

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 203

[Docket No. FR-4411-F-02]

RIN 2502-AH30

### Single Family Mortgage Insurance; Informed Consumer Choice Disclosure Notice

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements a recent statutory amendment to HUD's Federal Housing Administration (FHA) Single Family Mortgage Insurance Program. The statutory amendment requires an original lender to provide certain information, in the form of a disclosure notice, to prospective borrowers who have applied for an FHA-insured home mortgage; and that HUD develop this disclosure notice. Specifically, through the disclosure notice, the lender must provide the prospective FHA borrower with an analysis comparing the mortgage costs of the FHA-insured mortgage with the mortgage costs of other similar conventional mortgage products that the lender offers and that the borrower may qualify for. The disclosure notice must also provide information about when the requirement to pay FHA mortgage insurance premiums terminates. This final rule takes into consideration public comment received on the February 16, 1999 proposed rule.

**DATES:** Effective Date: July 2, 1999.

**FOR FURTHER INFORMATION CONTACT:** Vance T. Morris, Director, Home Mortgage Insurance Division, Office of Insured Single Family Housing, Room 9270, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-8000; telephone (202) 708-2700 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

#### I. Background on the Informed Consumer Choice Disclosure Requirement

HUD's February 16, 1999 proposed rule (64 FR 7726) advised the public of our proposal to amend the Federal Housing Administration (FHA) Single Family Mortgage Insurance Program regulations to require lenders to disclose, through a notice, certain

consumer information to prospective FHA borrowers. Because a number of comments received on the proposed rule indicated some misunderstanding about the reasons for this rulemaking, we believe it may be helpful to repeat, in this final rule, the background of the new informed consumer choice disclosure requirement.

#### a. New Statutory Requirement—Lenders Must Disclose Certain Information to Borrowers in Form of a Notice and HUD Must Develop the Notice

Section 225(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, 112 Stat. 2461) (FY 1999 HUD Appropriations Act) amended section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) (NHA) by adding the following language at the end of the section:

In conjunction with any loan insured under this section, an original lender shall provide to each prospective borrower a disclosure notice that provides a one page analysis of mortgage products offered by that lender and for which the borrower would qualify. This notice shall include: (i) A generic analysis comparing note rate (and associated interest payments), insurance premiums, and other costs and fees that would be due over the life of the loan for a loan insured by the Secretary under this subsection with note rates, insurance premiums (if applicable), and other costs and fees that would be expected to be due if the mortgagor obtained instead other mortgage products offered by the lender and for which the borrower would qualify with similar loan-to-value ratio in connection with a conventional mortgage . . . assuming prevailing interest rates; and (ii) a statement regarding when the mortgagor's requirement to pay mortgage insurance premiums for a mortgage insured under this section would terminate or a statement that the requirement will terminate only if the mortgage is refinanced, paid off, or otherwise terminated.

#### 1. Statutory Obligations Imposed on Lenders

This statutory amendment requires original lenders to provide prospective FHA-insured mortgage borrowers with:

- (1) A one page analysis comparing the mortgage costs of the FHA-insured mortgage with the mortgage costs of other similar conventional mortgage products that the lender offers and that the borrower may qualify for; and
- (2) Information about when the requirement to pay FHA mortgage insurance premiums terminates.

#### 2. Statutory Obligations Imposed on HUD

Section 225(b) of the FY 1999 HUD Appropriations Act directs HUD to:

(1) Develop the disclosure notice document, through which the lender must disclose this information; and

(2) Develop this notice within 150 days of enactment of the FY 1999 HUD Appropriations Act through notice and comment rulemaking.

#### b. How the February 16, 1999 Rule Proposed To Implement These Statutory Requirements

HUD's February 16, 1999 proposed rule included, for comment, a model disclosure notice that provided the consumer information required to be disclosed by section 225(a) of the FY 1999 HUD Appropriations Act (or more accurately by amended section 203(b)(2) of the NHA). The proposed rule also included an amendment to HUD's regulations at 24 CFR part 203 that would add a new § 203.10. New § 203.10 would conform HUD's FHA Single Family Mortgage Insurance Program regulations to the statutory lender disclosure requirement.

In the February 16, 1999 proposed rule, we specifically solicited comments and recommendations regarding the format of the proposed disclosure notice. As we stated in the proposed rule, HUD anticipates lenders will develop generic disclosure notices that compare a typical FHA mortgage in the marketplace with typical conventional mortgages offered by that lender using a \$100,000 sales price (or another amount that may be typical within the lender's market). We noted in the rule that lenders will be expected to modify their disclosure notices accordingly as conventional mortgage offerings and pricing change over time.

