DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4831–F–02]

RIN 2502–AI03

Revisions to the Single Family Mortgage Insurance Program

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

ACTION: Final rule.

SUMMARY: This final rule revises HUD's regulations under the single family mortgage insurance program that govern actions by mortgagees with respect to mortgages in default to implement recent statutory changes. The rule also amends regulations under the program to make them consistent with industry practices. The Department believes that these changes will help to increase the administrative efficiency of the single family mortgage insurance program. This final rule follows a proposed rule published on November 10, 2004, and takes into consideration and adopts changes in response to the public comments received.

DATES: *Effective Date:* November 1, 2007.

FOR FURTHER INFORMATION CONTACT: Ivery Himes, Director, Asset Management and Disposition Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9172, Washington, DC 20410–8000; telephone (202) 708–1672 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the toll free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—The November 10, 2004, Proposed Rule

The Department's regulations governing the procedures, rights, and servicing responsibilities, among other things, arising out of a mortgage insured under the single family mortgage insurance program of the Federal Housing Administration (FHA) generally are codified at 24 CFR part 203. Statutory amendments enacted by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998) (FY1999 Appropriations Act), and other changes in practices and procedures, necessitate changes to the regulations at 24 CFR 203.23, 203.24, 203.359, 203.370, 203.371, 203.389, 203.402, 203.604, and 203.605. On November 10, 2004, at 69 FR 65324, HUD published a proposed rule to implement these statutory amendments and make these provisions consistent with industry practice. Specifically, HUD's November 10, 2004, rule proposed the following changes.

A. Proposed Changes to Provisions of FHA Mortgage: Escrow for Condominium and Homeowner Association Fees

HUD proposed to amend 24 CFR 203.23(a) to require a provision in the mortgage for the payment by the mortgagor of homeowner or condominium association fees. Toward this end, HUD proposed to amend § 203.23 to require mortgagees of FHA-insured mortgages endorsed on or after the effective date of the final rule to collect, as part of the monthly mortgage payment, an escrow of the amounts necessary for the payment of these fees when they become due. HUD also proposed amending § 203.24(a)(1) to require the mortgagor to assign that part of the monthly payment received from the mortgagor for condominium or homeowners' association fees.

B. Proposed Changes to FHA Mortgage Claim Procedures

HUD also proposed to amend a number of its claims procedures. Initially, HUD proposed to revise § 203.359(b)(2) to provide that the deed to the Secretary must be recorded within 30 days after the later of the acquisition of possession of the property by the mortgagee or the expiration of the redemption period. HUD also proposed to amend procedures for the payment of pre-foreclosure claims to implement section 601(a) of the FY1999 HUD Appropriations Act. Specifically, HUD proposed to amend § 203.370 to provide for the payment of insurance benefits by the Secretary in a pre-foreclosure sale of the property if, among other things, ''the mortgagor has received an appropriate disclosure, as determined by the Secretary.'' Finally, HUD proposed to amend § 203.371(b) to provide that, along with the existing requirements that must be satisfied for payment of a partial claim, the mortgagor must have made a minimum number of monthly payments, as prescribed by the Secretary. Section 203.371(d) would also be revised to provide that HUD must receive the original of the note and security instrument no later than 60 days after the date of the execution of the note and the security instrument.

C. Proposed Changes to FHA Title Requirements

HUD proposed to amend § 203.389 to add ''aviation easements'' approved by the Secretary at the time of the mortgage origination to the list of easements in paragraph (b)(1) to which the Federal Housing Commissioner may not raise objection in taking title to property covered by an insured mortgage in default.

D. Proposed Changes to Payment of Insurance Benefits

HUD proposed to revise § 203.402(a) and (j) to incorporate new items that would be included in insurance benefits paid by HUD with respect to conveyed and non-conveyed properties. Specifically, in paragraph (a), HUD proposed that an amount be included in the claim payment of a utility fee, if it is a lien prior to the mortgage. HUD also proposed language that would permit HUD to reimburse mortgagees for payments of homeowners' association and condominium fees if, because of a default of a mortgagor in making escrow payments, the mortgagee has to pay these fees. Finally, HUD proposed a revision to paragraph (j) to eliminate the need for approval by the Secretary, prior to the issuance of a mortgage, of a covenant that provides for charges and fees for the administration, operation, and maintenance of community-owned property.

