incurred in connection with loan closing.

C. Affordable Housing

Annual MIPs will change from current rates generally between 45 and 70 basis points,³ to 35 basis points for all multifamily FHA-insured loan types. To qualify, the property must provide a set-aside of affordable units as defined below, and agree to accept voucher holders:

- Inclusionary Zoning, Density Bonus Set-asides, and Other Local Affordability Restrictions: Property owners shall submit with the FHA mortgage insurance application evidence of a deed covenant or housing ordinance on "inclusionary zoning" at the subject property to evidence the requirement for affordable unit set-asides. A minimum of 10 percent of the units must be affordable to, at most, a family at 80 percent Area Median Income (AMI), with rents sized to be affordable at 30 percent of the income at that level. The affordability set-aside must be on site, be in effect for at least 30 years after final endorsement of the FHA-insured mortgage, be monitored by public authority, and be recorded in a regulatory agreement;
- Project has between 10 percent and 90 percent of units covered by a Section 8 PBRA contract or other State or Federal rental assistance program contract serving very low-income residents, with a remaining term of at least 15 years;
- Project has between 10 percent and 90 percent of its units covered by an affordability use restriction under the LIHTC program or similar State or locally sponsored program, with rents

² http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/guidebooks/hsg-GB4430.

³ Except in the case of a 207/223(f) refinance or purchase that has a current upfront capitalized MIP basis points of 100.

sized at no greater than 30 percent of the income eligible for occupancy under the LIHTC program, with a recorded regulatory agreement in effect for at least 15 years after final endorsement and monitored by a public entity; or

- Project has at least 90 percent of its units covered by an affordability use restriction under the LIHTC program or similar State or locally sponsored program, but without the rent advantage required to qualify as Broadly Affordable (achievable and underwritten tax credit rents at least 10 percent below comparable market rents), and with a recorded regulatory agreement in effect for at least 15 years after final endorsement and monitored by a public entity.

To qualify for this MIP rate, the project owner must also agree to accept voucher holders under the Section 8 Housing Choice Voucher program or other Federal program voucher holders as residents for vacancies in units not covered by project-based Section 8, and execute a rider to the FHA regulatory agreement, acceptable to HUD, evidencing the owner's agreement to accept Section 8 vouchers for the life of the regulatory agreement.

Change: In response to public comments, HUD added the forth bullet providing an extra class of properties to those that are eligible for this affordable housing MIP rate.

D. Green and Energy Efficient Housing

Annual MIPs will change from current rates generally between 45 and 70 basis points,⁴ to 25 basis points for all multifamily FHA-insured loan types. Projects will access this rate to encourage owners to adopt higher standards for construction, rehabilitation, repairs, maintenance, and property operations that are more energy efficient and sustainable than traditional approaches to such activities. The lower rate will incentivize owners to implement measures that result in projects with greater energy and water efficiency, reduced operating costs, improved indoor air quality and resident comfort, and reduced overall impact on the environment. It is anticipated that mortgage proceeds will be used to retrofit properties to meet the stringent efficiency standards required to access this lower MIP premium. For properties that have already achieved a green building standard and that are refinancing with this lower MIP premium, proceeds may be used to complete further efficiency upgrades,

and/or to retrofit to the next-level green certification standards.

To qualify, upon application for FHA mortgage insurance, the owner must evidence that the project has achieved, or the owner must certify that it will pursue and achieve, an industry-recognized standard for green building. Acceptable, independently verified standards include the Enterprise Green Communities Criteria; U.S. Green Building Council's LEED-H, LEED-H Midrise, LEED-NC, or LEED for Existing Buildings: Operations & Maintenance; ENERGY STAR certification; EarthCraft House; EarthCraft Multifamily; Earth Advantage New Homes; Greenpoint Rated New Home; Greenpoint Rated Existing Home (Whole House or Whole Building label); the National Green Building Standard (NGBS); Passive Building Certification or EnerPHit Retrofits certification from the Passive House Institute US (PHIUS), International Passive House Association, or the Passive House Institute; and Living Building Challenge Certification from the International Living Future Institute, or other industry-recognized green building standards, in the sole discretion of HUD's Office of Multifamily Production.

