

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 203

[Docket No. FR-5160-P-01]

RIN 2502-A156

**Federal Housing Administration:
Acceptable Payment History for Late
Request for Endorsement of Mortgage
for Insurance**

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

ACTION: Proposed rule.

SUMMARY: HUD's current regulations require that a mortgage show an acceptable payment history when submitted for late endorsement, but they are silent as to what constitutes an acceptable payment history. This proposed rule would provide factors that establish an acceptable payment history when a mortgage is submitted for Federal Housing Administration (FHA) insurance more than 60 days after closing, and would make one technical amendment pertaining to the submission of documentation for endorsement.

DATES: *Comment Due Date:* August 8, 2008.

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>. HUD strongly encourages commenters to submit comments electronically so that HUD, in turn, can make them immediately available to the public. 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 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 all comments submitted are available for inspection and

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

FOR FURTHER INFORMATION CONTACT: Margaret E. Burns, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9278, Washington, DC 20410-8000; telephone number (202) 708-2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Current HUD regulations at 24 CFR 203.255(c)(7) provide that when a mortgage is submitted for insurance more than 60 days after closing, it must show an acceptable payment history as part of the pre-endorsement review conducted by HUD. Although HUD may determine on a case-by-case basis what constitutes an acceptable payment history, such a procedure is time consuming and inefficient. In the recent past, HUD has issued more general guidance for determining an acceptable payment history on two occasions. Mortgagee Letter 2004-14, issued April 12, 2004, provided for the submission of a payment history or ledger, as well as a certification that:

1. All mortgage payments due have been made by the mortgagor prior to or within the month due. If any payments have been made after the month due, the loan is not eligible for endorsement until six consecutive payments have been made prior to and/or within the calendar month due, and;
2. All escrow accounts for taxes, hazard insurance, and mortgage insurance premiums are current and intact, except for disbursements that may have been made to cover payments for which the accounts were specifically established, and;
3. The mortgage lender did not provide the funds to bring and/or keep the loan current or to bring about the appearance of an acceptable payment history.

Subsequently, on May 17, 2005, HUD issued Mortgagee Letter 2005-23, which eliminated the submission of the payment history or ledger, as well as the requirement for six consecutive payments. Instead of the payment history or the 6 months of payments, the certification under Mortgagee Letter 2005-23 included a statement that no mortgage payment is currently unpaid more than 30 days. The second and third factors, however, continued to be included.

II. This Proposed Rule

Having gained experience with the approaches in each of the cited Mortgagee Letters, HUD has determined that the first factor of Mortgagee Letter 2004-14, along with the two additional factors included in both Mortgagee Letters, provide an acceptable level of assurance that a mortgage for which a late endorsement is requested shows an acceptable payment history. The record of six consecutive payments as evidence of an acceptable payment history had been a longstanding HUD policy before the issuance of Mortgagee Letter 2005-23, which instead provided the alternative of an assurance that the loan was current at the time it was submitted for FHA's insurance endorsement. HUD considers it appropriate to return to its earlier, more rigorous longstanding policy, particularly at time of increased defaults and of concerns over the too-permissive lending practices associated with these increases. A more rigorous policy is expected to result in a lower level of default and claims on loans submitted to FHA for late endorsement. Accordingly, HUD, in this rule, is proposing to include the three factors of Mortgagee Letter 2004-14 in its regulations at 24 CFR 203.255(c)(7). In doing so, HUD will provide clarity and certainty as to which mortgages qualify for late endorsement when submitted more than 60 days after closing. Paperwork approval is concurrently being sought for the associated ledger and certification requirements. The certification requirements will be provided in § 203.255(b).