E. Proposed Changes to Mortgagee Actions and Forbearance

Finally, HUD proposed amending two provisions that outline responsibilities of the mortgagee. HUD proposed amending § 203.604(c)(2) to eliminate the requirement of a face-to-face meeting if the mortgaged property is within 200 miles of the mortgagee or a branch office thereof. HUD also proposed amending § 203.605 to clarify the deadline for the mortgagee to complete its loss mitigation evaluation by requiring the mortgagee to evaluate, before the account becomes four payments due and unpaid, all of the loss mitigation techniques provided in § 203.501 to determine which, if any, is appropriate and to reevaluate monthly thereafter.

For a detailed discussion of the proposed regulations, please see the preamble to the proposed rule, at 69 FR 65324–65325.

II. This Final Rule

This final rule takes into consideration the public comments received on the November 10, 2004, proposed rule. The following highlights

the notable changes made at this final rule stage.

Initially, HUD proposed amending §§ 203.23 and 203.24 to require the payment of homeowner or condominium association fees, among the other payments that the mortgagor is required to make under the mortgage. Based on public comments received on these provisions, HUD has determined that a mandatory escrow requirement for condominium and homeowners association fees is not feasible. Therefore, HUD has removed the corresponding homeowner and condominium association fee provisions that were proposed at § 203.402(a) and (j).

Second, in response to industry comments, HUD has determined that it will be difficult in some jurisdictions to be able to receive the recorded, original security instrument from the recording authority and ensure that they are received by HUD within 60 days from execution, as contained in the proposed rule. Accordingly, HUD has revised § 203.371(d) to provide that HUD must receive the original credit instrument no later than 60 days after the date of execution and the recorded, original security instrument not later than 6 months after the date of execution. Where the mortgagee is experiencing a delay from the recording authority, it may request an extension of time from HUD.

Third, HUD had proposed to revise § 203.604(c)(2) to eliminate the requirement of a face-to-face meeting if the mortgaged property is within 200 miles of the mortgagee or a branch office thereof. In consideration of the comments received, HUD has determined that the requirements in § 203.604 require additional consideration. As a result, HUD is planning a comprehensive revision that will revise § 203.604. Because HUD determined that the face-to-face meeting requirement should be reconsidered in a new proposed rule, this final rule does not effectuate the revisions to § 203.604(c)(2) that were contained in the proposed rule.

Although HUD proposed to amend § 203.359(b)(2) to revise the timing requirements for direct conveyance procedures, it has determined not to proceed with this change in this final rule. As proposed, the revision provided that the deed to the Secretary must be recorded within 30 days after the later of the acquisition of possession of the property by the mortgagee or the expiration of the redemption period. After further review, HUD believes that additional investigation is needed before establishing the revised time frame. Therefore, HUD is considering further change and clarification for the timing of direct conveyancing procedures and may issue new time frames in a future rulemaking.

Finally, HUD proposed revising § 203.605 to clarify the deadline for the mortgagee to complete its loss mitigation evaluation. After publication of the proposed rule, a change to § 203.605 was promulgated in the final rule entitled, ''Treble Damages for Failure to Engage in Loss Mitigation'' that was published in the **Federal Register** on April 26, 2005, at 70 FR 21572. Because the proposed change to § 203.605 has already been codified, HUD will not be revising § 203.605 in this final rule.

III. Discussion of Public Comments on the November 10, 2004, Proposed Rule

The public comment period on the proposed rule closed on January 10, 2005. HUD received 32 public comments from a diverse group of commenters representing mortgage companies, condominium owners, lenders, industry groups for mortgage bankers, title insurance companies, realtors, homeowners associations, an attorney, and homeowner advocacy groups. The following provides a discussion of key issues raised by public commenters and HUD's responses to these issues.

A. Escrow for Condominium and Homeowners Association Fees

Comment: The escrow requirement should be preserved in the final rule. Two commenters offered support for the escrow requirement. These commenters wrote that the proposal would help maintain the financial viability of condominium and homeowner associations. However, one of the commenters suggested several modifications and clarifications to the escrow requirement. First, the commenter suggested that HUD clarify that full payment of fees is due at the beginning of the year (either fiscal or calendar). Second, the commenter suggested that any remaining assessments should be due upon purchase of the property and not deferred until the end of the first year of the new mortgage. This commenter also recommended that the final rule should define the term ''assessment'' to ensure that funds not intended to fall within the scope of the rule are not escrowed.

HUD response: HUD appreciates the feedback provided by the commenters, but has determined that a mandatory escrow requirement for condominium and homeowners association fees is not feasible and has removed the requirement in this final rule.