Further, the owner must certify that it has achieved, or will pursue, achieve, and maintain a score of 75 or better on the 1-100 ENERGY STAR score, using EPA's Portfolio Manager. The reasonableness of achieving and maintaining the specified, independent green building standard, and the score of 75 or better in Portfolio Manager, must be verified by the independent conclusion of the qualified assessor preparing the physical condition assessment, and supported by the physical condition assessment report and recommendations, ASHRAE level II energy audit (required for existing structures only), and plans for new construction, or rehabilitation, repairs, and operations and maintenance. The physical condition assessment report submitted with the mortgage insurance application must include a certification from the architect, engineer, or energy auditor that the planned scope of work is reasonably sufficient to achieve and maintain the specified certification.

Additionally, the owner must submit to HUD evidence that the specified, independent green building standard has been achieved, and provide a copy of the Portfolio Manager report showing building performance at or above 75, when those standards have been achieved, and no more than 15 months after completion of new construction, substantial rehabilitation or renovations or 15 months after break-even

occupancy. If not achieved, HUD may impose protocols to ensure the owner brings the property into compliance, similar to protocols used by REAC for unacceptable property standards. The owner must submit the Portfolio Manager report annually to HUD showing that the property has maintained its efficiency performance. Note that properties of less than 20 units may qualify for this MIP rate by achieving an industry-recognized standard for green building, as described above, but are exempt from the requirement to achieve a score of 75 or better on the 1-100 ENERGY STAR score.

To ensure that the benefits of these MIP rates directly benefit the properties and residents, lenders submitting applications for loans using this MIP rate are limited in the total loan fees they may charge on any loan greater than \$2 million, to no more than 5 percent of the insured loan amount. Loan fees include (a) origination and placement fees as permitted by the MAP Guide; *plus* (b) trade profit, trade premium or marketing gain earned on the sale of the GNMA security at a value above par, even if the security sale is delayed until after endorsement; *minus* (c) loan fees applied by the mortgagee to its legal expenses incurred in connection with loan closing.

Change: In response to public comments, HUD makes the following changes:

- Deletes the phrase "and maintain" in reference to the owner providing evidence that the project has achieved an industry-recognized standard for green building.
- Adds to the list of certifications Passive House certifications, LEED for Existing Buildings: Operations & Maintenance, and Living Building Challenge Certification, and clarifies that other industry-recognized green building standards will be approved at the discretion of HUD's Office of Multifamily Production.
- Clarifies that a CNA provider may only certify a physical condition assessment report, if appropriately credentialed, in their capacity as architect, engineer, energy auditor, and/or approved certifier under the specified green building standard.
- Amends the time frame for providing the report showing compliance with building performance after completion of new construction, substantial rehabilitation, or renovations from no more than 12 months to no more than 15 months. HUD also provides that such report may be provided 15 months after break-even occupancy.

⁴ Except in the case of a 207/223(f) refinance or purchase that has a current upfront capitalized MIP basis points of 100.

- Requires that owners submit the Portfolio Manager report annually to HUD showing that the property has maintained its efficiency performance.

- Provides that while small properties (under 20 units) must meet one of the recognized independent green building/energy efficiency standards in order to access the Green/Energy Efficient MIP

rate, small properties are exempt from the requirement to achieve a score of 75 or better on the 1–100 ENERGY STAR score.

IV. MIPs for Certain FHA's Multifamily Mortgage Insurance Programs for April 1, 2016

The chart below details the MIP rates for each rate category, and each type of

FHA multifamily mortgage insurance covered under this notice. This notice does not change MIP rates for programs under FHA's Office of Healthcare Programs, including health care facilities and hospital insurance programs.