To achieve the regulatory changes discussed above, section 203.255(c) would be amended to designate the introductory paragraph as paragraph (c)(1) and revise existing paragraph (c)(7) as (c)(1)(vii), to include the three factors as paragraphs (A) through (C).¹ The current, undesignated, second paragraph in § 203.255(c)(7) would be designated as § 203.255(c)(2). As noted above, HUD would also amend § 203.255(b) to include the certification

¹ On September 5, 2007, HUD announced *FHA Secure*, an initiative that allows families with strong credit histories who had been making timely payments on their non-FHA-insured mortgages before a loan interest rate reset—but are now in default—to qualify for refinancing with FHA mortgage insurance. The proposed acceptable payment history standards would apply to the FHA-insured mortgage used to refinance the debt, but would not apply to the non-FHA-insured mortgage being refinanced. Therefore, this proposed rule does not affect the eligibility of a family that otherwise meets the eligibility criteria, but is in default on their mortgage, from participating in *FHA Secure*. A copy of Mortgagee Letter 2007-11, which announced *FHA Secure*, may be downloaded at: <http://portal.hud.gov/fha/reference/ml2007/07-11ml.doc>.

requirement. In addition to these changes, HUD would make a technical amendment. Newly designated paragraph (c)(2) would be revised to remove the erroneous indication that a false or fraudulent certification can be corrected and resubmitted in a way that would then make the mortgage eligible for endorsement. Certifications are subject to statutory requirements and penalties that the existing language in this regulation could not supersede.

III. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this proposed 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. Interested persons are invited to submit comments regarding the information collection requirements in this proposed rule. Comments must be received within 60 days from the date of this proposed rule.

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

REPORTING AND RECORDKEEPING BURDEN

Description of information collection	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
Payment History/Ledger	8,700	13	.10	11,310
Lender Certification	8,700	13	.50	56,550

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. Comments must refer to the proposal by name and docket number (FR-5160-P-01) and must be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395-6974 and

Reports Liaison Officer, Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000.

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 would provide factors for determining what constitutes an acceptable payment history for the purpose of late endorsement of a mortgage. The rule would not impose any additional burden on entities or individuals, but only examines compliance, over a limited period of time, with obligations that individuals have agreed to assume in exchange for a benefit. 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 effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD’s objectives, as described in this preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made, 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)). That finding is 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 appointment to review the finding by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

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 will not have federalism implications and would 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 (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 proposed rule does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for FHA mortgage insurance for homes 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 recordkeeping requirements, Solar energy.

Accordingly, for the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 203 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. In § 203.255 by:

A. Redesignating paragraph (b)(14) as (b)(15),

B. Adding a new paragraph (b)(14),

C. Redesignating paragraph (c) introductory text and paragraphs (c)(1) through (c)(7) as paragraph (c)(1) introductory text and paragraphs (c)(1)(i) through (c)(1)(vii), respectively,

D. Designating the undesignated paragraph following (c)(7) as paragraph (c)(2), and

E. Revising newly designated paragraph (c)(1)(vii) to read as follows:

§ 203.255 Insurance of mortgage.

* * * * *

(b) * * *

(14) In the case where a mortgage lender submits a loan for endorsement more than 60 days after closing as permitted by the Secretary, a certification to the Secretary that the lender has complied with the factors identified in § 203.255(c)(1)(vii).

(c)(1) * * *

(vii) The mortgage was not in default when submitted for insurance or, if submitted for insurance more than 60 days after closing, the mortgage shows an acceptable payment history. A mortgage that meets the following factors shows an acceptable payment history:

(A) All mortgage payments due have been made by the mortgagor prior to or within the month due. If any payments have been made after the month due, the loan is not eligible for endorsement until six consecutive payments have been made prior to or within the calendar month due, and;

(B) All escrow accounts for taxes, hazard insurance, and mortgage insurance premiums are current and intact, except for disbursements that may have been made to cover payments

for which the accounts were specifically established, and;

(C) The mortgage lender did not provide the funds to bring and/or keep the loan current or to bring about the appearance of an acceptable payment history.

(2) In addition to the reviews and determinations made in paragraph (c)(1) of this section, the Secretary is authorized to determine if the mortgage fails to meet a statutory or regulatory requirement. If, following this review, the mortgage is determined to be eligible, the Secretary will endorse the mortgage for insurance by issuance of a Mortgage Insurance Certificate. If the mortgage is determined to be ineligible, the Secretary will, among other things, inform the mortgagee in writing of this determination and will include the reasons for the determination and further inform whether any actions may be taken to correct the determination of ineligibility for endorsement.

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Dated: May 12, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

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