

## BOARD OF DIRECTORS OF THE HOPE FOR HOMEOWNERS PROGRAM

### 24 CFR Part 4001

[Docket No. B-2009-F-01]

RIN 2580-AA00

### HOPE for Homeowners Program: Program Regulations

**AGENCY:** Board of Directors of the HOPE for Homeowners Program.

**ACTION:** Final rule.

**SUMMARY:** This final rule sets forth the core requirements for the HOPE for Homeowners Program that have been established by the Board of Directors (Board) of the HOPE for Homeowners Program (Program). A new section 257 of the National Housing Act (NHA) provides the authority for this Program and oversight requirements to be performed by the Board. Specifically, section 257(c)(1) of the NHA requires the Board to prescribe such regulations as may be necessary or appropriate to implement the Program. The Board has determined that the regulations set forth in this rule are necessary and appropriate for the implementation and effective administration of the Program.

**DATES:** *Effective Date:* October 6, 2008.

**FOR FURTHER INFORMATION CONTACT:** Emmanuel Yeow, Secretary of the Board of Directors of the HOPE for Homeowners Program, Department of Housing and Urban Development, 451 7th Street, SW., Room 9110, Washington, DC 20410-8000, telephone 202-708-3600 (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:

##### Background

The HOPE for Homeowners Act of 2008, located in Title IV of division A of the Housing and Economic Recovery Act of 2008 (HERA), (Pub. L. 110-289, 122 Stat. 2654, approved July 30, 2008), amended Title II of the NHA to add a new section 257. New section 257 (12 U.S.C. 1701z-22) establishes within the Federal Housing Administration (FHA), the Program, a temporary FHA program, that offers homeowners and existing mortgage loan holders (or servicers acting on their behalf) insurance on the refinancing of loans for distressed mortgagors to support long term sustainable homeownership, including among other things, allowing homeowners to avoid foreclosure. Section 257 of the NHA authorizes the

Department of Housing and Urban Development (HUD) acting through the FHA to insure such refinanced eligible mortgages commencing no earlier than October 1, 2008, and such authority expires September 30, 2011.

Under the Program, new mortgages are offered by FHA-approved mortgagees to mortgagors who are at risk of losing their homes to foreclosure. The new FHA-insured mortgage refinances the borrower's existing mortgage at a significant write-down. Eligible borrowers must be unable to afford their existing mortgage payments, must occupy the residence that is the security for the refinanced mortgage as their primary residence, and may not have any present ownership interest in another residence. Investors and investor properties are not eligible for the FHA-insured refinanced mortgages. Under the Program, participating mortgagors share their new equity and future appreciation with FHA. Additionally, participation in this Program is voluntary. No mortgagees, servicers, or investors are compelled to participate.

Section 257 of the NHA prohibits the new mortgage loan insured by FHA from exceeding 90 percent of the appraised value of the property that is security for the mortgage, or 132 percent of the dollar amount limitation in effect for 2007 under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) for a property of applicable size. In addition, section 257 also provides that the term of the FHA-insured refinanced mortgage shall have a maturity of not less than 30 years, and must bear a single rate of interest that is fixed for the entire term of the mortgage. Section 257 directs that a mortgagor participating in the Program may not grant a new subordinate lien on the mortgaged property during the first 5 years of the term of the mortgage insured under the Program, except as the Board may determine is necessary to ensure the maintenance of property standards, and subject to the requirements that any new outstanding liens (1) do not reduce the value of FHA's equity in the mortgagor's home; and (2) when combined with the mortgagor's existing mortgage indebtedness, do not exceed 95 percent of the home's appraised value at the time of the new subordinate lien.

The fundamental principle behind the HOPE for Homeowners Act and this Program is that providing new equity for distressed homeowners may be an effective way to help homeowners avoid foreclosures.

### This Final Rule

Section 257(c)(1) of the NHA requires the Board to establish requirements and standards for the Program, and prescribe such regulations and provide such guidance as may be necessary or appropriate to implement such requirements and standards.<sup>1</sup> In addition to this broad direction to establish requirements and standards for the Program, section 257 also outlines specific areas for which the Board is charged with establishing standards and policies for the Program.

This final rule provides the core requirements that the Board has determined are necessary and appropriate for the implementation and effective administration of the Program. Consistent with section 257 of the NHA, however, the Board may establish standards and policies through means other than codified regulations. More detailed provisions implementing these core requirements may be issued by the Board or FHA through orders, a **Federal Register** notice, or through FHA mortgagee letters (or similar administrative issuances). Because this is a temporary program designed to address the immediate needs of homeowners faced with the looming threat of foreclosure, the regulations adopted by the Board are limited to the basic requirements of the Program. The Board's objective is to adopt regulations that address the core features of the Program, include necessary safety measures to avoid fraud, waste, and abuse, and leave FHA with sufficient flexibility to issue such guidance or processing requirements to make this a Program that is able effectively to assist distressed homeowners avoid foreclosure.

The regulations in this part present the purpose, the authority delegated to FHA, and reference to FHA requirements that are applicable to the Program.<sup>2</sup> The regulations define the

<sup>1</sup> The Board is composed of the Secretary of HUD, the Secretary of Treasury, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, or their respective designees. Section 257(t) of the NHA also provides that the Board may "prescribe, amend, and repeal such bylaws as may be necessary for carrying out the functions of the Board." Consistent with this provision, the Board adopted bylaws regarding its organization, staffing, and operational procedures. These bylaws were published in the **Federal Register** on September 4, 2008 (73 FR 51621) and provide that the Board's principal place of business is 451 7th Street, SW., Washington, DC 20410-0500.

