

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR-4916-P-01]

HUD-2004-0022

RIN 2502-AI20

Change in Default Reporting Period

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations under the single-family mortgage insurance program that require mortgagees to report the status of all single-family mortgages insured by HUD that are in default after 60 days or that are 90 or more days delinquent, as applicable. The rule would require mortgagees to report to HUD mortgages that are 30 or more days delinquent on the last day of the month. The Department believes that the rule would, among other things, provide HUD with more recent delinquency information. The receipt of more up-to-date information will enable HUD to better monitor its loss mitigation program and strengthen the soundness of the Federal Housing Administration (FHA) Mortgage Insurance Funds.

DATES: Comment Due Date: February 22, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at: <http://www.regulations.gov>; or
- The HUD electronic Web site at: <http://www.epa.gov/feddocket>. Follow the link entitled "View Open HUD Dockets." Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at <http://www.epa.gov/feddocket>.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Office of

the Deputy Assistant Secretary for Single Family Housing, Office of Housing, Department of Housing and Urban Development, Room 9172, 451 Seventh Street, SW., Washington, DC 20410-8000; telephone 202-708-1672 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Under HUD's existing regulations at 24 CFR 203.332, 203.439(c), and 203.468, mortgagees are required to report to HUD the status of all FHA single-family mortgages that are delinquent. Section 203.332 provides that a monthly report is to be made to the FHA Commissioner (Commissioner) by the mortgagee with respect to "mortgages insured under this part that are 90 or more days delinquent." The report also must list the "status of all mortgages which were reported as 90 or more days delinquent the previous month."

Under section 203.439(c), mortgagees are required to notify the Department of Hawaiian Home Lands each month of those mortgages insured under section 247 of the National Housing Act (12 U.S.C. 1715z-12) on leaseholds of Hawaiian home lands that are 90 or more days delinquent, including mortgages reported the previous month as 90 or more days delinquent. The regulation provides that the notice is in addition to the report required under § 203.332.

With regard to default, § 203.468 requires that the lender notify the Commissioner of a default within 60 days after its occurrence, unless the default has been cured or unless the Commissioner has been notified of a previous default that remains uncured.

The delinquency and default information is used to identify status and trends of FHA insured mortgages. Default reporting is also an effective indicator of FHA lenders' origination and servicing activities along with potential risks to the FHA Mutual Mortgage Insurance Fund. HUD's Single Family Default Monitoring System, through the submission of data by the mortgagees, captures loan level default data and feeds this information to other HUD portfolio management and lender monitoring systems, including Credit Watch and Neighborhood Watch. Accurate default reporting is essential to HUD's portfolio and lender monitoring activities.

II. This Proposed Rule

This rule would revise 24 CFR 203.330 and 203.331 by changing the data reporting period for delinquent mortgages and defaulted mortgages to once each month on a day prescribed by HUD. The report shall be made in a manner prescribed by HUD. In light of the proposed revisions to §§ 203.330 and 203.331, this rule would remove § 203.332 to avoid unnecessarily duplicative sections.

This rule would also revise paragraph (c) of 203.439 to state that the mortgagee shall notify the Department of Hawaiian Home Lands once a month on a day prescribed by HUD of all mortgages insured under section 247 of the National Housing Act on leaseholds of Hawaiian home lands that are delinquent on the last day of the month. The notice would be in addition to the requirements in §§ 203.330 and 203.331.

Finally, §§ 203.466 and 203.467 also would be revised to conform them to the proposed revisions of §§ 203.330 and 203.331, with respect to the definitions and notice requirements, respectively, of the former sections. In light of the proposed revisions to §§ 203.466 and 203.467, this rule would remove § 203.468 to avoid unnecessarily duplicative sections.

The revisions proposed by this rule would require mortgagees to begin their delinquency reporting of all loans in which the monthly payment is due but not paid by the last day of the month. HUD believes that the proposed regulatory changes should be welcomed by mortgagees. These changes would bring FHA's requirements closer to Fannie Mae, Freddie Mac, the Mortgage Bankers Association, and industry standards for delinquency reporting requirements. As such, FHA would be in a better position to integrate itself, should it choose to do so, into a single platform for industry-wide default data reporting. Additionally, mortgagees should better understand references to payments due and unpaid rather than being required to count days from the due date.

HUD also believes that the proposed revisions would also contribute to FHA's efforts in protecting the financial integrity of the FHA Mutual Mortgage Insurance Fund. The revisions proposed in this rule would result in the Department's receiving more recent and timely delinquency and default information thereby increasing FHA's ability to forecast default volume, future defaults, and potential insurance losses. More timely information will also enable FHA to better monitor its loss mitigation program. This is important

since FHA insures 100 percent of a mortgage loan as compared to private mortgage insurers that insure only 10 to 20 percent of a loan.

Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance

with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
All activity under this rule	600	7200	1	7200

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the interim rule, however. Comments must refer to the proposal by name and docket number (FR-4712) and must be sent to:

Mark Menchik, HUD Desk Officer,
Office of Management and Budget,
New Executive Office Building,
Washington, DC 20503-0001, Fax
number: (202) 395-6947, E-mail:
Mark_D_Menchik@omb.eop.gov
and

Kathleen McDermott, Reports Liaison
Officer, Office of Housing-Federal

Housing Commissioner, Department
of Housing and Urban Development,
451 Seventh Street, SW., Room 9116,
Washington, DC 20410-8000.

Environmental Impact

This rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321). In keeping with the exclusion provided for in 24 CFR 50.19(c)(1), 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. Accordingly, under 24 CFR 50.19(c)(2), this rule is categorically excluded because it amends an existing document where the existing document as a whole would not fall within the exclusion in 24 CFR 50.19(c)(1) but the amendment by itself would do so.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) 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, nor on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act (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. This proposed rule would not impose any new obligation small entities participating in the FHA single-family mortgage insurance programs. Although the rule would require timelier reporting by servicers of delinquent mortgages, the information that the servicers will report is already in their possession. As a result, any new expense to small entities caused by this rule would be negligible. Further, there are no anti-competitive discriminatory aspects of the rule with regard to small entities. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

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.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.117.

List of Subjects in 24 CFR Part 203

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

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 203 to 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 § 203.330 to read as follows:

§ 203.330 Definition of delinquency and requirement for notice of delinquency to HUD.

(a) A mortgage account is delinquent any time a payment is due and not paid.

(b) Once each month on a day prescribed by HUD, the mortgagee shall report to HUD all mortgages insured under this part that were delinquent on the last day of the month. The report shall be made in a manner prescribed by HUD.

3. Revise 203.331 to read as follows:

§ 203.331 Definition of default, date of default, and requirement of notice of default to HUD.

(a) *Default.* If the mortgagor fails to make any payment or to perform any other obligation under the mortgage, and such failure continues for a period of 30 days, the mortgage shall be considered in default for the purposes of this subpart.

(b) *Date of default.* For the purposes of this subpart, the date of default shall be considered as 30 days after-

(1) The first uncorrected failure to perform any obligation under the mortgage; or

(2) The first failure to make a monthly payment that subsequent payments by the borrower are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

(c) *Notice of default.* Once each month, on a day prescribed by HUD, the mortgagee shall report to HUD all mortgages that were in default on the last day of the month. The report shall be made in a manner prescribed by HUD.

(d) *Number of days in month.* For the purposes of this section, each month shall be considered to have 30 days.

§ 203.332 [Removed and reserved]

4. Remove and reserve § 203.332.

5. Amend § 203.439 by revising paragraph (c) to read as follows:

§ 203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.

* * * * *

(c) *Notice of delinquency.* Once each month on a day prescribed by HUD, the mortgagee shall notify the Department of Hawaiian Home Lands of all mortgages insured pursuant to section 247 of the National Housing Act on leaseholds of Hawaiian home lands that are delinquent on the last day of the month. The notice is in addition to the requirement in §§ 203.330 and 203.331.

6. Revise 203.466 to read as follows:

§ 203.466 Definition of delinquency and requirement for notice of delinquency to HUD.

(a) A mortgage account is delinquent any time a payment is due and not paid.

(b) Once each month on a day prescribed by HUD, the mortgagee shall

report to HUD all mortgages insured under this part that were delinquent on the last day of the month. The report shall be made in a manner prescribed by HUD.

7. Revise 203.467 to read as follows:

§ 203.467 Definition of default, date of default, and requirement of notice of default to HUD.

(a) *Default.* If the borrower fails to make any payment or to perform any other obligation under the mortgage, and such failure continues for a period of 30 days, the mortgage shall be considered in default for the purposes of this subpart.

(b) *Date of default.* For the purposes of this subpart, the date of default shall be considered as 30 days after-

(1) The first uncorrected failure to perform any obligation under the mortgage; or

(2) The first failure to make a monthly payment that subsequent payments by the borrower are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

(c) *Notice of default.* Once each month, on a day prescribed by HUD, the mortgagee shall report to the Secretary all mortgages that were in default on the last day of the month. The report shall be made on a form prescribed by HUD.

(d) *Number of days in month.* For the purposes of this section, each month shall be considered to have 30 days.

§ 203.468 [Removed and reserved]

8. Remove and reserve § 203.468.

Dated: December 20, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 05-1046 Filed 1-19-05; 8:45 am]

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