Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Accordingly, the FHWA solicits comments on this issue.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et. seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does contain collection of information requirements for the purposes of the PRA. The FHWA believes that the information collected under this action is contained in the existing information collection under OMB Control Number 2125–0541 granted by OMB on February 1, 2008.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this proposed action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 669

Grants programs—transportation, Highways and roads, Taxes, Motor vehicles.

Issued on: October 28, 2009.

Victor M. Mendez,

Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations part 669 as follows:

PART 669—ENFORCEMENT OF HEAVY VEHICLE USE TAX

1. The authority citation for part 669 is revised to read as follows:

Authority: 23 U.S.C. 141(c) and 315; 49 CFR 1.48(b).

2. Revise § 669.7 to read as follows:

§ 669.7 Certification requirement.

The Governor of each State, or his or her designee, shall certify to the FHWA before January 1 of each year that it is obtaining proof of payment of the heavy vehicle use tax as a condition of registration in accordance with 23 U.S.C. 141(c). The certification shall cover the 12-month period ending September 30.

§ 669.9 [Amended]

3. Amend § 669.9 by amending paragraphs (b) and (c) by removing the words ''23 U.S.C. 141(d)'' and adding in its place the words ''23 U.S.C. 141(c)'' each place it appears.

§ 669.11 [Amended]

4. Amend § 669.11 by removing the word ''July'' and adding in its place the word ''January''.

5. Revise § 669.13 to read as follows:

§ 669.13 Effect of failure to certify or to adequately obtain proof of payment.

If a State fails to certify as required by this regulation or if the Secretary of Transportation determines that a State is not adequately obtaining proof of payment of the heavy vehicle use tax as a condition of registration notwithstanding the State's certification, Federal-aid highway funds apportioned to the State under 23 U.S.C. 104(b)(4) for the next fiscal year shall be reduced in an amount up to 25 percent as determined by the Secretary.

6. Revise § 669.15 to read as follows:

§ 669.15 Procedure for the reduction of funds.

(a) Each fiscal year, each State determined to be in nonconformity with the requirements of this part will be advised of the funds expected to be withheld from apportionment in accordance with § 669.13 and 23 U.S.C. 141(c), as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than 90 days prior to final apportionment.

(b) A State that received a notice in accordance with paragraph (a) of this section may within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in conformity with this Part. Documentation shall be submitted to the Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(c) Each fiscal year, each State determined to be in nonconformity with the requirements of this part and 23 U.S.C. 141(c), based on FHWA's final determination, will receive notice of the funds being withheld from apportionment pursuant to § 669.3 and 23 U.S.C. 141(c), as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

§ 669.19 [Amended]

7. Amend § 669.19 as follows:

a. Amend paragraphs (a) and (b) by removing the words ''23 U.S.C. 104(b)(5)'' and adding in its place the words ''23 U.S.C. 104(b)(4)'' in each place it appears; and

b. Amend paragraph (c) by removing the word ''Secretary's''.

8. Revise § 669.21 to read as follows:

§ 669.21 Procedure for evaluating State compliance.

The FHWA shall periodically review the State's procedures for complying with 23 U.S.C. 141(c), including an inspection of supporting documentation and records. In those States where a branch office of the State, a local jurisdiction, or a private entity is providing services to register motor vehicles including vehicles subject to HVUT, the State shall be responsible for ensuring that these entities comply with the requirements of this part concerning the collection and retention of evidence of payment of the HVUT as a condition of registration for vehicles subject to such tax and develop adequate procedures to maintain such compliance. The State or other responsible entity shall retain a copy of the receipted IRS Schedule 1 (Form 2290), or an acceptable substitute prescribed by 26 CFR 41.6001–2 for a period of 1 year for purposes of evaluating State compliance with 23 U.S.C. 141(c) by the FHWA. The State may develop a software system to maintain copies or images of this proof of payment.