<sup>2</sup> Section 4(b) of the Department of Housing and Urban Development Act, 42 U.S.C. 3533(b), provides that the Federal Housing Commissioner shall head a Federal Housing Administration within HUD and shall have such duties and powers as may

key Program terms, and address the following Program areas: underwriting standards, representations of the mortgagee whose mortgagor will participate in the Program, mortgagor representations, certain prohibitions imposed on FHA, FHA equity sharing with the borrower, FHA appreciation sharing with the borrower, the prohibition on subordinate liens during the first five years of the mortgagor's Program mortgage, and applicable hearing procedures. The Board has determined that regulations addressing these areas are necessary for immediate implementation and long-term administration of the Program.

The payment to FHA of the equity created in the property as a result of the refinancing of the eligible mortgage is designed to avoid any windfall to mortgagors that would arise as the result of the refinancing. The same windfall avoidance concept also applies to the requirement that property appreciation be shared between the homeowner and FHA, the latter which is authorized to share any appreciation funds with subordinate mortgage holders.

Section 257(e)(4)(B) requires that, at a minimum, the Board take into consideration three factors in determining the amount of appreciation a subordinate mortgage lien holder may receive. The first factor is the status or relative priority of the subordinate liens. This factor is addressed in the payout allocation set forth in the rule. After sale or disposition of the property, HUD's 50 percent appreciation interest is paid to prior mortgage lien holders in order of the seniority in which their mortgage liens were held, to the extent of HUD's share. Mortgage lien holders that were in 2nd position behind the 1st mortgage will be paid first, then 3rd mortgage lien holders, and when the claims of all prior lien holders have been satisfied, HUD will retain the balance, if any.

The second factor is the outstanding principal and accrued but unpaid interest of the existing senior mortgage and subordinate mortgages. Since the total balances may not accurately reflect the amount the mortgagee potentially could recover in a foreclosure, the Board determined that these balances should be compared to the appraised value of the property. Therefore, this factor is expressed in the matrix described below as a cumulative combined loan-to-value (CLTV).

The third factor is the extent to which the principal and accrued interest owed on the mortgages that are senior to the particular subordinate mortgage exceed the property's current appraised value. This factor is taken into account as well in the matrix for appreciation sharing because the amount a subordinate mortgage holder may receive is based in part on the amount of principal and interest, calculated at the pre-default contract rate, owed on those mortgages that are more senior than the subordinate mortgage in question.

The Board gave very careful consideration to these three factors by examining several models developed to implement this authority. The initial models were very intricate and concern was raised that adopting any of them would cause confusion in the mortgage marketplace, and discourage subordinate mortgage holders and servicers from participating in the program. The Board also considered the potential for the existing senior mortgage holder, who will receive proceeds from the refinancing that are likely to exceed the holder's potential recovery in a foreclosure, to compensate a subordinate mortgage holder to participate in the Program. The Board encourages lenders to pursue such arrangements.

The following matrix provides the mechanism for determining the future appreciation payment a subordinate lien holder is eligible to receive. The Board considers a number of benefits to be present with this approach. It provides an incentive to action by subordinate lien holders; reduces administrative costs; is simple to calculate and easy to understand; and voids competing appraisals.

#### APPRECIATION SHARING PAYOUT MATRIX

Subordinate lien holder	Percent of unpaid principal and interest that lien holder is eligible to receive*
Cumulative CLTV >135% .....	9%
Cumulative CLTV ≤135% .....	12%

\* Appreciation payment to a subordinate lien holder will depend on actual appreciation at the time of sale of the property and will be limited by the amount of future appreciation HUD receives. Payment will be made according to the subordinate lien holder's position of priority in relation to the property at the time the Program mortgage is originated, and will be based upon principal and interest on the date of origination of the Program mortgage, calculated at the pre-default contract rate of interest.

In establishing the maximum payments allowable to a subordinate mortgage holder, the Board took into account information received from market participants concerning the price received in the market currently for delinquent subordinate mortgages. The Board expects that the majority of subordinate mortgages offered to the Program will be delinquent. The information provided by market participants indicates that delinquent subordinate mortgages currently trade at substantially below their par values, with market values within the ranges established by the Board. Moreover, the information provided suggests that subordinate mortgages that are even 30 days delinquent are very likely to default and yield no recovery value to the holder of the subordinate mortgage. Indeed, it is common practice for holders to write-down the value of delinquent subordinate mortgages in portfolios and in securitized pools to zero once the loans are 180 days past due.

In establishing the maximum amounts that a subordinate mortgage holder may receive through receipt of an interest in the future appreciation of the property, the Board also took into consideration that subordinate mortgage holders receiving compensation in the form of future appreciation rights, may require additional compensation to participate in the Program to reflect the time value of money and uncertainty about the extent and timing of property appreciation. A certificate entitling the holder to receive a portion of future appreciation on a property may be worth little or nothing if the property experiences little or no appreciation. Moreover, appreciation rights are exercised upon sale or other disposition of the property, the timing of which is determined by the homeowner, rather than the claim holder. As a result, if homeowners that have a mortgage insured under the Program sell quickly, appreciation rights will have less value. Since homeowners participating in the Program have an incentive to sell the property to escape the shared appreciation requirement, claim holders may discount the value of shared appreciation rights. Accounting for these factors is inherently imprecise; nonetheless, using models based in part on option-pricing concepts, the Board believes that providing the holder of a subordinate mortgage the right to receive a maximum of 9 to 12 percent of the unpaid principal and interest on the subordinate mortgage out of the future appreciation, if any, on the property should likely provide the

be prescribed by the Secretary of HUD. The Secretary of HUD has delegated to the FHA Commissioner the power and authority to carry out all FHA mortgage insurance programs, including authority to issue rules or regulations to carry out these programs.

holder about the same risk-adjusted compensation as the holder would receive from a current cash payment equal to the approximate current market value of a delinquent subordinate lien of the same amount and CLTV.