We also stated in the proposed rule that it was HUD's assessment that a generic disclosure notice (similar to those provided with ARMs) reflects the intent of Congress in passing this statutory requirement and does not place an unreasonable burden on lenders. Therefore, we are not requiring, through this rulemaking, a case-specific disclosure notice for each borrower who may qualify for both an FHA-insured mortgage and conventional financing. We reiterate the statement, made in the proposed rule, that to do otherwise would significantly increase mortgage origination costs and be counter to the intent of Congress in enacting the informed consumer choice requirement and the Paperwork Reduction Act of 1995.

#### II. Public Comments on the Proposed Rule

In order to complete rulemaking by the deadline imposed by section 225(b) of the FY 1999 HUD Appropriation Act,

we found it necessary to shorten the public comment period for the February 16, 1999 proposed rule to 30 days. By the close of the public comment period on March 18, 1999, we had received 27 comments on the proposed rule. The commenters primarily included mortgage lending institutions and associations representing lenders.

This section of the preamble presents a summary of the significant issues raised by the commenters and HUD's responses to their comments.

*a. Support for the Proposal—HUD's Proposal Strikes a Reasonable Balance*

The majority of the commenters were supportive of the proposed model disclosure notice and commended HUD's efforts to strike a balance between the borrower's need for information and minimizing the administrative burden placed on lenders. The following reflects a comment typical of these commenters:

[We] applaud HUD's efforts to develop the Informed Consumer Choice Disclosure in a manner that provides consumers with meaningful, relevant information without adding to the administrative burden being borne by lenders. By not requiring case-specific examples, the proposed disclosure format allows lenders to be flexible but consistent in the way which pertinent information is provided to borrowers thereby striking a reasonable balance between the borrower's need for information and the effort required for lenders to produce the disclosure.

*b. Opposition to the Proposal—Do Not Mandate Disclosure; Do Not Mandate Use of HUD's Proposed Disclosure Notice*

*Comments.* Several commenters stated their opposition to the requirement that lenders provide a disclosure notice to prospective FHA borrowers. Other commenters in this group recognized that the disclosure requirement was statutory but objected to HUD's proposed model disclosure notice. These commenters stated that HUD's disclosure notice was too summary or brief in form and, therefore, was not very informative. These commenters stated that, because of its brevity, the disclosure notice might be misleading or confusing for the borrower.

Other commenters stated that the consumer is buried with information that he or she has little interest in receiving, and even less ability to decipher, and that implementing the disclosure in any form will only heighten the confusion surrounding mortgage lending. Another commenter stated that responsible lenders already follow procedures that ensure

applicants are properly informed of the various products available to them and of the costs associated with mortgage loans. The commenter stated that HUD should focus on the few lenders that do not inform applicants of the various products available to them, instead of mandating that the whole industry adopt another disclosure notice.

*HUD Response.* As stated in the proposed rule, and reiterated in this final rule, section 225(a) of the FY 1999 HUD Appropriations Act (amended section 203(b)(2) of the NHA) imposes this disclosure requirement on lenders. We have no authority to waive this requirement. The statute specifies that the disclosure notice is to provide a one page analysis of mortgage products offered by the lender for which the prospective FHA borrower would qualify, and that this analysis is to offer comparison information. The statute imposes an obligation on HUD to develop the disclosure notice through notice and comment rulemaking. We have complied with this statutory obligation through this rulemaking.

We recognize that a lender may want to provide a borrower with more comparison information than a one page disclosure notice makes possible. We also recognize, as some commenters pointed out, that many lenders already provide this type of information in booklets and brochures that are readily available to borrowers. Nevertheless, by creating this statutory disclosure requirement, the Congress appears to have sought specific assurances that lenders are advising prospective FHA borrowers of any comparable conventional mortgage products that they may qualify for. The implementation of this requirement through regulation does not prohibit a lender from providing a borrower with information the lender has already compiled in addition to the one-page disclosure notice.

*c. Specific Comments on the Model Disclosure Notice and New § 203.10*

*Comment—Additional Information Should Be Included in the Notice, and Certain Terms Should be Changed.*

Several commenters suggested various changes to the proposed model disclosure notice. Some of these suggestions consisted of stylistic or editorial changes. Other suggestions included substantive changes to the model notice. These changes included:

- Adding a line to compare the annual percentage rate (APR) of the mortgage products;
- Adding a "total payment" line to include the monthly mortgage insurance premium in line 6;

- Adding a third column to show the dollar differences between the first two columns;
- Changing the title of line 4 to "Downpayment and Closing Costs";
- Changing the title of line 4 to "Required Equity Investment";
- Changing the title of line 4 "Cash Needed at Closing";
- Clarifying that closing costs do not include points;
- Providing more explanation on how mortgage insurance payments change;
- Defining the percentage of private mortgage insurance coverage required;
- Identifying conditions under which mortgage insurance may not be dropped under a conventional mortgage; and
- Identifying any conditions that attach to the conventional loan that may require the continuation of mortgage insurance.

