Nashville, TN, John C Tune, RNAV (GPS) RWY 2, Amdt 2
Nashville, TN, John C Tune, RNAV (GPS) RWY 20, Amdt 2
Nashville, TN, John C Tune, Takeoff Minimums and Obstacle DP, Amdt 2
Austin, TX, Austin-Bergstrom Intl, RNAV (GPS) Y RWY 35R, Amdt 1B
Austin, TX, Austin-Bergstrom Intl, RNAV (RNP) Z RWY 35L, Orig
Austin, TX, Austin-Bergstrom Intl, RNAV (RNP) Z RWY 35R, Orig
Castroville, TX, Castroville Muni, RNAV (GPS) RWY 16, Amdt 1
Castroville, TX, Castroville Muni, RNAV (GPS) RWY 34, Amdt 1
Castroville, TX, Castroville Muni, Takeoff Minimums and Obstacle DP, Orig
Eastland, TX, Eastland Muni, NDB RWY 35, Amdt 3A, CANCELED
Mosinee, WI, Central Wisconsin, VOR/DME RWY 35, Amdt 9B, CANCELED
Stevens Point, WI, Stevens Point Muni, VOR/DME RWY 3, Amdt 15, CANCELED
Stevens Point, WI, Stevens Point Muni, VOR/DME RWY 21, Amdt 19, CANCELED
Stevens Point, WI, Stevens Point Muni, VOR/DME RWY 30, Amdt 18, CANCELED
Wisconsin Rapids, WI, Alexander Field South Wood County, VOR/DME OR GPS–A, Amdt 9A, CANCELED

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–5823–IA–01]

Federal Housing Administration (FHA): Court of Competent Jurisdiction To Foreclose Liens on FHA-Owned Properties

AGENCY: Office of the General Counsel, HUD.

ACTION: Interpretive rule.

SUMMARY: The Federal Housing Administration (FHA) generally acquires title to single family properties when it pays mortgage insurance benefits to approved mortgagees. FHA's activities in managing and marketing the properties it acquires include paying real estate taxes referred to as *ad valorem* taxes (a tax based on the value of the property) and special assessments. For properties in condominiums or planned unit developments, FHA also pays homeowners' association or condominium association fees. During the period over which an insured lender forecloses and FHA becomes the owner of the property, taxes or other fees may become due and payable. With lenders conveying close to 100,000 properties annually to FHA, bills for taxes and fees may be past due and payable at the time of FHA's acquisition and suits are brought for payment of taxes and fees. This rule provides HUD's interpretation of the ''sue and be sued'' clause contained in section 1, Title I of the National Housing Act. This rule provides that, in the case of an action brought against HUD to foreclose on a lien arising out of unpaid taxes or fees, the term ''court of competent jurisdiction'' as used in section 1 of the National Housing Act refers to a United States District Court. In conjunction with this interpretive rule, HUD is providing, by separate notices published in today's **Federal Register**, direction to taxing authorities and other entities owed money as to the proper Point of Contact (POC) at HUD for seeking payment. In the unlikely event that payment is not timely made, the entity can bring an action under the Quiet Title Act in the appropriate United States District Court to foreclose on its lien interest in the property.

DATES: *Effective Date:* October 15, 2015.

FOR FURTHER INFORMATION CONTACT: Bruce S. Albright, Senior Trial Attorney and Litigation Risk Advisor, Office of Litigation, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10258, Washington, DC 20410–8000; telephone number 202–708–0300 (this is not a toll-free number). Persons with hearing or speech challenges may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Under FHA's single family mortgage insurance program, FHA took title to approximately 94,500 properties in Fiscal Year (FY) 2012 by paying insurance claims to approved mortgagees. In recouping its losses to the Mutual Mortgage Insurance Fund (MMIF), FHA manages and markets these properties through contractors.