### Findings and Certifications

#### *Administrative Procedure Act*

This final rule is being issued and will become effective without a public comment period. Section 553(a) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA) provides that advance notice and public comment procedures do not apply to a matter relating to agency management or personnel or to public property, loans, grants, benefits or contracts (see 5 U.S.C. 553(a)). This final rule establishes regulations for a new mortgage insurance program under the supervision of the Board and is therefore exempt from notice and comment rulemaking as provided in 5 U.S.C. 553(a).

This final rule will become effective upon publication in the **Federal Register**. Section 553(d) of the APA provides that substantive rules, such as this rule, shall be made effective not less than 30 days after publication unless, among other things, an agency finds good cause to provide an earlier effective date. Good cause exists for these regulations to be immediately effective. This is a voluntary and temporary program designed to address the immediate needs of homeowners facing foreclosure, and HERA provides for this Program to begin October 1, 2008, in order that homeowners can take advantage of the mortgage relief offered by this Program. The immediate effective date of this rule is consistent with the statutory authority. The objective for expedient action by the Board to have this Program commence at the beginning of the new Federal fiscal year is motivated by the high level of at-risk borrowers and weak conditions in the housing market.

#### *Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, **Regulatory Planning and Review**. OMB determined that this rule is an economically significant regulatory action as defined in section 3(f) of the Order. Accordingly, an economic analysis was prepared for this rule.

This Program has the potential to have significant economic benefits. The major unknown is participation. If 10,000 participate in the Program, the aggregate net benefit of the Program may

exceed \$100M. It is possible that there will be more participants than 10,000, or less, in which case the net benefits increase or decrease, as the case may be. There are other factors important in determining the aggregate impact on the economy. The net benefit to the lender was estimated to be \$10,000 but, as the economic analysis discusses, it may be higher. A higher net benefit to the senior lien holder would increase the expected benefit of preventing a foreclosure. There are also economic benefits to the community from preventing foreclosure. HUD anticipates that the net economic benefits will exceed the costs based on initial analysis.

The docket file for this rule, which includes the economic analysis, is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

#### *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 preempts state law within the meaning of the Executive Order.

#### *Unfunded Mandates Reform Act*

Title II of 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 the private sector. This rule will not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

#### *Congressional Review Act*

OMB has determined that this rule constitutes a "major rule" as defined in

the Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*). Generally, a major rule under the CRA has a 60-day delayed effective date and is required to be submitted to Congress in accordance with the requirements of the CRA. Section 808 of the CRA allows a rule to become effective sooner than otherwise provided by the CRA, if the agency, for good cause, finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. This finding and a brief statement of the reasons for the finding must be incorporated in the rule. (See 5 U.S.C. 808(2)). As stated in this preamble under the section that addresses APA requirements, this rule is exempt from the notice and comment procedures of the APA. As also discussed in connection with the APA requirements, this Program is a voluntary and temporary measure designed to prevent eligible borrowers whose mortgages are at risk of foreclosure from losing their homes. Some of these borrowers are facing foreclosure now or may in the very near future, making the need for implementation of the Program immediate. A 60-day delay in the effective date of this rule would therefore be contrary to the public interest. Thus, good cause exists to make this rule effective as close as possible to October 1, 2008, which is the date on which the HERA provides for the Program to begin. The Board will submit this rule and other required information to Congress as required by the CRA.

#### **List of Subjects in 24 CFR Part 4001**

Administrative procedures, Practice and procedure, Mortgage insurance, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board of Directors of the Hope for Homeowners Program establishes a new Chapter XXIV consisting of part 4001 in Title 24 of the Code of Federal Regulations to read as follows:

#### **CHAPTER XXIV—BOARD OF DIRECTORS OF THE HOPE FOR HOMEOWNERS PROGRAM**

#### **PART 4001—HOPE FOR HOMEOWNERS PROGRAM**

#### **Subpart A—HOPE for Homeowners Program—General Requirements**

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**Subpart B—Eligibility Requirements and Underwriting Procedures**

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**Subpart C—Rights and Obligations under the Contract of Insurance**

- 4001.201 Cross-reference.
- 4001.203 Calculation of upfront and annual mortgage insurance premiums for Program mortgages.

**Subpart D—Servicing responsibilities**

- 4001.301 Cross-reference.
- 4001.303 Prohibition on subordinate liens during first five years.

**Subpart E—Enforcement****Mortgagor False Information**

- 4001.401 Notice of false information from mortgagor-procedure.

**Appraiser Independence**

- 4001.403 Prohibitions on interested parties in insured mortgage transaction.

**Mortgagees**

- 4001.405 Mortgagees.

**Appendix A to Part 4001—Calculation of Future Appreciation Payment.**

Authority: 12 U.S.C. 1701z–22.

**Subpart A—HOPE for Homeowners Program—General Requirements****§ 4001.01 Purpose of program.**

The HOPE for Homeowners Program is a temporary program authorized by section 257 of the National Housing Act, established within the Federal Housing Administration (FHA) of the Department of Housing and Urban Development (HUD) that offers homeowners and existing loan holders (or servicers acting on their behalf) FHA insurance on refinanced loans for distressed borrowers to support long-term sustainable homeownership by, among other things, allowing homeowners to avoid foreclosure. The HOPE for Homeowners Program is administered by HUD through FHA.

**§ 4001.03 Requirements and delegated authority.**

(a) *Core requirements.* This subpart establishes the core requirements for the HOPE for Homeowners Program that have been adopted by the Board of Directors (Board) for the HOPE for Homeowners Program (Program). In addition to the core requirements, codified in this subpart, the Board of

Directors may adopt and issue additional requirements, standards and policies through non-codified regulations, including through order, **Federal Register** notice, or other statement, such as a mortgagee letter, to be issued and implemented by FHA.

(b) *Basic Program parameters.* (1) FHA is authorized to insure eligible refinanced mortgages under the Program commencing no earlier than October 1, 2008. The authority to insure additional mortgages under the Program expires September 30, 2011.