This list does not include all suggestions made by the commenters, but provides an overview of the various types of changes suggested by the commenters.

*HUD Response—Model Notice Adheres to Statutory Requirements; Lenders Have Flexibility to Add Information They Believe Relevant.* HUD appreciates all the suggestions that commenters offered on how the proposed model notice could be improved. As the model notice included in this final rule reflects, we adopted some, but clearly not all, of the changes recommended by the commenters. Consistent with President Clinton's memorandum on plain language (entitled "Plain Language in Government", 63 FR 31885, June 10, 1998), we revised some language in an effort to make the model notice conform with the President's directive. Of the suggested changes that we did not adopt in the final model notice, we note that many of the suggested changes would require more detailed information than a one-page analysis can reasonably include. More importantly, many of the suggested changes would require more information than the statute requires be included in the disclosure notice.

In developing the disclosure notice, we were cognizant of both the considerable information already provided to borrowers by many lenders and the degree of information we believe that Congress intended lenders to provide to borrowers in a one page analysis. We believe that Congress, in imposing this requirement on lenders, sought assurances that FHA borrowers would be made aware of any non-FHA mortgage products that they may qualify for, and determined that a one page

analysis would provide the appropriate "notification" of these non-FHA mortgage products. We believe that this "notification of possible mortgage options" was the main objective of this statutory requirement. For more complete information, the FHA borrower, once notified by the disclosure notice, can then follow-up with the lender and obtain more information on any conventional mortgages that the borrower may qualify for. We believe that the statutory language is clear that Congress was not mandating a detailed comparison of FHA versus conventional mortgage products, nor was it mandating a notice that would explain all applicable mortgage terms.

In developing the model disclosure notice, HUD's intent was to adhere to the statutorily required components of the notice and not to go beyond these requirements. Therefore, we structured the model notice to provide only the information statutorily required, which is to say, only the information sufficient to put the prospective FHA borrower on notice of conventional mortgage products that the borrower may qualify for, and to provide this information in a manner and format that would not impose an undue administrative burden on lenders.

As discussed in the proposed rule and later in this preamble, lenders may want to make additions to their disclosure notices. The model notice included in the final rule merely represents the format prescribed by the Commissioner. The model notice contains the minimum elements of an informed consumer choice disclosure notice. These elements must be included in a lender's notice. The lender may want to include additional lines, columns, or mortgage features that better reflect their mortgage products, or define terms lenders believe should be explained.

*Comment—The Title of the Second Column of the FHA mortgage insurance Premium Information Tables is Unclear.* Two commenters wrote that the titles of the second columns of the FHA mortgage insurance premium tables (entitled "You will make payments for:") were unclear. Both commenters were concerned that consumers might not realize that "payments" means insurance premium payments, rather than mortgage payments. One commenter suggested that the titles should be changed to "You will make premium payments for:". The other commenter suggested that the titles should be changed to read: "You will make mortgage insurance payments for:".

*HUD Response—Clarification Is Made in Final Version of Model Notice.* We agree that the title of the second column of the FHA mortgage insurance premium information tables in the February 16, 1999 proposed model notice was unclear. In order to be as clear as possible, in the model notice included in this final rule, we changed the title to reflect both commenters' suggestions. The title of the second column is now "You will make mortgage insurance premium payments:".

*Comment—Does "Associated Costs" Include the Interest Rate?* One commenter asked whether the phrase "associated costs" in the first paragraph of the proposed model notice included the interest rate. The commenter was concerned that requiring exact interest rate quotes on the disclosure notice would significantly increase the paperwork burden of the lender. The commenter suggested that the final model notice should clarify whether the phrase "associated costs" includes the interest rate.

*HUD Response—Interest Rate Not Included in Associated Costs.* The phrase "associated costs" does not include the interest rate. The disclosure notice does not require an interest rate quote.