Comment: The proposed escrow requirement will limit the availability of FHA financing, thereby creating an obstacle for homeowners seeking FHA financing. These commenters stated that homebuyers would be required to prepay condominium fees at the time of closing, thereby substantially increasing downpayment costs. The commenters wrote that the increased out-of-pocket costs would discourage many homebuyers from purchasing homes with FHA-insured mortgages.

HUD response: Regardless of whether the fees are paid directly by the mortgagor or through the escrow account, the mortgagors are responsible for payment of the homeowners or condominium association fees. Therefore, HUD believes that escrowing those fees would not affect the affordability of the mortgage. Notwithstanding, HUD has determined that a mandatory escrow requirement for all FHA-insured condominium and homeowners association fees is not feasible and has removed the requirement in this final rule.

Comment: The escrow requirement would impose undue burden on condominium and homeowners associations, as well as servicers. The commenters stated that many of the condominium associations are small and would find it difficult to keep track of the various servicers to whom to send their bills.

HUD response: The Department agrees with the commenters in that the mortgagees and the condominium and homeowners associations, as well as servicers, would need to track additional information if the fees were escrowed. The mortgagees would need to maintain the identity of the condominium or homeowners association, and the condominium and homeowners association would need to maintain the identity of the mortgagee servicing the mortgage. As stated above, HUD has determined that a mandatory escrow requirement for all FHA-insured condominium and homeowners association fees is not feasible. Therefore, HUD has removed the requirement in this final rule.

Comment: The escrow requirement will increase costs and administrative burden for HUD. Several commenters wrote that HUD's costs would increase substantially when servicers are required to advance escrow funds for delinquent loans. The commenters suggested that the costs to HUD for repayment of these escrow advances would outweigh any benefit to HUD in avoiding the relatively small number of

liens or delinquencies that occur under the current system. The commenters also stated that, unlike taxes and insurance, condominium fees are often paid on a monthly or quarterly basis. The commenters wrote that the administrative costs of tracking the fees would prove prohibitive for HUD.

HUD response: HUD disagrees that escrowing for the condominium and homeowners association fees would increase costs for the Department. Currently, in priority states, HUD is already reimbursing mortgagees for the costs in discharging the liens placed upon properties for nonpayment. HUD expects its net cost to decrease, as there should be fewer situations in which the condominium or homeowners association needs to place a lien for nonpayment. Although HUD believes its costs would decrease, HUD has determined that the proposed mandatory escrow requirement is not feasible and has removed the requirement in this final rule.

Comment: The proposed escrow requirement is not necessary because condominium association liens do not present a title problem in the majority of states. One commenter wrote that the issue of unpaid or delinquent condominium fees appears to affect a small percentage of FHA loans and does not justify the imposition of the escrow requirement for the entire population of FHA loans subject to condominium fees. Another commenter stated that several states have begun efforts to resolve the public policy issues involved in homeowner association regulation. This commenter further opined that these efforts would be undermined by HUD's proposed rule.

HUD response: The Department agrees with the commenter that there are currently more non-priority states than priority states. There is a change, however, occurring within the industry for more states to provide for the condominium and homeowner associations to be able to place a priority lien for nonpayment. HUD has determined, however, that a mandatory escrow requirement for all FHA-insured condominium and homeowners association fees is not feasible and has removed the requirement in this final rule.

Comment: There is no legal basis for the proposed escrow requirement. Two commenters questioned HUD's authority to create a policy that guarantees payment of condominium fees where there is no legal obligation to do so and no actual benefit to the FHA insurance fund.

HUD response: Section 203 of the National Housing Act (12 U.S.C. 1709) provides the Secretary with authority to insure mortgages and establish related terms by which the mortgages are insured. HUD believes that it is prudent public policy for HUD to promulgate regulations that will assist in strengthening U.S. neighborhoods. When condominium and homeowner association fees go unpaid, the neighborhood suffers because of deferred maintenance or even deferred capital improvements. It is HUD's responsibility to establish policies that help ensure the stability of neighborhoods. Notwithstanding, HUD has determined that a mandatory escrow requirement for all FHA-insured condominium and homeowners association fees is not feasible and has removed the requirement in this final rule.

Comment: HUD should consider alternatives to the proposed escrow requirement. Several commenters opposed to the escrow requirement suggested possible alternatives that might accomplish HUD's goal. For example, one commenter suggested that HUD should establish stronger qualifying criteria to ensure that a borrower can meet its obligation before being approved for FHA financing. This commenter also suggested that HUD should require disclosure of the fees and the possibility of future increases. Another commenter suggested that HUD should implement a regulation that ensures its lien is superior, thus avoiding the administrative and legal concerns raised by the escrow requirement. A third commenter recommended that before implementing the escrow requirement, HUD examine options such as appropriate forbearance language and repayment plan alternatives.

