

tenants, there should be an opportunity to comment prior to changing the premium. Two commenters stated that a full notice and comment procedure would allow those affected to comment on both the credit subsidy analysis and the effect premium changes would have on the program and the families served.

HUD Response: A 30-day public comment period can be sufficient even for a proposed rule under the APA. The APA provides no specified minimum time period for public comments (although, for proposed rules, HUD's regulations at 24 CFR 10.1 state a general policy of a 60-day comment period, which may be abbreviated or extended for reasons provided by HUD). HUD finds that a 30-day period is sufficient time for comments to the MIP notices, and therefore, this time period is not altered by this final rule. HUD will give appropriate consideration to all comments received. HUD declines to adopt any change to the interim notice procedure as a result of this comment.

2. Regulatory Flexibility Act

Comment: Two commenters stated that the rule violated the Regulatory Flexibility Act (5 U.S.C. 605(b)). One commenter stated that the certification under the Act was insufficient because it was not sufficiently based on facts as required by the statute. Another commenter stated that HUD had available a course of action that would have been less burdensome to small entities, which was use of the \$40 million emergency credit subsidy. The commenters stated that the accompanying notice was faulty for this same reason.

HUD Response: Section 605(b) of the Regulatory Flexibility Act requires that a certification that a proposed rule will not have a significant economic impact on a substantial number of small entities be accompanied by "a statement providing the factual basis for such certification." HUD provided its factual basis in the preamble to the interim rule.

Furthermore, for reasons stated in HUD's response to an earlier comment on HUD's use of a good cause exception to proposed rulemaking (above), HUD does not believe use of the \$40 million emergency appropriation was an appropriate alternative.

B. Substantive Issues

1. Program Continuity

Comment: One commenter stated that the rule does not meet the expressed purpose of ensuring program continuity. This commenter stated that now that HUD can change the mortgage insurance

premium "in a matter of days," the new rule actually would create more uncertainty about the program than when the rate was set by rule. The commenter stated that the only way to ensure program continuity is by calculating an adequate amount of credit subsidy. Another commenter agreed, stating that the authority to increase MIPs on 30 days' notice undermines confidence in the FHA as a stable financing vehicle. This commenter stated that projects can take months or years to plan, and it is important that there be enough time to re-evaluate and re-underwrite projects when MIP increases occur. This commenter stated that an increase in MIPs should occur no more often than annually, and be preceded by 180 days prior notice.

HUD Response: HUD recognizes that applicants for mortgage insurance need to know the mortgage insurance premium applicable to their proposed project as far in advance as possible. Mortgage insurance premium changes are typically included in the proposed HUD budget announced in February of each year. Therefore, the industry will have received notice through the annual budget process. Additionally, any increase in MIP will generally not be effective until October 1, of each year, the start of the federal government's fiscal year.

Any decrease in premium rates will be made as soon as possible consistent with regulatory and budgetary requirements. If increases and decreases in premiums are combined in one notice, HUD reserves the right to treat the increases and decreases under identical time frames.

2. Other Negative Effect on Programs

Comment: One commenter stated that the increase in premiums in the rule and accompanying notice would have a negative effect on the Section 221(d)(3) insurance program for cooperatives. The commenter stated that because of the high mortgage insurance premium, some low- and moderate-income families without Section 8 assistance will not be able to afford to buy into cooperatives. The commenter stated that, conversely, for Section 8 residents, the increase in premiums will result in higher Section 8 costs to the government, resulting in no net savings.

HUD Response: For FY 2002, Congress appropriated \$15 million in credit subsidy. Of this amount, Congress allocated \$6,919,000, for the Section 221(d)(3) program for nonprofit sponsors and cooperatives to construct or substantially rehabilitate multifamily housing. The increase in mortgage

insurance premiums lowered the Section 221(d)(3) credit subsidy rate and allowed more mortgages to be insured. Cooperatives have the option of using Section 213, which does not require credit subsidy and has a 50 basis point premium.

Comment: The proposed increase would further depress the production of much-needed rental housing and negatively affect the quality of life of working families. This commenter stated that the FHA plays a "unique role" in increasing the willingness of developers to build in harder-to-serve areas. The timing of the MIP increase will have a negative effect during a "national crisis" in rental housing production. It will further depress the production of much-needed housing. The commenter stated that, according to HUD's FY 2002 budget, HUD predicted that \$3 billion in FHA-insured 221(d)(4) commitments would have been issued in FY 2002. The 30 basis point increase in MIP will amount to increased costs of \$105 million (present value of the increase over 40 years) on new multifamily projects. The increased costs will either result in fewer projects being built or will be absorbed by tenants through rent increases.

HUD Response: An increase in the MIP for Section 221(d)(4) was necessary to continue to operate the program without the need for credit subsidy. A large number of Section 221(d)(4) projects that could not obtain credit subsidy in FY 2001 received firm commitments in FY 2002 at the higher premium. HUD believes that providing more housing under its programs is a benefit that outweighs the slightly higher insurance premiums that participants have to pay.

Comment: Similarly, another commenter stated that the increase will "significantly impair the capacity of the FHA multifamily mortgage insurance programs to address the nation's critical need for affordable rental housing." This commenter states that analysis shows that the premium increase will result in rent increases of 3% to 4%, which will undermine the ability of the programs to serve low- and moderate-income families. In some cases, projects will not be built at all, resulting in fewer affordable housing units.

HUD Response: Without the credit subsidy increase, HUD would not be able to operate the programs requiring credit subsidy in a satisfactory manner. Avoiding program shutdowns and approving more housing projects is a benefit that outweighs the slight increase in premiums in some programs.