*Comment—Reference to "Upfront Mortgage Insurance Premium" Requires Revision.* Three commenters made suggestions about line 10 of the model notice, entitled "Upfront Mortgage Insurance Premium." Two commenters suggested that line 10 should use the upfront mortgage insurance premium (UFMIP) for non-first-time homebuyers. One of these commenters pointed out that the model notice uses the UFMIP for first-time homebuyers who obtain housing counseling, which implies that lenders should use this number. The other commenter suggested that line 10 should state the UFMIP as a percentage of the loan amount (either 1.75% or 2.25%), in addition to the dollar amount.

*HUD Response—Lender Should Choose Appropriate UFMIP.* The directions in the proposed rule for line 10 of the model notice provided that the lender should "[s]how any upfront mortgage insurance premium charged. . ." This instruction means that a lender should choose an appropriate UFMIP. In order to be clear, however, the final model notice includes a footnote that indicates which UFMIP was used in the table. Lenders must include a similar footnote.

*Comment—The FHA Column Numbers Appear to be Incorrect.* One commenter suggested that some of the

numbers in the FHA column are incorrect. The commenter wrote that, assuming the base mortgage amount of \$97,750 (line 2), the upfront mortgage insurance premium (line 10) would be \$2,199.38, and the adjusted mortgage amount would be \$99,949 (line 2 in parentheses). The commenter also suggested that the monthly mortgage insurance premium (line 8) would be \$40.54.

*HUD Response—Model Notice Based on First-Time Homebuyer UFMIP.* The numbers in the FHA column in the model notice are based on a first-time home buyer UFMIP. The numbers suggested by the commenter are based on a non-first-time homebuyer UFMIP. As mentioned in the response to the previous comment, the final model notice has been revised to include a footnote that indicates which UFMIP was used in the table. In the case of the final model notice, the footnote indicates that the table uses a first-time homebuyer UFMIP.

Please note, the number listed for the monthly mortgage insurance premium (line 8) has been revised from \$41.44 to \$40.73 in the final model notice. This is a correction. The number listed in the proposed model notice was based on the mortgage amount including the UFMIP (line 2 in parentheses). It should have been based on the mortgage amount not including the UFMIP. The number listed on line 8 of the final model notice is now correct.

*Comment—Remove the Phrase "Lender's Judgment" from Model Notice.* The proposed model disclosure notice includes a sentence that states "[I]n your lender's judgment, you may have the credit standing to qualify for more than one mortgage product." A few commenters requested that the phrase "in your lender's judgment" be removed from the model disclosure notice. These commenters stated that the phrase tends to indicate that the lender controls the borrower's eligibility for each mortgage product listed on the disclosure notice and that the lender has the authority to offer a borrower other mortgage products when, in some cases, the lender has no such authority.

*HUD Response—Phrase Removed but Statute Requires Lenders to Exercise Judgment.* Although we removed this phrase from the final model notice, we have included this language in the text of the final regulation. The statute expects lenders to exercise their judgment in determining whether a prospective FHA borrower may be eligible for a conventional mortgage product. The statute provides that "in conjunction with any loan insured under this section (section 203(b)(2) of

the NHA) an original lender shall provide to each prospective borrower a disclosure notice that provides a one page analysis of mortgage products offered by that lender and *for which the borrower would qualify*" (emphasis added). We believe that this language requires the lender to determine, based on the information the lender has about the prospective FHA borrower, whether the borrower may qualify for a conventional mortgage product. If the lender determines that the prospective FHA borrower may qualify for a conventional mortgage product, the lender must provide the disclosure notice to the borrower.

The final rule does not require, however, that this determination be a formal determination in any way. The final rule only requires the lender to make a determination based on the lender's initial assessment of the prospective FHA borrower's eligibility for a conventional mortgage product. We believe that the Congress intended the disclosure notice to pose as minimal a burden on lenders as possible. We also believe that Congress intended that, to be most useful, the disclosure be provided to borrowers as early as possible in the process. Requiring that the determination be based only on an initial assessment satisfies both these requirements because a lender need only make a quick initial determination, perhaps within a few minutes of meeting with a borrower, before deciding whether to hand out the notice.

The final rule emphasizes that the nature of determination is informal by using the language "may qualify" (§ 203.10(a)) in place of the statutory language "would qualify". The word "may" indicates a less certain determination than the word "would" requires. The use of the word "may" in the final rule indicates that the lender's determination need only be an informal, initial determination. Because we also believe that Congress intended the notice to be distributed as widely as possible, the final rule states that if a lender is unsure about a borrower's eligibility the lender should distribute the disclosure notice.