FHA MULTIFAMILY MORTGAGE INSURANCE PREMIUMS BY RATE CATEGORY

FHA Multifamily mortgage insurance program	Current upfront capitalized MIP * basis points	Apr 1, 2016, upfront capitalized MIP * basis points	Current annual MIP basis points	Apr 1, 2016, annual MIP basis points
MARKET RATE HOUSING		Unchanged		Unchanged
207 Multifamily New Constr/Sub Rehab w/o LIHTC	70	70	70	70
207 Manufactured Home Parks w/o LIHTC	70	70	70	70
221(d)(4) New Constr/Sub Rehab w/o LIHTC	65	65	65	65
220 Urban Renewal Housing w/o LIHTC	70	70	70	70
213 Cooperative	70	70	70	70
207/223(f) Refi or Purchase for Apts. w/o LIHTC	100	100	60	60
223(a)(7) Refi of Apts. w/o LIHTC	50	50	50	50
231 Elderly Housing w/o LIHTC	70	70	70	70
241(a) Supplemental Loans for Apts. coop w/o LIHTC	95	95	95	95
BROADLY AFFORDABLE HOUSING		25		25
207 New Constr/Sub Rehab w 90 percent+ LIHTC, or 90 percent+ Section 8	45	25	45	25
207 Manufactured Home Parks w 90 percent+ LIHTC, or 90 percent+ Section 8	45	25	45	25
221(d)(4) New Constr/Sub Rehab w 90 percent+ LIHTC, or 90 percent+ Section 8	45	25	45	25
220 Urban Renewal Housing w 90 percent+ LIHTC, or 90 percent+ Section 8	45	25	45	25
207/223(f) Refi or Purchase w 90 percent+ LIHTC, or 90 percent+ Section 8	100	25	45	25
223(a)(7) Refi w 90 percent+ LIHTC, or 90 percent+ Section 8	50	25	45	25
231 Elderly Housing w 90 percent+ LIHTC, or 90 percent+ Section 8	45	25	45	25
241(a) for Apts./coop w 90 percent+ LIHTC, or 90 percent+ Section 8	45	25	45	25
Section 542(b) Risk-Sharing**	50	25	50	25
Section 542(c) Risk-Sharing**	50	25	50	25
AFFORDABLE: INCLUSIONARY VOUCHERS		35		35
207 New Constr/Sub Rehab w Inclusionary Zoning, or 10 percent–90 percent LIHTC, or 10 percent–90 percent Section 8	45–70	35	45–70	35
207 Manufactured Home Parks w Inclusionary Zoning, or 10 percent–90 percent LIHTC, or 10 percent–90 percent Section 8	45–70	35	45–70	35
221(d)(4) New Constr/Sub Rehab w Inclusionary Zoning, or 10 percent–90 percent LIHTC, or 10 percent–90 percent Section 8	45–65	35	45–65	35
220 Urban Renewal Housing w Inclusionary Zoning, or 10 percent–90 percent LIHTC, or 10 percent–90 percent Section 8	45–70	35	45–70	35
207/223(f) Refi or Purchase w Inclusionary Zoning, or 10 percent–90 percent LIHTC, or 10 percent–90 percent Section 8	100	35	45–60	35
223(a)(7) Refinance of Apts. w Inclusionary Zoning, or 10 percent–90 percent LIHTC, or 10 percent–90 percent Section 8	50	35	45–50	35
231 Elderly Housing w Inclusionary Zoning, or 10 percent–90 percent LIHTC, or 10 percent–90 percent Section 8	45–70	35	45–70	35
241(a) Supplementals for Apts./coop w Inclusion Zoning, or 10 percent–90 percent LIHTC, or 10 percent–90 percent Section 8	45–95	35	45–95	35
GREEN/ENERGY EFFICIENT HOUSING		25		25
207 Multifamily New Construction/Sub Rehab w Green	45–70	25	45–70	25
207 Manufactured Home Parks with Green	45–70	25	45–70	25
221(d)(4) New Constr/Sub Rehab w Green	45–65	25	45–65	25
220 Urban Renewal Housing w Green	45–70	25	45–70	25
207/223(f) Refi or Purchase for Apts. w Green	100	25	45–60	25
223(a)(7) Refi of Apts. w Green	50	25	45–50	25
231 Elderly Housing w Green	45–70	25	45–70	25

FHA MULTIFAMILY MORTGAGE INSURANCE PREMIUMS BY RATE CATEGORY—Continued

FHA Multifamily mortgage insurance program	Current upfront capitalized MIP * basis points	Apr 1, 2016, upfront capitalized MIP * basis points	Current annual MIP basis points	Apr 1, 2016, annual MIP basis points
241(a) Supplemental Loans for Apts./coop w Green	45–95	25	45–95	25

* Upfront premiums for multifamily refinancing programs are capitalized and based on the first year's annual MIP for the applicable rate category (except market rate 223(f), where the upfront rate remains at 100 basis points). Upfront premiums for multifamily new construction and substantial rehabilitation programs insuring advances are capitalized and based on the annual MIP for the applicable rate category for the entire construction period, rounded up to the nearest whole year.