There is a time lag between a mortgagee initiating and completing the foreclosure of a defaulted insured mortgage and FHA acquiring and managing the property. Taxes or Homeowners Association (HOA) or Condominium Association (CA) fees, or fees for special assessments may come due and payable at the time when the property is being conveyed to FHA (or shortly thereafter) for the insurance benefits. HUD issued Mortgagee Letter 2013–18 on May 31, 2013, addressing unpaid tax and association fees.[1] This Mortgagee Letter may reduce, but not entirely eliminate, problems FHA has faced with unpaid taxes and fees when FHA takes title to single family properties. Correspondence regarding tax and other property charges and assessments are presently sent to a myriad of addresses—either to FHA's headquarters and field offices across the nation, or to the contractors handling the management of the FHA properties.

If a taxing authority, HOA, CA, or special assessment entity is unable to obtain payment of the amounts due after sending out notices and contacting FHA offices and contractors, its alternative has been to perfect a lien under applicable local law and then attempt to enforce the lien against the HUD owned property by foreclosing the lien on the property. Normally, absent the involvement of a Federal agency, this is accomplished under a state court procedure, which varies greatly from jurisdiction to jurisdiction as to the time period in which to respond to the summons and complaint, as well as upon who service is required to be made. HUD's involvement as a Federal government agency, however, means that the proper venue should be in Federal District Court. On occasion, when actions are brought in state court, the government's interest cannot be determined quickly enough for a U.S. Attorney's Office to timely respond to a complaint that seeks to foreclose FHA's ownership interest in a property. If the property is taken by the taxing authority or other entity, FHA must expend time and resources to recover the property, and may even lose its ability to recoup its insurance losses to the Mutual Mortgage Insurance Fund (MMIF).

II. This Interpretive Rule

A. Introduction

This interpretive rule clarifies HUD's longstanding position on the question of what is meant by the term ''court of competent jurisdiction'' in the ''sue and be sued'' clause contained in section 1, Title I of the National Housing Act (NHA) (12 U.S.C. 1702). The purpose of this clarification is to assist FHA to efficiently manage its real estate owned (REO) inventory and ensure prompt payment for taxes and other fees and assessments. The purpose is also to protect FHA's MMIF assets, which include acquired single family properties.[2] By accompanying notices in

[1] See *http://portal.hud.gov/hudportal/documents/huddoc?id=13-18ml.pdf.*

[2] Section 202(a)(3) of the National Housing Act (12 U.S.C. 1708(a)(3)) imposes a fiduciary duty on the Secretary to protect the Mutual Mortgage Insurance Fund. Section 4(b) of the Department of HUD Act (42 U.S.C. 3533(b)) requires the Secretary to hold FHA managers responsible for protecting federal assets and performing risk management.

today's **Federal Register**, HUD provides specific POCs at HUD's Home Ownership Centers (HOCs) that holders of liens on HUD single family property may use to present requests for payment. The publication and use of these POCs by the public should help obviate the need for litigation to enforce non-payment of liens against FHA properties. This interpretive rule provides the process for initiating suit against FHA if for some reason payment is not made and the taxing authority or other entity has a lien that it seeks to foreclose.

B. HOC POCs

Ancillary to the interpretive rule, HUD is providing POCs in each of its four HOCs to receive tax bills and similar billings. Each HOC oversees on average 13 states/jurisdictions for FHA activities and has an REO division that handles the day-to-day oversight of FHA's acquired properties. In most cases, having a known POC to send billings should obviate the need to have to bring suit against HUD to levy on a property.

C. Jurisdiction

In the unlikely event it becomes necessary for a taxing authority or HOA, CA or special assessment entity to proceed against HUD's property, this interpretive rule explains the exclusive federal jurisdiction for such an action. Section 1 title I, of the NHA provides a limited waiver of sovereign immunity. Under that provision: ''[T]he Secretary shall, in carrying out the functions of this title and titles II, III . . . be authorized, in his official capacity, to sue and be sued *in any court of competent jurisdiction,* State or Federal.'' (Underlining is provided for emphasis). This section was added to the NHA by the Banking Act of 1935, sec. 334, Title III, Public Law 74–305, 49 Stat. 684, approved August 23, 1935). In 1972, Congress passed the Quiet Title Act (QTA) (Pub. L. 92–562, 86 Stat. 1176). The QTA made two changes to Title 28 of the United States Code, which title of the code governs the federal judicial system and judiciary procedures. First, the QTA created a new 28 U.S.C. 2409a, entitled ''Real Property Quiet Title Actions.'' Paragraph (a) of section 2409a states, ''The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest.'' Second, QTA amended 28 U.S.C. 1346, entitled ''United States as defendant'' by adding a new paragraph (f), which states, ''The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in property in which an interest is claimed by the United States.''