**Comment—Providing the Disclosure Notice Will Mislead Borrowers That They Are Eligible for Non-FHA Products.** A few commenters requested clarification regarding to whom the lender must provide the informed consumer choice disclosure notice. One commenter stated that providing the disclosure will lead the average applicant to believe that he or she will be equally likely to qualify for either FHA or conventional financing. This

commenter stated that in most cases the average FHA applicant will not qualify for conventional financing. Other commenters asked whether a lender is to provide the disclosure only to applicants who will likely qualify for conventional financing.

**HUD Response—The Statute Requires the Lender to Provide the Disclosure to a Prospective FHA Borrower Who "Would Qualify" for a Non-FHA Mortgage Product Offered by the Lender.** The statute does not require a lender to provide every prospective borrower or every prospective FHA borrower with an informed consumer choice disclosure notice. As mentioned in the response to the previous comment regarding the phrase "lender's judgment", a lender is required to determine, based on the lender's initial assessment, whether a prospective FHA borrower may be eligible for a conventional mortgage product. If the lender determines that the borrower may be eligible, then the lender must provide a disclosure notice to the borrower.

Again, in imposing this requirement on lenders, we believe that there was concern on the part of the Congress that there are individuals who qualify for both an FHA-insured mortgage and a conventional mortgage, and Congress wanted assurances that these borrowers would be made aware of their choice of financing. In order to ensure that all prospective FHA borrowers that must receive a disclosure notice do, in fact, receive a disclosure notice, the lender should err on the side of providing a disclosure notice to a prospective FHA borrower. The final rule emphasizes this by stating that if a lender is unsure about a prospective FHA borrower's eligibility, the lender should provide a disclosure notice to the borrower.

One commenter suggested that a lender should be able to include in the disclosure notice a comparison of key underwriting requirements between conventional and FHA loan products, and this information would assist the consumer in understanding why conventional financing would not be a viable alternative. The statute, however, does not mandate this action on the part of the lender.

**Comment—Clarify the Type of Comparison of FHA/Conventional Mortgage Products That Is Required.** One commenter stated that it was the intent of the Congress that the disclosure notice should provide consumers with a broader comparison of conventional loan products and not just a single conventional loan product. Other commenters requested that the final rule make clear that the disclosure notice assumes hypothetical loan terms;

that the notice is for illustration purposes only (that actual customer rate and loan terms may be different); or that where a lender serves more than one market, the lender can develop a generic notice suitable for all markets. Other commenters stated that the notice should require lenders to provide only a comparison of the most commonly required FHA mortgages and most commonly available conventional mortgage products, and requested that the final rule clarify that the lender may select a typical, conventional loan for comparison. Another commenter stated that HUD should stipulate to lenders that conventional loans used for comparison should include consideration of all conventional products offered by the lender that the borrower may qualify for with the best alternative used for comparison with the comparable FHA loan parameters. One commenter suggested that HUD's model notice include the following language for clarity purposes: "As such, your lender has prepared a comparison of typical FHA and alternative conventional mortgage products for your review. The information below reflects terms and conditions that we have used recently for our FHA and conventional loans. The loan amount, costs, interest rate, premiums, and other information in the comparison will vary from your own loan transaction."

**HUD Response—The Lender Need Only Provide A Generic Comparison.** We believe that the proposed rule was clear about the type of comparison that is required by the statute, that is a generic comparison. We stated in the February 16, 1999 proposed rule that HUD would not require a case-specific notice for each prospective FHA borrower who may qualify for both an FHA-insured mortgage and conventional financing. We stated that the disclosure notice should compare a typical FHA mortgage in the marketplace with a typical conventional mortgage offered by the lender. We understand, however, the concerns of lenders about the type of comparison that must be made, and have included additional language in the final rule and in the model notice that we believe eliminates ambiguity about the type of comparison required.

**Comment—HUD's Proposal For the Time At Which the Lender Must Provide the Disclosure Should Be Changed.** Two commenters stated that borrowers want and need to see the information provided in the disclosure notice before they begin their application process. Other commenters stated that the timing of the disclosure notice should conform to the timing of disclosure established

for statements required by the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA). Another commenter suggested that the trigger event should not be the signing of the loan, but when the application is received or prepared by the lender. These same commenters stated that, at a minimum, the final rule must clarify that when the proposed rule stated "three days," HUD meant three business days.

**HUD Response—Disclosure Notice Must Be Provided No Later Than Three Days After the Lender's Receipt of the Application.** We appreciate these comments and recognize the need for clarification with respect to the time at which the lender must provide the disclosure notice. The final rule provides that the disclosure notice must be provided to a prospective FHA borrower no later than three business days after the lender's receipt of the application.