[FR Doc. E9–27939 Filed 11–27–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 202

[Docket No. FR 5356–P–01]

RIN 2502–AI81

Federal Housing Administration (FHA): Continuation of FHA Reform—Strengthening Risk Management Through Responsible FHA-Approved Lenders

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

ACTION: Proposed rule.

SUMMARY: Through this proposed rule, HUD continues its efforts to streamline, modernize, and strengthen the mortgage insurance functions and responsibilities of FHA, as authorized by provisions contained in the National Housing Act, as amended by the FHA Modernization Act of 2008, and further supported by the Helping Families Save Their Homes Act of 2009. First, FHA proposes to no longer approve loan correspondents as approved participants in FHA programs. Mortgagees would be required to ensure that their loan correspondents meet applicable requirements. The FHA-approved mortgagee will, in turn, act as sponsor as it has in the past. However, in using a sponsor/correspondent relationship, the sponsoring mortgagee must agree to assume responsibility for any loan correspondent that works with the mortgagee in the FHA insured loan, and assume liability for the FHA-insured loan underwritten and closed in the name of the FHA-approved mortgagee. Second, this proposed rule would update the FHA regulations to incorporate criteria specified in the Helping Families Save Their Homes Act of 2009 that precludes certain lending entities from originating an FHA-insured loan, and are designed to ensure that only entities of integrity are involved in the origination of FHA-insured transactions. Third, and consistent with the objective to work with and rely upon responsible mortgagees, FHA proposes to increase the net worth requirement for FHA-approved mortgagees for the purpose of ensuring that approved mortgagees are sufficiently capitalized.

DATES: *Comment Due Date:* December 30, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted 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 appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (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. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000; telephone number 202–708–1515 (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

The FHA Modernization Act of 2008, Title I of Division B of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, approved July 30, 2008), made or authorized HUD to make significant changes to the way in which FHA conducts several areas of its mortgage insurance operations. The FHA Modernization Act increased maximum mortgage limits, overhauled and streamlined FHA's Title I manufactured housing and condominium mortgage insurance programs, allowed a Home Equity Conversion Mortgage (HECM) to be used to purchase a home, and allowed for the insurance of cooperatives, to name a few of the significant changes made by this 2008 statute. A key theme of many of the changes made by the FHA Modernization Act centered on streamlining and modernizing existing FHA programs.

The Helping Families Save Their Homes Act (HFSH Act), Division A of Public Law 111–22, strengthened HUD's enforcement authority to ensure the integrity and safety of FHA's mortgage insurance programs. The HFSH Act contains several provisions designed to ensure that predatory lending entities and individuals are not allowed to participate in FHA-insured mortgage programs, and specifically requires FHA approval of all parties participating in the FHA single family mortgage origination process. The HFSH Act authorizes HUD to impose civil money penalties against loan originators who are not FHA-approved and yet participate in FHA loan originations. The HFSH Act strengthens HUD's enforcement authority by authorizing the imposition of civil money penalties not only for violation of statutory requirements, but for violation of any FHA implementing regulation, handbook, or mortgagee letter issued under title II of the National Housing Act. The HFSH Act directs FHA to strengthen the existing FHA lender approval process, including strengthening by ensuring that only lenders of integrity are approved by FHA as approved mortgagees.

With the authority and direction presented by these two statutes, which support and enhance the existing authority of the National Housing Act, FHA proposes to both streamline and strengthen the FHA lender approval process. Except as modified by this proposed rule, all other components of the lender approval process would remain the same, including those provisions regarding the monitoring and enforcement of FHA requirements, the imposition of sanctions (enhanced by the HFSH Act), and the opportunity to appeal adverse determinations.