HUD response: HUD acknowledges the commenters' suggestions and appreciates the recommendations. HUD has, however, determined that the proposed escrow requirement is not feasible and has removed the proposed requirement in this final rule.

B. Claim Procedures

Comment: In cases where the mortgagee arranges for a direct conveyance of the property to the Secretary, HUD should clarify that if a third party has caused a delay, through no fault of the servicer, then HUD will consider granting an extension. One commenter, offering support for the proposed changes to § 203.359(b)(2), asked HUD to state whether it will grant extensions to the 30-day conveyance requirement.

HUD response: HUD appreciates the suggestion offered by the commenter. Although HUD is not effectuating changes to § 203.359(b)(2) in this final rule, it is contemplating revision of the direct conveyance provisions. As stated in section II of this preamble, HUD is considering further change and clarification for the timing of direct conveyance procedures and may issue a new provision in a future rulemaking.

Comment: The final rule should state whether the proposed change to § 203.370(c)(4), which would require a disclosure statement in all pre-foreclosure sales, replaces the debt-counseling requirement for these sales.

HUD response: The revised disclosure requirement replaces the previous requirement for the mortgagor to receive homeownership counseling and to provide a counseling certification to that effect. Counseling will always be encouraged for all mortgagors considering the use of a pre-foreclosure sale (PFS) as a means of loss mitigation. This regulatory change is implemented to improve consistency between 24 CFR 203.370(c)(4) and statutory language in section 204(a)(D) of the National Housing Act.

Comment: Because the timing of submission of partial claim documents is outside the servicer's control, the proposed requirement that HUD must receive the original of the note and security instrument no later than 60 days after the date of execution is unreasonable. According to the commenters, certain jurisdictions experience extensive delays in handling the recording and mailing of documents. These commenters stated that the proposed rule provision authorizing a servicer to provide a certified copy would be insufficient to address these concerns, because it would be equally difficult to obtain such a copy from a recorder's office. To address these concerns, the commenters suggested several alternative timing requirements. For example, some of the commenters recommended that the 60-day requirement should run from the date the servicer receives the original recorded security instrument from the recorder's office. One commenter suggested that the servicer should be permitted to submit a copy of the unrecorded documents within 60 days of execution, followed by submission of the original recorded documents within 120 days of execution. Another commenter suggested the same remedy, but with time frames of 90 days for submission of the unrecorded document and 12 months for submission of the recorded instrument. One commenter urged that HUD continue to work on development of an online system to replace the manual process necessary to

request extensions for delivering partial claim documents.

HUD response: The Department agrees with several of the industry comments that it will be impossible in some jurisdictions to be able to receive the recorded security instruments from the recording authority and to ensure that they are received by HUD within 60 days from execution. However, several commenters agreed that all mortgagees should be able to provide copies of the documents filed for recordation within the initial 60-day time frame and then forward the recorded documents to HUD at a later date. The industry was varied in the timing of when it recommended that the recorded documents should be received by HUD. Those recommendations ranged from 90 days to 12 months. As such, the Department has set the time requirement for receipt of the recorded security instrument at 6 months from the date of execution. The deadline for delivery of the original note to HUD remains at 60 days after the date of execution. Where the lender is experiencing a delay from the recording authority, it may request an extension of time from HUD.

Comment: The penalty for failure to meet partial claim submission deadline is too severe. Several commenters objected to the penalties for failure to provide the partial claim documents, consisting of the original note and recorded security instrument, within 60 days of execution. The proposed rule provided that if the servicer misses the submission deadline, HUD will require reimbursement of the amount of the entire partial claim payment. The commenters stated that this penalty is severe because it is based upon a third party's actions over which servicers have no control. The commenters also wrote that the penalties are not based upon the actual harm suffered by HUD. The commenters wrote that the penalties are so severe that the unintended consequences of the rule will be that servicers will view the use of partial claims as unreasonably risky and will be reluctant to offer such plans to borrowers for fear of incurring enormous, yet uncontrollable, penalties.

HUD response: HUD considered the industry comments concerning the deadline for partial claims and acknowledges the difficulty in some jurisdictions to be able to receive the recorded security instruments from the recording authority. This delay makes it difficult to ensure that the recorded documents are received by HUD within the proposed 60-day period. Therefore, HUD has set the time requirement for receipt of the original note at no later than 60 days and the original of the security instrument not later than 6 months from the date of execution. Where the lender is experiencing a delay from the recording authority, it may request an extension of time from HUD.