**Comment—Rule Should Clarify If Mortgage Brokers Are Responsible for Providing the Disclosure Notice.** A few commenters asked whether a mortgage broker is responsible for delivering the disclosure notice if the application is taken by a mortgage broker. One commenter noted that in the situation in which a broker takes the application, the broker might not deliver the application to the lender until well after the three-day period has expired.

**HUD Response—A Mortgage Broker Is Not An Original Lender; Lender Is Responsible for Providing Disclosure Notice.** The statute provides that the "original lender" must provide the informed consumer choice disclosure. Therefore, a mortgage broker providing the disclosure notice to the borrower will not fulfill the lender's obligation under the statute. As noted in the previous response, the final rule clarifies that the timing of the disclosure notice is no later than 3 business days after the lender's receipt of the application.

**Comment—The Disclosure Notice Should Be Updated Only Once Annually.** Several commenters were concerned about the frequency with which they would be required to update

the disclosure notice. These commenters stated that since pricing of mortgage products can change as frequently as daily or weekly, it would appear that the expectation is that the lenders would be required to update the disclosure notices with the same frequency. The commenters stated that to update the disclosure notices for pricing changes as frequently as they occur defeats the intent of Congress in mandating a generic comparison. These lenders requested that the final rule provide that lenders need only update the disclosure notice once every 12 months.

**HUD Response—The Final Rule Provides that the Disclosure Notice Need Only Be Updated Once Annually.** We agree with the commenters that market conditions could technically require frequent revisions to the disclosure notice that would result in an undue administrative burden on lenders. HUD encourages lenders to update their disclosure notices periodically so that the notice remains meaningful to their borrowers, but the final rule only requires lenders to update their disclosure notices once annually.

**Comment—Delay the Effective Date of its Rule Requiring Informed Consumer Choice Disclosure.** A few commenters requested that HUD delay implementation of the informed consumer choice disclosure notice until after the Homeownership Protection Act (Pub. L. 105-216, 12 U.S.C. 4901 *et seq.*) (HPA) becomes effective on July 29, 1999. These commenters noted that this statute will change the maximum number of years that mortgage insurance will be required. The HPA requires automatic termination of private mortgage insurance (PMI), generally when the loan-to-value (LTV) is scheduled to reach 78 percent of its original level. The commenters stated that in addition to the HPA, the Federal Reserve Board plans to revise the Official Staff Commentary on Regulation Z to explain the interaction between the HPA and TILA.

**HUD Response—Statute Provides No Authority for Delaying Implementation.** We understand the concerns of the

commenters, but believe that the FY 1999 HUD Appropriations Act does not provide HUD with the authority to delay implementation. In requiring HUD to develop the disclosure notice 150 days after enactment of the HUD FY 1999 Appropriations Act and to develop the disclosure notice through notice and comment rulemaking, we interpret this to mean that the only delay in implementation of this statutory requirement is to be HUD's development of the notice. To ensure prompt development, the Congress imposed a statutory deadline on HUD for development of the notice.

**Comment—HUD Needs to Provide Additional Guidance on How Calculations Are to Be Made in the Comparison Chart and More Detailed Instructions on Preparing the Notice.** A few commenters asked technical questions about how precisely calculations were to be done in the disclosure notice to provide a meaningful comparison to consumers.

**HUD Response—HUD Will Provide Lenders More Detailed Instructions Through Mortgagee Letter.** It is our intent that the disclosure notice impose as minimal an administrative burden on FHA approved mortgagees as possible. This rule is not the appropriate place to provide detailed processing instructions and additional guidance on calculations to lenders. We will be issuing a Mortgagee Letter and will provide specific guidance to lenders about the disclosure notice.

### III. The Informed Consumer Choice Disclosure Notice—HUD's Model Notice

The following provides HUD's model informed consumer choice disclosure notice. To complete the generic disclosure format shown below, lenders should use the following instructions. At the lender's discretion, a lender may revise the disclosure notice to include additional line items or columns, further define terms, or explain additional features that better reflect the lender's FHA and conventional mortgage products so as to make a meaningful comparison.