(2) Under this Program, an eligible mortgagor may obtain a refinancing of his or her existing mortgage(s) with a new mortgage loan insured by FHA, subject to conditions and restrictions specified in section 257 of the National Housing Act and requirements established by the Board.

(c) *Delegated authority.* HUD is statutorily charged with administering, through FHA, the Program. In carrying out the Program requirements established by the Board, FHA is directed to issue such interim guidance and mortgagee letters as FHA determines necessary or appropriate, within the parameters of the requirements, standards and policies adopted by the Board. In addition to FHA's statutory charge, the Board of Directors authorizes FHA to address unique or case-by-case situations as may be encountered by FHA in carrying out the Program, and to take such action as may be necessary to implement the Board's requirements. This delegated implementing authority includes, but is not limited to, specifying application forms, mortgage application procedures, certifications or other assurances, and other information collection requirements, subject to such rules, standards and policies as the Board may adopt.

(d) *Other applicable requirements.* Except as may be otherwise provided by the Board, the provisions and requirements in the FHA regulations in 24 CFR part 203, which are generally applicable to all FHA-insured single family mortgage insurance programs, also apply with respect to the insurance of a refinanced eligible mortgage under the Program.

**§ 4001.05 Approval of mortgagees.**

(a) *Eligibility.* In order for a mortgage to be eligible for insurance under this part, the mortgagee originating the mortgage loan and seeking mortgage insurance under this part shall have been approved by the Secretary pursuant to 24 CFR part 202.

(b) *Mortgagee whose loan is to be refinanced.* A mortgagee holding or

servicing an eligible mortgage to be refinanced and insured under section 257 of the National Housing Act is not required to be an approved mortgagee as required in paragraph (a) of this section, unless it seeks to be the originator of the refinanced mortgage to be insured by FHA.

**§ 4001.07 Definitions.**

As used in this part and in the Program, the following definitions apply.

*Act* means the National Housing Act (12 U.S.C. 1701 *et seq.*).

*Allowable closing costs* mean charges, fees and discounts that the mortgagee may collect from the mortgagor as provided in 24 CFR 203.27(a).

*Board* means the Board of Directors for the HOPE for Homeowners Program, which is comprised of the Secretary of HUD, the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System (Federal Reserve Board), and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation or the designees of each such individual.

*Capital improvements* means a repair, renovation, or addition to a property that significantly enhances the value of the property, but does not include expenses for interior decor, landscape maintenance, or normal maintenance or replacement expenses.

*Contract of insurance* means the agreement by which FHA provides mortgage insurance to a mortgagee.

*Default and delinquency fees* means late charges contained in a mortgage/ security instrument for the late or non-receipt of payments from mortgagors after the date upon which payment is due, including charges imposed by the mortgagee for the return of payments on the mortgage due to non-sufficient funds.

*Direct financial benefit*, as used in section 257(e)(1)(A)(ii)(II) of the Act, consists of the greater of two factors:

- (1) The amount of initial equity the mortgagor has in the property at the closing for the Program mortgage as determined under § 4001.118; and
- (2) The total amount that the existing senior mortgage and all existing subordinate mortgages on the property have been written down.

*Disposition* means any transaction that results in whole or partial transfer of title of a property other than—

- (1) A sale of the property; or
- (2) Any transaction or transfer specified in 12 U.S.C. § 1701j-3(d)(1) through (8).

*Eligible Mortgage* means a mortgage as defined in § 4001.104.

*Existing senior mortgage* means an eligible mortgage that has superior

priority and is being refinanced by a mortgage insured under section 257 of the Act.

*Existing subordinate mortgage* means a mortgage that is subordinate in priority to an eligible mortgage which is being refinanced by a mortgage insured under section 257 of the Act.

*FHA* means the Federal Housing Administration.

*HOPE for Homeowners Program (or Program)* means the program established under section 257 of the Act.

*HUD* means the Department of Housing and Urban Development.

*Intentionally defaulted* for purposes of section 257(e)(1)(A) of the Act means the mortgagor:

(1) Knowingly failed to make payment on the mortgage or debt;

(2) Had available funds at the time payment on the mortgage or debt was due that could pay the mortgage or debt without undue hardship; and

(3) The debt was not subject to a bona fide dispute.

*Mortgage* has the same meaning as provided in 24 CFR 203.17(a)(1).

*Mortgagee* has the same meaning as provided in 24 CFR 203.251(f).

*Mortgagor* has the same meaning as provided in 24 CFR 203.251(e).

*Premium pricing* means the price for the sale of a mortgage loan with an above market rate of interest.

*Prepayment penalties* mean such amounts as defined in 12 CFR 226.32(d)(6) of the Federal Reserve Board's Regulation Z (Truth in Lending).

*Primary residence* means the dwelling where the mortgagor maintains his or her permanent place of abode and typically spends the majority of the calendar year. A mortgagor can only have one primary residence.

*Program mortgage* means the mortgage into which the existing senior mortgage is refinanced.

*Secretary* means the Secretary of Housing and Urban Development.

*Total monthly mortgage payment* means the sum of:

(1) Principal and interest, as determined on a fully indexed and fully amortized basis; and

(2) *Escrowed amounts.* (i) The monthly required amount collected by or on behalf of the mortgagee for real estate taxes, premiums for required hazard and mortgage insurance, homeowners' association dues, ground rent, special assessments, water and sewer charges and other similar charges required by the note or security instrument; or

(ii) For mortgages not subject to escrow deposits,  $\frac{1}{12}$  of the estimated

annual costs for items listed in paragraph (2)(i) of this definition.

