

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 81

[Docket No. FR-5014-P-01]

RIN 2501-AD17

**Secretary of HUD's Regulation of the
Federal National Mortgage Association
(Fannie Mae) and the Federal Home
Loan Mortgage Corporation (Freddie
Mac); Regulatory Amendments To
Strengthen Prevention of Predatory
Lending Practices**

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

ACTION: Proposed rule.

SUMMARY: HUD is proposing changes to its regulations governing Fannie Mae and Freddie Mac (collectively, the government sponsored enterprises or GSEs) to reinforce the efforts of HUD and the GSEs to prevent predatory lending practices. The changes proposed by this rule would allow HUD to keep up-to-date with and combat new predatory lending practices as they are discovered and, therefore, strengthen HUD's oversight role in monitoring GSE practices to ensure that the loans the GSEs purchase are not contrary to responsible lending practices.

DATES: *Comment Due Date:* August 7, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Interested persons also may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. 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 to HUD will be available, without change, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. 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) 708-3055 (this is not a toll-free number). Copies of comments submitted electronically are available for

inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Sandra Fostek, Director, Office of Government Sponsored Enterprises, Office of Housing, Room 3150; telephone (202) 708-2224. For fair lending questions, contact Bryan Greene, Director, Office of Policy, Legislative Initiatives and Outreach, Office of Fair Housing and Equal Opportunity, Room 5246; telephone (202) 708-1145. For legal questions, contact Paul S. Ceja, Assistant General Counsel for Government Sponsored Enterprises/RESPA, or Rhonda L. Daniels, Senior GSE/RESPA Division Attorney, Office of General Counsel, Room 9262; telephone (202) 708-3137. The address for all of these persons is the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. The above telephone numbers are not toll-free. Persons with hearing and speech impairments may access the phone numbers through TTY by calling the Federal Information Relay Service at (800) 877-8399.

SUPPLEMENTARY INFORMATION:

I. Background

More Americans have achieved homeownership than at any time in our nation's history. Sixty-nine percent of households own their own homes. Minority homeownership rates have been increasing and in 2004 stood at 48.1 percent for Hispanics and 49.7 percent for African Americans. The growth in minority homeownership reflects the nation's enormous progress in expanding access to capital for previously underserved borrowers. HUD and other Federal agencies, the GSEs, state and local governments, and responsible lenders across the nation have all played a part in this progress. Governments and the private lending industry have taken several actions to expand homeownership to all Americans, with a special focus on increasing opportunities for first-time homebuyers and minority households. These actions include homebuying simplification, new financing options, and housing counseling.

Despite this progress, many families are suffering today because of abusive practices in a segment of the mortgage lending market. Predatory lending practices strip borrowers of home equity and threaten families with foreclosure, destabilizing the very communities in which some families are just now beginning to enjoy homeownership. Unscrupulous lenders that engage in predatory lending practices all too often

target low-income families, minorities, first-time homebuyers, and the elderly.

HUD has been at the forefront in its Federal Housing Administration (FHA) programs in implementing rules, requirements, and other policies designed to prevent predatory lending practices in FHA programs. Fannie Mae and Freddie Mac also have taken leadership roles through various activities designed to prevent predatory lending, including educating potential borrowers about the homebuying process and identifying for these borrowers those lending practices that are predatory. The GSEs also work to protect borrowers from predatory lending practices by refusing to do business with financial institutions that engage in such practices.

In its final rule on Housing Goals for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) for the Years 2005-2008 and Amendments to HUD's Regulation of Fannie Mae and Freddie Mac published on November 2, 2004 (69 FR 63580), HUD did not address anti-predatory lending policies. Given the serious consequences of predatory lending practices, HUD determined that it would be more effective to have a separate rule that addresses the subject of predatory lending practices.

II. This Proposed Rule

This rule proposes to amend the definitions of "mortgages with unacceptable terms and conditions or resulting from unacceptable practices" and "mortgages contrary to good lending practices" that are codified in 24 CFR 81.2 (Definitions). These two types of mortgages are ineligible for goals credit. Specifically, the rule proposes to include in each definition a new paragraph that allows the Secretary of HUD, through a notice and comment process, to add to the list of "good lending practices" or the list of "unacceptable terms or conditions or resulting from unacceptable practices" described in each definition. Currently, these lists can only be expanded upon the initiation of the GSEs with the Secretary's concurrence. The proposed process would provide a fast-track notice and comment process, separate from rulemaking, to give the Secretary discretion to add to the definitions of mortgages determined ineligible for goal or subgoal credit (*see* 24 CFR 81.16(c)(12)-(13)). At the same time, the new procedure would ensure the GSEs and others have the opportunity to comment before the definitions are expanded. Because unscrupulous lenders have become increasingly

creative in finding ways to strip borrowers of home equity, HUD and the GSEs must have the ability to respond quickly and effectively to prevent adverse outcomes for borrowers. In this regard, the definitions retain the existing authority of the GSEs to add to the respective lists, subject to the Secretary's concurrence.

III. Findings and Certifications

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance, 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)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

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. This proposed rule is applicable only to the GSEs, which are not small entities within the meaning of the RFA. Therefore, the undersigned certifies that the rule does not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

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 relevant requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (12 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 proposed rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

List of Subjects in 24 CFR Part 81

Accounting, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 81 as follows:

PART 81—THE SECRETARY OF HUD'S REGULATION OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE) AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC)

1. The authority citation for 24 CFR part 81 continues to read as follows:

Authority: 12 U.S.C. 1451 *et seq.*, 1716–1723h, and 4501–4641; 28 U.S.C. 2461 note; 42 U.S.C. 3535(d) and 3601–3619.

2. In § 81.2, revise paragraph (4) of the definition of "*mortgages contrary to*

good lending practices" and revise paragraph (5) of the definition of "*mortgages with unacceptable terms or conditions or resulting from unacceptable practices*," to read as follows:

§ 81.2 Definitions.

* * * * *

Mortgages contrary to good lending practices * * *

(4) Engage in other good lending practices that are:

(i)(A) Identified in writing by a GSE as good lending practices for inclusion in this definition; and

(B) Determined by the Secretary to constitute good lending practices; or

(ii) Identified by the Secretary as good lending practices through published notice that provides the opportunity for public comment prior to the inclusion in this definition.

Mortgages with unacceptable terms or conditions or resulting from unacceptable practices * * *

(5) Other terms or conditions that are:

(i)(A) Identified in writing by a GSE as unacceptable terms or conditions or resulting from unacceptable practices for inclusion in this definition; and

(B) Determined by the Secretary as an unacceptable term or condition of a mortgage for which goals credit should not be received; or

(ii) Identified by the Secretary as unacceptable terms or conditions or resulting from unacceptable practices through published notice that provides the opportunity for public comment prior to inclusion in this definition.

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Dated: April 28, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

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