Comment: In the final rule, HUD should clarify the minimum number of payments required for payment of partial claim. Two commenters requested additional clarification regarding the proposed amendment to § 203.371(b), which would establish the requirements for payment of a partial claim. Under the proposed rule, the mortgagor would have made a ''minimum number of monthly payments as prescribed by the Secretary'' to be eligible for payment of a partial claim. The commenters requested that the final rule provide greater specificity regarding how many payments would constitute a ''minimum number.'' One of the commenters suggested that the final rule establish a requirement of four monthly payments.

HUD response: Numerous factors that affect the financial situation of the mortgagor must be considered in making payment determinations. HUD believes it is in the best interests of all parties to make the minimum number of payments determinations on a case-by-case basis. Thus, HUD has not revised the provision in this final rule and has clarified that determinations are made on a case-by-case basis.

C. Face-To-Face Interview Requirement

Comment: The face-to-face meeting requirement is obsolete and unnecessary and should be removed in the final rule. Several commenters stated that the meeting requirement was adopted nearly 30 years ago, before the current collection, delinquency assistance, and loss mitigation measures were in place. The commenters also stated that under HUD's current regulations and guidelines, as well as self-imposed guidelines, servicers have multiple contacts with delinquent borrowers. These communication efforts include notices and monthly statements indicating that a borrower's payment is past due, loss mitigation letters commencing on the 60th day of delinquency, a ''how to avoid foreclosure'' pamphlet, and (should matters reach that far) a foreclosure notice.

HUD response: HUD agrees with the commenters and has determined that amending the existing requirement is appropriate. As the Department has already relieved the industry from a requirement to conduct a face-to-face meeting as a requirement for loan origination, it may also be time to make a similar change with respect to FHA's servicing requirements. However, the Department strongly believes that there must be a minimum standard for mortgagees to attempt to contact a delinquent mortgagor. The earlier the mortgagee reaches a delinquent mortgagor to discuss options for bringing the mortgage current, the greater are its chances in resolving the delinquency. Therefore, the Department will propose a comprehensive revision of § 203.604 in a subsequent rulemaking that will invite industry comments. As a result, HUD has determined not to pursue changes to the face-to-face requirement and has removed its proposal in this final rule. The current § 203.604 will remain effective.

Comment: The face-to-face meeting requirement may violate the Fair Debt Collection Practices Act. Two commenters suggested that a face-to-face meeting in a borrower's home might cast the servicer as a ''debt collector'' acting in violation of the Fair Debt Collection Practices Act.

HUD response: As explained in response to the previous comment, HUD is not pursuing the change to § 203.604(c)(2) at this time, but is considering a new proposed rule that would invite industry comments about improving the face-to-face meeting requirements.

Comment: Face-to-face meetings are economically burdensome, give preferential treatment to borrowers fortunate to live within the 200-mile limitation over other borrowers, and place the employees of mortgagees at risk of bodily harm. One commenter explained that servicers would be required to incur exorbitant travel and training expenses in order to comply with this requirement, since servicers are expected to use trained personnel who are familiar with the borrower's account and loss mitigation procedures. Another commenter suggested that borrowers who are facing the potential loss of their home are likely to be uncooperative, frustrated, and angry. Other commenters recommended that, for the safety of a servicer's employees and to ensure compliance with loss mitigation requirements, personal visits should take place at the servicer's office or at a HUD counseling agency, and not at the mortgagor's home.

HUD response: HUD agrees that amending the existing requirement is appropriate. As discussed, HUD is developing a proposed rule that will comprehensively revise § 203.604 and will invite industry comment. Accordingly, this final rule does not

adopt any changes to the current § 203.604.

Comment: HUD should clarify which ''branches'' or ''offices are subject to the face-to-face meeting requirement.'' One commenter stated that many large servicers have numerous servicing sites, only some of which may service FHA loans. The commenter asked HUD to clarify whether servicing sites that do not service FHA loans are subject to the face-to-face requirement. The commenter wrote that employees at such sites are not trained on FHA loss mitigations and other loan requirements. Another commenter wrote that the proposed rule might be misinterpreted to apply to origination offices. According to this commenter, this would conflict with HUD's long-standing position that the face-to-face requirement refers to servicing offices and not to origination offices of the lender.