BILLING CODE 4210-27-P

**INSTRUCTIONS FOR CONSTRUCTING AN  
INFORMED CONSUMER CHOICE DISCLOSURE NOTICE**

Line No.	Field Name	Instruction
1	Sales Price	Show \$100,000 sales price (or any other amount you wish that is more reflective of the market).
2	Mortgage Amount	Compute the mortgage amount in accordance with FHA requirements and in accordance with the investor or lender requirements for the conventional financing.
3	Closing Costs	Show the same amount of closing costs for both the FHA and conventional financing. You should use good faith estimates to develop typical costs for the various mortgage programs you offer.
4	Downpayment Needed	Show downpayment amounts exclusive of prepaid expenses.
5	Interest Rate and Term of Loan in Years	Show interest rate and term of loan in years.
6	Monthly Payment (principal and interest only)	Show monthly principal and interest only.
7	Loan-to-Value	Compute loan-to-value by dividing mortgage amount, exclusive of any upfront mortgage insurance premiums, by the lesser of the sales price or appraised value.
8	Monthly Mortgage Insurance Premium (first year)	Show the monthly mortgage insurance premium, if applicable, based on FHA and private mortgage insurance company fee schedules.
9	Maximum Number of Years of Monthly Insurance Premium Payments	Show the maximum number of years that the monthly mortgage insurance premiums, if applicable, must be paid based on FHA requirements and lender/investor requirements for the conventional financing (if monthly insurance premiums terminate when the loan balance declines to a certain loan-to-value (LTV) ratio, show the estimated number of years it will take to reach that LTV).
10	Upfront Mortgage Insurance Premium (if applicable)	Show any upfront mortgage insurance premium charged on either the FHA mortgage or the conventional mortgage.

## HUD MODEL NOTICE

INFORMED CONSUMER CHOICE DISCLOSURE NOTICE

In addition to an FHA-insured mortgage, you may also qualify for other mortgage products offered by your lender. To assure that you are aware of possible choices in financing, your lender has prepared a comparison of the typical costs of alternative conventional mortgage product(s) below, using representative loan amounts and costs (the actual loan amounts and associated costs shown below will vary from your own mortgage loan transaction). You should study the comparison carefully, ask questions, and determine which product is best for you. The information provided below was prepared as of [included month and year].

Neither your lender nor FHA warrants that you actually qualify for any mortgage loan offered by your lender. This notice is provided to identify the key differences between these mortgage products offered by your lender. **This disclosure is not a contract and does not constitute loan approval.** Actual mortgage approval can only be made following a full underwriting analysis by your mortgage lender.

		<b>FHA Financing 203(b) Fixed Rate</b>	<b>Conventional Financing 97% with Mortgage</b>
1	Sales Price	\$100,000	\$100,000
2	Mortgage Amount	\$97,750 (\$99,460 w/ Upfront Mortgage Insurance Premium)	\$97,000
3	Closing Costs	\$2000	\$2000
4	Downpayment Needed	\$4250	\$5000
5	Interest Rate and Term of Loan in Years	7.00%/30 Year Loan	7.00%/30 Year Loan
6	Monthly Payment (principal and interest only)	\$661	\$645
7	Loan-to-Value	97.75%	97%
8	Monthly Mortgage Insurance Premium (first year)	\$40.73 <sup>1</sup>	\$76.63
9	Maximum Number of Years of Monthly Insurance Premium Payments	30 Years	Approx. 13 Years
10	Upfront Mortgage Insurance Premium (if applicable)	\$1710 <sup>2</sup> (Included in Mortgage Amount, line 2)	n/a

<sup>1</sup>Monthly mortgage insurance premiums are calculated on the average annual principal balance, i.e., as the amount you owe on the loan decreases each year, so does the amount of the monthly premium.

<sup>2</sup>Based on an upfront mortgage insurance premium rate available for first-time homebuyers who obtain housing counseling.

**FHA Mortgage Insurance Premium Information:**

If you paid an upfront mortgage insurance premium, you will also be charged a monthly mortgage insurance premium for the period of time shown below, based on the initial loan-to-value and term of your mortgage. You are required to make these payments on your FHA-insured loan for the time shown unless you refinance or the mortgage is otherwise paid in full. (If you were *not* charged an upfront premium, as for example on condominiums, you will pay the monthly premium for the life of the mortgage.)

<b>If the term of your mortgage will be greater than 15 years and with a loan-to-value ratio:</b> Of 89.99 or Less Between 90.00 and 95.00 Of 95.01 and Greater	<b>You will make mortgage insurance premium payments for:</b> 7 Years 12 Years 30 Years
<b>If the term of your mortgage will be 15 years or less and with a loan-to-value ratio:</b> Of 89.99 or Less Between 90.00 and 95.00 Of 95.01 and Greater	<b>You will make mortgage insurance premium payments for:</b> None Required 4 Years 8 Years

#### IV. Findings and Certifications

##### *Paperwork Reduction Act Statement*

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0537. 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 valid control number.

##### *Environmental Impact*

In accordance with 24 CFR 50.19(c)(1) of HUD's regulations, this rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969 (Pub. L. 91–190, 83 Stat. 852, codified as amended at 42 U.S.C. 4321–4347).