## Subpart B—Eligibility Requirements and Underwriting Procedures

### § 4001.102 Cross-reference.

(a) All of the provisions of 24 CFR part 203, subpart A, concerning eligibility requirements of mortgages covering one-family dwellings under section 203 of the National Housing Act (12 U.S.C. 1709) apply to mortgages on one-family dwellings to be insured under section 257 of the National Housing Act (12 U.S.C. 1701z–22), except the following provisions: 203.7 Commitment Process; 203.10 Informed consumer choice for prospective FHA mortgagors; 203.12 Mortgage insurance on proposed or new subdivisions; 203.14 Builder's warranty; 203.16 Certificate and contract regarding use of dwelling for transient or hotel purposes; 203.18 Maximum mortgage amounts; 203.18a Solar-energy system; 203.18b Increased mortgage amount; 203.18c One-time or up-front MIP excluded from limitations on maximum mortgage amounts; 203.18d Minimum principal loan amount; 203.19 Mortgagor's minimum investment; 203.20 Agreed interest rate; 203.29 Eligible mortgage in Alaska, Guam, Hawaii or the Virgin Islands; 203.32 Mortgage lien; 203.37a Sale of property; 203.42 Rental properties; 203.43 Eligibility of miscellaneous types of mortgages; 203.43a Eligibility of mortgages covering housing in certain neighborhoods; 203.43d Eligibility of mortgages in certain communities; 203.43e Eligibility of mortgages covering houses in federally impacted areas; 203.43g Eligibility of mortgages in certain communities; 203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act; 203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act; 203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation Indians; 203.44 Eligibility of advances; 203.45 Eligibility of graduated payment mortgages; 203.47 Eligibility of growing equity mortgages; 203.49 Eligibility of adjustable rate mortgages; 203.50 Eligibility of rehabilitation loans; 203.51 Applicability; and 203.200–203.209 Insured Ten-Year Protection Plans (Plan).

(b) For the purposes of this subpart, all references in 24 CFR part 203, subpart A, to section 203 of the Act shall be construed to refer to section 257 of the Act. Any references in 24 CFR part 203, subpart A, to the "Mutual

Mortgage Insurance Fund" shall be deemed to be to the Home Ownership Preservation Entity Fund, and any references to "the Commissioner" shall be deemed to be to the Board or the Commissioner (as the context may require).

(c) If there is any conflict in the application of any requirement of 24 CFR part 203, subpart A, to this part the provisions of this part shall control.

### § 4001.104 Eligible mortgages.

A mortgage eligible to be refinanced under section 257 of the Act must:

(a) Have been originated on or before January 1, 2008;

(b) Be secured by a property owned and occupied by the mortgagor as his or her primary residence, and be the only residence in which the mortgagor has any present ownership interest; and

(c) Meet such other requirements as the Board may adopt.

### § 4001.106 Eligible mortgagors.

In order for a mortgagor to be eligible to refinance his or her existing mortgages under section 257 of the Act, the mortgagor must:

(a) Have had, on March 1, 2008, a monthly total mortgage payment of more than 31 percent of the mortgagor's monthly gross income;

(b) Not have an ownership interest in any other residential property;

(c) Not have been convicted of fraud under federal or state law in the past 10 years;

(d) Certify that the mortgagor has not intentionally defaulted on any mortgage or debt and has not knowingly, or willfully and with actual knowledge, furnished material information known to be false for purposes of obtaining any Program mortgage; and

(e) Meet such other requirements as the Board may adopt.

### § 4001.108 Eligible properties.

(a) A mortgage may be insured under the Program only if the property that is to be the security for the mortgage is a one-family residence.

(b) The following property types are eligible to secure a mortgage insured under the Program:

(1) Detached and semi-detached dwellings;

(2) A condominium unit;

(3) A cooperative unit; or

(4) A manufactured home that is permanently affixed to realty and is treated as realty under applicable state law except state taxation law.

### § 4001.110 Underwriting.

A mortgage may be insured under the Program only if the following conditions are met:

(a) *Debt-to-income thresholds.* Except as provided in paragraph (c) of this section:

(1) *Payment-to-income.* The total monthly mortgage payment of the mortgagor under the Program mortgage does not exceed 31 percent of the mortgagor's monthly gross income; and

(2) *Debt-to-income.* The sum of the total monthly mortgage payment under the Program mortgage and all monthly recurring expenses of the mortgagor does not exceed 43 percent of the mortgagor's monthly gross income.

(b) *Past credit performance.* The mortgagor must have made at least six full payments on the existing senior mortgage being refinanced under the Program.

(c) *Trial modifications.* For any mortgagor who is unable to meet the requirements of paragraph (a) of this section, a mortgage loan may nevertheless be presented for insurance by FHA under the Program if:

(1) The mortgagor, using existing income, has made full and timely mortgage payments on the existing senior mortgage pursuant to the terms of the trial modification:

(i) For the three consecutive months before submission of the application for the mortgage to be insured under the Program; and

(ii) In an amount that is at least 90 percent of the estimated total monthly mortgage payment to be paid by the mortgagor on the Program mortgage.

(2) The total monthly mortgage payment of the mortgagor under the Program mortgage does not exceed 38 percent of the mortgagor's monthly income; and

(3) The sum of the total monthly mortgage payment under the Program mortgage and all monthly recurring expenses of the mortgagor does not exceed 50 percent of the mortgagor's monthly gross income.

(d) *Non-occupant co-borrowers.* A mortgage loan may be insured by the FHA under the Program, even if one of the mortgagors on the loan (*i.e.*, a co-signer) does not reside at the residence securing the loan, provided that the non-resident mortgagor relinquishes all interests in the property that is to be security for the mortgage before an application is submitted for FHA insurance under the Program.

(e) *Amount of new mortgage payment.* The mortgagor's total monthly payment on the mortgage to be insured under the Program must not be greater than the mortgagor's aggregate total monthly mortgage payment under the mortgagor's existing senior mortgage and all existing subordinate mortgages.

(f) *Limit on origination fees.* Mortgagees may charge and collect from mortgagors allowable closing costs.