HUD response: As explained above, HUD is not pursuing the change to § 203.604(c)(2) at this time, but is considering a new proposed rule that would invite industry comments about improving the face-to-face meeting requirements.

Comment: The final rule should provide for the use of investigators to locate ''no contact'' borrowers. One commenter suggested that the final rule should provide for the use of third-party investigative companies to locate delinquent borrowers that lenders are unable to locate and contact.

HUD response: As explained above, HUD is not making a change at this time, but is considering a new proposed rule that would invite industry comments about improving the face-to-face meeting requirements. Because HUD is still considering the comments received on this requirement and because HUD plans to issue a proposed rule that would revise the section, HUD is not making any change to the current regulations at § 203.604.

D. Mortgagee Action and Forbearance

Comment: In the final rule, HUD should clarify whether the accelerated claim disposition (ACD) demonstration criteria for the transfer for ACD loans will be affected by the rule.

HUD response: In the November 10, 2004, proposed rule, HUD sought to clarify § 203.605 regarding the deadline for the mortgagee to complete its loss mitigation evaluation. The proposed revision would make clear that before the account becomes four payments due and unpaid, the mortgagee shall evaluate all of the loss mitigation techniques provided in § 203.501 to determine which, if any, is appropriate, and shall reevaluate monthly thereafter.

Subsequent to publication of the November 10, 2004, proposed rule, a change to § 203.605 was promulgated in the final rule for treble damages that was published in the **Federal Register** on April 26, 2005, at 70 FR 21572. Because the proposed change to § 203.605 was addressed in that final rule, HUD will not be further updating this regulation at this time. HUD also has no plans to change the existing criteria for selection of cases for possible participation in the Accelerated Claim Disposition (ACD) program.

IV. Findings and Certifications

Paperwork Reduction Act

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 2502–0404. 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

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). A supplemental FONSI was made for this final rule. Both are available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an advance appointment to review the FONSI by calling the Regulations Division at (202) 708–3055 (this is not a toll-free telephone number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are not any unusual procedures that would need to be complied with by small entities. The rule revises certain regulations under the Single Family Mortgage Insurance program to improve the efficiency of the program. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

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.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.117.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 203 to read as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

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

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

■ 2. Revise § 203.370(c)(4) to read as follows:

§ 203.370 Pre-foreclosure sales.

* * * * *

(c) * * *

(4) Must have received an appropriate disclosure, as prescribed by the Secretary.

■ 3. Revise § 203.371(b)(4), (b)(5), add a new paragraph (b)(6), and revise paragraph (d), to read as follows:

§ 203.371 Partial claim.

* * * * *

(b) * * *

(4) The mortgagor is not financially able to make sufficient additional payments to repay the arrearage within a time frame specified by HUD;

(5) The mortgagor is not financially qualified to support monthly mortgage payments on a modified mortgage or on a refinanced mortgage in which the total arrearage is included; and

(6) The mortgagor must have made a minimum number of monthly payments as prescribed by the Secretary on a case-by-case basis.

* * * * *

(d) *Application for insurance benefits.* Along with the prescribed application for partial claim insurance benefits, the mortgagee shall provide HUD with the original credit instrument no later than 60 days after execution. The mortgagee shall provide HUD with the original security instrument, required by paragraph (c) of this section, no later than 6 months following the date of execution. If the mortgagee experiences a delay from the recording authority, it may request an extension of time, in writing, from HUD. If the mortgagee does not provide the original of the note and security instrument within the prescribed deadlines, the mortgagee shall be required to reimburse the amount of the claim paid, including the incentive.

■ 4. Revise § 203.389(b)(1) to read as follows:

§ 203.389 Waived title objections.

* * * * *

(b)(1) Aviation easements, which were approved by the Secretary at the time of the origination of the mortgage, and other customary easements for public utilities, party walls, driveways, and other purposes.

* * * * *

■ 5. Revise § 203.402(a) and (j) to read as follows:

§ 203.402 Items included in payment—conveyed and nonconveyed properties.

* * * * *

(a) Taxes, ground rents, water rates, and utility charges that are liens prior to the mortgage.

* * * * *

(j) Charges for the administration, operation, maintenance, or repair of community-owned property or the maintenance or repair of the mortgaged property, paid by the mortgagee for the purpose of discharging an obligation arising out of a covenant filed for record prior to the issuance of the mortgage; and charges for the repair or maintenance of the mortgaged property required by, and in an amount approved by, the Secretary under § 203.379 of this part.

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Dated: September 24, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E7–19459 Filed 10–1–07; 8:45 am]

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