##### *Regulatory Flexibility Act*

The Secretary has reviewed this final rule before publication and by approving it certifies, in accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule would not have a significant economic impact on a substantial number of small entities. The rule implements a statutory disclosure requirement imposed on lenders and provides lenders with a model format for that disclosure so that the lenders may comply with the statutory requirements.

##### *Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612 (entitled "Federalism"), has determined that the policies contained in this rule would not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, review under the order is not required.

##### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (5 U.S.C. 1531–

1538)(UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

##### **List of Subjects in 24 CFR Part 203**

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

For the reasons discussed in the preamble, HUD amends 24 CFR part 203 as follows:

##### **PART 203—SINGLE FAMILY MORTGAGE INSURANCE**

1. The authority citation for 24 CFR part 203 continues to read as follows:

**Authority:** 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

2. Add § 203.10 to read as follows:

##### **§ 203.10 Informed consumer choice for prospective FHA mortgagors.**

(a) *Mortgagee to provide disclosure notice.* A mortgagee must provide a prospective FHA mortgagor with an informed consumer choice disclosure notice if, in the mortgagee's judgment, the prospective FHA mortgagor may qualify for similar conventional mortgage products offered by the mortgagee. The mortgagee should base this judgment on the mortgagee's initial assessment of the prospective FHA mortgagor's eligibility for a conventional mortgage product. If a mortgagee is unsure about a prospective FHA mortgagor's eligibility for a conventional mortgage product, the mortgagee should provide the prospective FHA mortgagor with an informed consumer choice disclosure notice.

(b) *Informed consumer choice disclosure notice.* (1) *Contents of notice.* The informed consumer choice disclosure notice must:

(i) Provide a one page generic analysis comparing the mortgage costs of an FHA-insured mortgage with the mortgage costs of similar conventional mortgage products offered by the mortgagee that the prospective FHA mortgagor may qualify for;

(ii) Provide information about when the requirement to pay FHA mortgage insurance premiums terminates; and

(iii) Meet the requirements of section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)).

(2) *Format of disclosure notice.* The informed consumer choice disclosure

notice must be provided in a format prescribed by the Commissioner. HUD has prepared a model informed consumer choice disclosure notice that represents this format and that meets the requirements of section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)). The model informed consumer choice disclosure notice contains the minimum elements of an informed consumer choice disclosure notice. These elements must be included in a mortgagee's informed consumer choice disclosure notice. A mortgagee, however, may include additional elements in an informed consumer choice disclosure notice to better reflect the mortgagee's products or to provide information that the mortgagee believes is meaningful and helpful to the mortgagee's customers.

(3) *Availability of model disclosure notice.* HUD's model informed consumer choice disclosure notice is made available to FHA-approved mortgagees through Mortgagee Letter and is available to the public through the internet at HUD's web site at <http://www.hud.gov> or by contacting: Home Mortgage Insurance Division, Office of Insured Single Family Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–2700 (this is not a toll-free number), or the nearest HUD Homeownership Center (Atlanta, GA (888) 696–4687; Denver, CO (800) 543–9378; Philadelphia, PA (800) 440–8647; or Santa Ana, CA (888) 827–5605). Hearing- or speech-impaired individuals may access these numbers via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

(c) *Timing.* When required under paragraph (a) of this section, a mortgagee must provide an informed consumer choice disclosure notice to a prospective FHA mortgagor not later than three business days after the mortgagee receives the prospective FHA mortgagor's application.

(d) *Revision of notice.* A mortgagee should revise its informed consumer choice disclosure notice periodically to reflect prevailing market conditions. To ensure that the informed consumer choice disclosure notice reflects prevailing market conditions, a mortgagee must revise its informed consumer choice disclosure notice at least once annually.

(e) *Applicability.* This section applies to any application for mortgage insurance authorized under section 203(b) of the National Housing Act (12 U.S.C. 1709) that the mortgagee receives on or after July 2, 1999.

(f) *Definitions.* As used in this section:



*Application* means the submission of financial information in anticipation of a credit decision.

*Conventional mortgage* means conventional mortgage as used in section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) or section 302(b)(2) of

the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)), as applicable.

*Mortgagee* means mortgagee as defined in § 202.2 of this chapter.

*Prospective FHA mortgagor* means a person who submits an application to a mortgagee to obtain mortgage insurance

authorized under section 203(b) of the National Housing Act (12 U.S.C. 1709).

Dated: May 12, 1999.

**William C. Apgar,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 99-13917 Filed 6-1-99; 8:45 am]

BILLING CODE 4210-27-P