The Supreme Court succinctly explained the lack of jurisdiction in state courts and the exclusivity of federal court jurisdiction in QTA actions in *California* v. *Arizona,* 440 U.S. 59 (1979):

> [T]he intent of Congress seems reasonably clear. The congressional purpose was simply to confine jurisdiction to the federal courts and to exclude the courts of the States, which otherwise might be presumed to have jurisdiction over quiet-title suits against the United States, once its sovereign immunity had been waived. . . . We find, therefore, that section 1346(f), by vesting 'exclusive original jurisdiction' of quiet title actions against the United States in the federal district courts did no more than assure that such jurisdiction was not conferred upon the courts of any State.

Federal courts have consistently held that 28 U.S.C. 2409a authorizes owners of an interest in real property in which an agency such as HUD holds an interest, including an ownership interest, to bring suit to foreclose the government's interest in the property. The QTA applies to lawsuits involving interests that could cloud title, not just traditional quiet title actions, as the terminology of the QTA by its terms includes any adjudication of a ''disputed title'' to real property. *See, United States* v. *Bedford Associates,* 657 F. 2d 1300, 1316 (2d Cir. 1981), *cert. den.* 456 U.S. 914 (1982); *Robinson* v. *United States,* 586 F. 3d 683, 687 (9th Cir. 2009); *Delta Sav. & Loan Ass'n.* v. *I.R.S.,* 847 F. 2d 248, 249 n. 1 (5th Cir. 1988); *George* v. *United States,* 672 F. 3d 942 (10th Cir. 2012), *cert. den.* 133 S. Ct. 432, __ U.S. __, 2012 U.S. LEXIS 7933 (2012).

III. This Interpretive Rule

In order to have a uniform process that both the public and HUD can use, and which will ensure that HUD can act in a timely, accurate, and consistent manner to protect properties that are assets of the MMIF, it is HUD's interpretation that the sue and be sued clause in 12 U.S.C. 1702, specifically the words ''court of competent jurisdiction'' means, for purposes of foreclosing tax, HOA, CA, special assessment (*i.e.,* for sidewalks, septic or water systems and the like), or similar fees and assessments that result in liens on HUD properties, the United States District Court in the jurisdiction where the HUD property that is to be the subject of the lien foreclosure is situated or in Washington, DC. This interpretation is based on the provisions of the QTA, and the Supreme Court's analysis of the same in *California* v. *Arizona* and similar cases.

As the exclusive venue for foreclosing a lien on HUD-owned property is a United States District Court, the Federal Rules of Civil Procedure (FRCP) must be followed. Rule 4(i) sets out the procedures to serve Federal agencies. Under that rule, the head of the agency or his or her designee must be served, as well as the United States Attorney General and the United States Attorney in the applicable district. HUD, by separate notice in today's **Federal Register**, pursuant to previously published delegations of authority, authorizes Regional Counsel in each of HUD's 10 Regional Counsel Offices to redelegate to staff within their operational jurisdictions the authority to accept service of process in those cases where FHA owns a property, a taxing authority, HOA, CA, or other entity purports to bring suit due to a nonpayment of taxes or other fees and assessments, and the entity seeks to foreclose its lien in order to obtain title to the property.

IV. Conclusion

Accordingly, HUD interprets the ''sue and be sued'' clause of section 1 of title 1 of the NHA as requiring suit to be brought exclusively in the Federal District Court where the property is located (or in the Federal District Court for the District of Columbia) if a lienholder wishes to enforce a lien against a single family property owned by HUD as the result of the payment of a mortgage insurance claim.

Dated: October 7, 2015.

Helen R. Kanovsky,

General Counsel.

[FR Doc. 2015–26160 Filed 10–14–15; 8:45 am]

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This interpretive rule is issued pursuant to these statutory mandates.

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in