** Under the Sections 542(b) and 542(c) Risk-Sharing programs, the MIP collected by HUD is currently, and will continue to be, proportionate to the percentage of risk assumed by FHA, as follows:

Program	FHA percent of risk share	April 1, 2016, upfront capitalized MIP basis points (bps)	April 1, 2016, annual MIP basis points (bps)
542(b)	50 percent	12.5 (25 bps × 50 percent)	12.5 (25 bps × 50 percent).
542(c)	50 percent	12.5 (25 bps × 50 percent)	12.5 (25 bps × 50 percent).
	75 percent	18.75 (25 bps × 75 percent)	18.75 (25 bps × 75 percent).
	90 percent	22.5 (25 bps × 90 percent)	22.5 (25 bps × 90 percent).

V. Regulatory Waiver for the 542(c) Risk-Sharing Program

Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) (42 U.S.C. 3535(q)) requires HUD to publish waivers in the **Federal Register**. To allow for the FY 2016 MIP changes covered in this notice to apply to the 542(c) Risk-Sharing program, authorized under the Housing and Community Development Act of 1992, HUD must waive §§ 266.600, 266.602, and 266.604, which currently prescribe percentages for calculating the MIP under the 542(c) Risk-Sharing program. HUD believes these set percentages are no longer appropriate for the 542(c) Risk-Sharing program and issued a proposed rule on March 8, 2016, entitled “Section 542(c) Housing Finance Agencies Risk-Sharing Program: Revisions to Regulations” (81 FR 12051), which would permit MIP changes for the Risk-Sharing program to be published through **Federal Register** notice. All loans originated under the Risk-Sharing programs are for affordable housing purposes with recorded affordability restrictions, and therefore qualify as Broadly Affordable housing. HUD believes that the 542(c) Risk-Sharing program, like the other identified Multifamily Housing programs, should be eligible for the MIP changes in this notice. Therefore, HUD is issuing this regulatory waiver of §§ 266.600, 266.602, and 266.604 for FY 2016 and FY 2017. Commitments issued or reissued for 542(c) Risk-Sharing program beginning April 1, 2016, through FY 2017 will be eligible for these MIP changes.

VI. Environmental Impact

This notice involves the establishment of rate or cost determinations and related external administrative requirements that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dated: March 28, 2016.

Edward L. Golding,

Principal Deputy Assistant Secretary for Housing.

Dated: March 28, 2016.

Nani A. Coloretto,

Deputy Secretary.

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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506-AB27

Imposition of Special Measure Against FBME Bank Ltd., Formerly Known as the Federal Bank of the Middle East Ltd., as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: In a Notice of Finding (NOF) published in the **Federal Register** on

July 22, 2014, FinCEN found that reasonable grounds exist for concluding that FBME Bank Ltd. (FBME), formerly known as the Federal Bank of the Middle East Ltd., is a financial institution of primary money laundering concern pursuant to Section 311 of the USA PATRIOT Act (Section 311). On the same date, FinCEN also published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) to propose the imposition of a special measure authorized by Section 311 against FBME and opened a comment period that closed on September 22, 2014. On July 29, 2015, FinCEN published in the **Federal Register** a final rule imposing the fifth special measure, which the United States District Court for the District of Columbia subsequently enjoined before the rule's effective date of August 28, 2015. FinCEN is issuing this final rule imposing a prohibition on U.S. financial institutions from opening or maintaining a correspondent account for, or on behalf of, FBME in place of the rule published on July 29, 2015.

DATES: This final rule is effective July 29, 2016.

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at (800) 767-2825 or regcomments@fincen.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (the USA PATRIOT