#### **§ 4001.112 Income verification.**

The mortgagee shall use FHA's procedures to verify the mortgagor's income and shall comply with the following additional requirements:

(a) The mortgagee shall document and verify the income of the mortgagor by obtaining a transcript of the borrower's Federal income tax returns or a copy of the borrower's Federal income tax returns obtained directly from the Internal Revenue Service for the most recent two years; and

(b) The mortgagee shall document and verify the mortgagor's income in any case in which the mortgagor has not filed a Federal income tax return.

#### **§ 4001.114 Appraisal.**

(a) The property shall be appraised by an appraiser on the FHA Appraiser Roster.

(b) An appraisal of a property to be security for a Program mortgage shall be conducted in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) but dated no more than 90 days from the date on which the mortgage transaction is closed, except as otherwise provided by the Board.

(c) The mortgagee must inform the appraiser that copies of the appraisal may be shared with holders and servicers of existing subordinate mortgages.

#### **§ 4001.116 Representations and prohibitions.**

(a) *Underwriting and appraisal standards.* In order for the Program mortgage to be eligible for insurance under the Program, the underwriter and the mortgagee must provide certifications, in a format approved by the FHA, that the mortgage is in compliance with the underwriting and the appraisal standards set forth in this part, and that it meets all requirements applicable to the Program. FHA may require additional certifications by the mortgagee to ensure compliance with such additional standards as the FHA deems necessary given the specific mortgage transaction presented.

(b) *Mortgagor's liability for repayment.* (1) The mortgagor shall provide a certification to FHA that the mortgagor has not:

(i) Intentionally defaulted on the mortgagor's existing mortgage(s), or any other debt; or

(ii) Knowingly or willfully and with actual knowledge furnished material information known to be false for the purpose of obtaining the mortgagor's existing mortgage(s).

(2) The mortgagor shall provide any other certifications that FHA may otherwise require.

(3) A mortgagor obligated under a Program mortgage shall agree in writing, on a form approved by the Board, to be liable to pay to FHA any Direct Financial Benefit achieved from the reduction of indebtedness on the existing senior and subordinate mortgages that are being refinanced under the Program if he or she makes a false statement or other misrepresentation in the certifications and documentation required for Program eligibility, including but not limited to the certifications required under section 257(e)(1)(A)(i) of the Act.

(c) *Mortgagee in violation of Program requirements.* (1) If the mortgagee holds a Program mortgage that it originated and/or underwrote, and FHA finds that the mortgagee violated the Program requirements, FHA is prohibited from paying FHA insurance benefits to that mortgagee.

(2) If the mortgagee no longer holds the Program mortgage that it originated and/or underwrote, FHA will pay the insurance claim to the mortgagee presently holding the Program mortgage (if all other requirements of the contract for mortgage insurance are met and the present holder did not participate in the violation of Program requirements) and shall seek indemnification from the non-holding mortgagee.

(d) *FHA insurance.* A mortgage is eligible for insurance if the mortgagee submits a complete case binder within 120 days from the date of closing of the mortgage, or such other time as the Board may prescribe. The binder shall include evidence acceptable to the Board that the mortgage is current.

(e) *Mortgagor failure to make first mortgage payment.* FHA shall not pay a mortgage insurance claim to any mortgagee if the first total monthly mortgage payment is not made within the time frame established in paragraph (d) of this section. The mortgagee shall not, directly or indirectly, make all or a part of the first total monthly mortgage payment on behalf of the mortgagor. The mortgagee is prohibited from escrowing funds at closing for all or part of the first total monthly mortgage payment.

#### **§ 4001.118 Equity sharing.**

(a) *Initial Equity.* For purposes of section 257(k)(1) of the Act, the initial equity created as a direct result of the origination of a Program mortgage on a property, as calculated by the Program mortgage lender, shall equal:

(1) The appraised value of the property that was used at the time of origination of the Program mortgage to

underwrite the mortgage and to determine compliance with the maximum loan-to-value ratio at origination established by section 257(e)(2)(B) of the Act; less

(2) The original principal amount of the Program mortgage on the property.

(b) *FHA's interest.* Upon the sale or disposition of a property or Program mortgage refinancing, FHA shall calculate and be entitled to receive the portion of the initial equity (as defined by paragraph (a) of this section) set forth in section 257(k)(1) of the Act, subject to such standards and policies as the Board may establish.

#### § 4001.120 Appreciation sharing.

(a) *Calculation of appreciation.* For purposes of section 257(k)(2) of the Act, the amount of the appreciation in value of a property securing a Program mortgage that occurs between the date the mortgage was insured under section 257 of the Act and the date of any subsequent sale or disposition of the property shall be equal to the following, as such amounts of appreciation may be established to the satisfaction of FHA:

(1) The gross proceeds from the sale or disposition of the property (calculated at the pre-default rate of interest); less

(2) The amount of closing costs, as adopted by the Board, incurred by the mortgagor(s) in connection with such sale or disposition, if any; less

(3) Seventy-five percent, as may be modified by the Board, of the actual expenditures for Capital Improvements made by the mortgagor(s) after the date of origination of the Program mortgage; and less

(4) The appraised value of the property that was used at the time of origination of the Program mortgage to underwrite that mortgage and determine compliance with the maximum loan-to-value ratio at origination established by section 257(e)(2)(B) of the Act.

(b) *HUD's interest in appreciation.* Upon sale or disposition of a property securing a Program mortgage, FHA shall be entitled to receive an amount equal to 50 percent of the appreciation in value of the property calculated in accordance with paragraph (a) of this section.

(c) *Eligibility of subordinate mortgage holders to receive a portion of appreciation in value.* The persons or entities that hold, on the date of origination of a Program mortgage, an existing subordinate mortgage on the property shall be eligible to receive a portion of FHA's interest in the appreciation in value of the property, as determined in accordance with the provisions of this section and such

additional standards and policies that the Board may establish, if:

(1) The existing subordinate mortgage was originated on or before January 1, 2008;

(2) The amount of the unpaid principal and interest on such existing subordinate mortgage on the date of origination of the Program mortgage is at least \$2,500; and

(3) Each person holding such existing subordinate mortgage agrees, in connection with the origination of the Program mortgage, to fully release:

(i) The mortgagor(s) from any indebtedness under the existing subordinate mortgage; and

(ii) The holder's mortgage lien on the property.

(d) *Shared appreciation interest of subordinate mortgage holders.*

(1) *In general.* The eligible holder(s) of an existing subordinate mortgage on a property securing a Program mortgage shall be eligible to receive, subject to paragraph (c)(3) of this section, an interest in FHA's interest in the appreciation in the value of such property up to the amount set forth in the Appendix to this part.

(2) *Form.* The interest of an eligible holder of an existing subordinate mortgage under paragraph (d) of this section is evidenced in a shared appreciation certificate or other documentation to be issued by, or on behalf of, HUD.

(3) *Multiple subordinate liens.* If there is more than one eligible existing subordinate mortgage on a property securing a Program mortgage, the interests of such eligible existing subordinate mortgages under paragraph (d)(1) of this section shall have priority among each other in the same order of priority that existed among the existing subordinate mortgages on the date of origination of the Program mortgage.

(4) *Distribution of appreciation interest to subordinate mortgage holders.* Upon the sale or disposition of a property securing a Program mortgage other than sale or disposition related to a default, any proceeds due to FHA as a result of the appreciation in value of the property (as calculated in accordance with paragraph (a) of this section) shall be distributed:

(i) First to the holders of any shared appreciation certificate or other documentation issued by HUD with respect to the property, if any, in accordance with paragraphs (d)(1), (d)(2), and (d)(3) of this section; and

(ii) The remaining amounts, if any, will be retained by FHA.

#### § 4001.122 Fees and closing costs.

(a) The holder or servicer of the existing senior and subordinate

mortgages shall either forgive or waive all prepayment penalties and delinquency and default fees.

(b) Allowable closing costs incurred in connection with the refinancing and insurance of a mortgage under the Program can be paid from the following sources:

(1) The mortgagor's assets;

(2) The mortgagee holding or servicing the existing senior and subordinate mortgage or the mortgagee originating the Program mortgage;

(3) Premium pricing by the mortgagee providing the Program mortgage;

(4) Financed as part of the Program mortgage provided that the mortgage amount is adjusted accordingly, and the loan-to-value ratio does not exceed 90 percent (including the up-front premium required under § 4001.203(a)(1));

(5) A Federal, state, county or parish, or municipal program; or

(6) Such other sources as the Board may permit.

### Subpart C—Rights and Obligations Under the Contract of Insurance

#### § 4001.201 Cross-reference.

(a) All of the provisions of 24 CFR part 203, subpart B, covering mortgages insured under section 203 of the Act shall apply to mortgages insured under section 257 of the Act, *except the following sections:* 203.256 Insurance of open-end advances; 203.259a Scope; 203.260 Amount of insurance premium; 203.261 Calculation of periodic MIP (periodic MIP); 203.270 Open-end insurance charges; 203.280 One-time of Up-front MIP; 203.281 Calculation of one-time MIP; 203.283 Refund of one-time MIP; 203.284 Calculation of up-front and annual MIP on or after July 1, 1991; 203.285 Fifteen year mortgages: calculation of up-front and annual MIP on or after December 26, 1992; 203.415–203.417 Certificate of Claim; 203.420–203.427 Mutual Mortgage Insurance Fund and Distributive Shares; 203.436 Claim procedures—graduated payment mortgages; 203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act; 203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act; 203.439a Mortgages on property in Allegheny Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act; and 203.440–203.495 Rehabilitation Loans.

(b) For the purposes of this subpart, all references in 24 CFR part 203, subpart B, to section 203 of the Act shall be construed to refer to section 257 of the Act. Any references in 24 CFR part

203, subpart B, to the "Mutual Mortgage Insurance Fund" shall be deemed to be to the Home Ownership Preservation Entity Fund, and any references to "the Commissioner" shall be deemed to be to the Board or the Commissioner (as the context may require).

(c) If there is any conflict in the application of any requirement of 24 CFR part 203, subpart B, to this part 4001, the provisions of part 4001 shall control.

**§ 4001.203 Calculation of upfront and annual mortgage insurance premiums for Program mortgages.**

(a) *Applicable premiums.* Any mortgage presented for endorsement under section 257 on or after October 1, 2008, and prior to September 30, 2011, shall be subject to the following requirements:

(1) *Upfront premium.* FHA shall establish and collect a single premium payment equal to 3 percent of the amount of the original insured principal obligation of the Program mortgage.

(2) *Annual premium.* In addition to the premium under paragraph (a)(1) of this section, FHA shall establish and collect an annual premium payment in an amount equal to 1.5 percent of the amount of the remaining insured principal balance of the Program mortgage.

(b) *Proceeds for payment of the upfront premium.* The up-front premium shall be paid with proceeds from the Program mortgage through a reduction of the amount of indebtedness that existed on the eligible mortgage prior to its being refinanced.

**Subpart D—Servicing Responsibilities**

**§ 4001.301 Cross-reference.**

(a) All of the provisions of 24 CFR part 203, subpart C, covering mortgages insured under section 203 of the Act shall apply to mortgages insured under section 257 of the Act, *except as follows*: 203.664 Processing defaulted mortgages on property located on Indian land; 203.665 Processing defaulted mortgages on property located on Hawaiian home lands; 203.666 Processing defaulted mortgages on property in Allegany Reservation of Seneca Nation of Indians; and 203-670-203.681 Occupied Conveyance.

(b) For the purposes of this subpart, all references in 24 CFR part 203, subpart C, to section 203 of the Act shall be construed to refer to section 257 of the Act. Any references in 24 CFR part 203, subpart C, to the "Mutual Mortgage Insurance Fund" shall be deemed to be to the Home Ownership Preservation Entity Fund, and any references to "the

Commissioner" shall be deemed to be to the Board or the Commissioner (as the context may require).

(c) If there is any conflict in the application of any requirement of 24 CFR part 203, subpart C, to this part 4001, the provisions of part 4001 shall control.

**§ 4001.303 Prohibition on subordinate liens during first five years.**

(a) *Prohibition on subordinate liens during first five years.* Except as provided in paragraph (b) of this section, a mortgagor shall not, during the first 5 years of the term of the mortgagor's Program mortgage, incur any debt, take any action, or fail to take any action that would have the direct result of causing a lien to be placed on the property securing the Program mortgage if such lien would be subordinate to the Program mortgage.

(b) *Property preservation exception.* Paragraph (a) of this section shall not prevent a mortgagor on the Program mortgage from incurring new mortgage debt secured by a lien on the property securing the Program mortgage that is subordinate to the Program mortgage if:

(1) The proceeds of the new mortgage debt are necessary to ensure the maintenance of property standards, including health and safety standards;

(2) Repair or remediation of the condition would preserve or increase the property's value;

(3) The cost of the proposed repair or remediation is reasonable for the geographic market area;

(4) The results of the repair or remediation are not primarily cosmetic;

(5) The repair or remediation does not represent routine maintenance;

(6) The new mortgage debt is closed-end credit, as defined in § 226.2 of the Federal Reserve Board's Regulation Z (12 CFR 226.2); and

(7) The sum of the unpaid principal balance and accrued and unpaid interest on the Program mortgage and the original principal balance of the new mortgage debt:

(i) Does not exceed 95 percent of the estimated appraised value of the property securing the Program mortgage after completion of the proposed repair or remediation; and

(ii) Is less than:

(A) The estimated appraised value of the property securing the Program mortgage after completion of the proposed repair or remediation; less

(B) FHA's proportionate share of the initial equity created upon origination of the Program mortgage as determined pursuant to the schedule set forth in section 257(k)(1) of the Act as if a sale of the property had occurred on the date of origination of the new mortgage debt.

**Subpart E—Enforcement**

**Mortgagor False Information**

**§ 4001.401 Notice of false information from mortgagor-procedure.**

(a) If FHA finds that the mortgagor has made a false certification or provided false information via any means, including but not limited to false documentation, FHA shall inform the mortgagor, in writing or any other acceptable format, of such fact.

(b) The notice shall be sent to the mortgagor's last known address by both certified and ordinary mail. The notice shall state with specificity the misrepresentation or false statement made by the mortgagor. The notice shall include a request for repayment of the Direct Financial Benefit that the mortgagor is deemed to have received, as determined by FHA, by the refinancing of the eligible mortgage and subordinate mortgages. This does not preclude HUD or the United States from bringing any other action that they may be authorized to bring.

(c) The mortgagor may request a hearing before a Hearing Officer. The hearing will be conducted in accordance with the provisions of 24 CFR part 26, subpart A, except as modified by this section. Requests for a hearing must be made within 45 days from the date of the false information notice.

**Appraiser Independence**

**§ 4001.403 Prohibitions on interested parties in insured mortgage transaction.**

(a) A mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company or employee thereof, and any person with an interest in a real estate transaction involving an appraisal conducted as part of the process for insuring a mortgage under section 257 of the Act shall not improperly influence or attempt to improperly influence through any means, including but not limited to coercion, extortion, collusion, compensation, instruction, inducement, intimidation, nonpayment for services rendered, or bribery, the development, reporting, result or review of a real estate appraisal sought in connection with the origination, processing and closing of the mortgage for insurance.

(b) HUD may, pursuant to its authority under section 536(a) of the Act, bring an action to impose a civil money penalty for a violation of paragraph (a) of this section.

(c) The authority to bring a civil money penalty under this section shall not preclude HUD from bringing any other action that HUD may be

authorized to bring for a violation of paragraph (a) of this section.

**Mortgagees**

**§ 4001.405 Mortgagees.**

(a) FHA is authorized by the Board to engage in monitoring activities to ensure mortgagee compliance with the requirements of this Program. The Mortgagee Review Board at HUD is authorized by the Board to impose sanctions and civil money penalties against mortgagees that violate program requirements under this part. The authority of the Mortgagee Review Board to impose sanctions and civil penalties shall not preclude HUD from bringing any other action that HUD may be authorized to bring.

(b) Nonpayment of mortgage insurance claims for reasons established in § 4001.16 shall not preclude the Mortgagee Review Board or HUD from bringing any action against the mortgagee that the Mortgagee Review Board or HUD are authorized to bring.

(c) The mortgagee may request a hearing before a Hearing Officer. The hearing will be conducted in accordance with the provisions of 24 CFR part 26, subpart A, except as modified by this section. Requests for a hearing must be made within 45 days from the date of the false information notice.

**Appendix A to Part 4001—Calculation of Future Appreciation Payment**

Subordinate lien holder's CLTV	Percent of unpaid principal and interest that lien holder is eligible to receive
Cumulative CLTV >135% ....	9%

Subordinate lien holder's CLTV	Percent of unpaid principal and interest that lien holder is eligible to receive
Cumulative CLTV ≤135% ....	12%

**Note:** Appreciation payment to a subordinate lien holder will depend on actual appreciation at the time of sale of the property and will be limited by the amount of future appreciation HUD receives. Payment will be made according to the subordinate lien holder's position of priority in relation to the property at the time the H4H mortgage is originated, and will be based upon principal and interest on the date of origination of the Program mortgage, calculated at the pre-default contract rate of interest.

Dated at Washington, DC, this 30th day of September, 2008.

By order of the Board of Directors of the HOPE for Homeowners Program.

**Margaret E. Burns,**

*Executive Director of the Board.*

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