II. This Proposed Rule

A. Strengthening and Streamlining Lender Approval

1. *Limiting Approval to Mortgagees.* Through this rule, FHA proposes changes to the eligibility criteria for FHA lender approval. Currently, through the FHA lender approval

process, FHA approves two types of lenders. First, FHA approves mortgagees. Mortgagees can perform any lender origination and/or service function and can own FHA-insured loans. Second, FHA approves loan correspondents, but with limited functions. Loan correspondents are allowed to perform any origination function except underwriting and cannot service or own FHA-insured loans. This rule proposes to limit the FHA lender approval process to mortgagees. This rule does not propose to alter, however, the approval process of investing mortgagees and governmental institutions as addressed in 24 CFR 202.9 and 202.10. FHA will continue to approve investing mortgagees and government institutions.

The limitation of the FHA approval process to mortgagees reflects recognition that the mortgagee, by underwriting, servicing, or owning a loan, is the most critical lending party to a mortgage transaction. Accordingly, the mortgagee should be the party that is subject to FHA's rigorous lender-approval and oversight processes, and bear the greatest degree of responsibility and liability for the loan obtained by the borrower and insured by FHA. Loan correspondents will continue to be authorized to participate in the origination of FHA loans through association with an FHA-approved mortgagee, but these entities no longer will be subject to the FHA lender-approval process.

FHA-approved mortgagees would be required to ensure that their loan correspondents meet applicable requirements. The FHA-approved mortgagee acts as sponsor as it has in the past, but in using a sponsor/correspondent relationship, the sponsoring mortgagee must agree to assume responsibility for any loan correspondent that works with the mortgagee in the FHA-insured loan for activities related to the loan origination, and assume liability for the FHA-insured loan underwritten and closed in the name of the FHA-approved mortgagee. Not only would FHA-approved mortgagees be required to ensure that sponsoring loan correspondents meet standards assuring their integrity and financial soundness, including those recently emphasized in the HFSH Act (*see* Section II.A.2 of this preamble), but to also ensure compliance by all parties to an FHA transaction with FHA's requirements regarding loan origination, processing, underwriting, and servicing and found in relevant statutes, regulations, HUD handbooks, and mortgagee letters. Although loan correspondents no longer would be subject to lender approval requirements, the FHA-approved mortgagee must ensure that any loan correspondent that the mortgagee sponsors complies with the requirements that make loans eligible for FHA insurance. Failure to comply with these requirements may result in FHA seeking sanctions against the FHA-approved mortgagee.

FHA-approved mortgagees will be authorized to underwrite for and acquire FHA mortgage applications from loan correspondents and non-FHA-approved lenders, such as mortgage brokers, provided that these parties: (1) Are in compliance with the requirements of the Secure and Fair Enforcement (SAFE) Mortgage Licensing Act (Title V of Division A of Pub. L. 110–289, approved July 30, 2008), when such requirements become applicable under the State or States in which these parties conduct business, and (2) are not suspended, debarred, or otherwise excluded from participating in the origination of an FHA loan. If the loan application is taken by an entity that is not the FHA-approved Direct Endorsement mortgagee that underwrote the loan, the entity must include the following in the FHA loan origination system for the subject loan: (1) The entity's FHA identification number (if the entity is FHA-approved) or (2) the entity's legal name and tax identification number (if the entity is not FHA-approved). The loan must be underwritten by and closed in the name of the FHA-approved mortgagee.

As contemplated by this proposed rule, upon promulgation of the final rule that will follow this proposed rule, entities that are already approved by FHA as loan correspondents would not be permitted to renew their status, or convert their approval to mortgagee, and only FHA-approved mortgagees would be allowed to request FHA case numbers.

The advantages of this limitation of FHA lender approval authority are twofold. First, this change focuses the administrative burden of the lender approval process to those entities (and HUD recognizes that a stringent approval process necessitates some administrative burden) that bear the greatest responsibility for the validity and eligibility of the loan for FHA insurance. It is the mortgagee that determines whether a borrower qualifies for the mortgage for which the borrower applied and, therefore, determines the risk of lending money to the borrower. This is the most critical determination of the mortgage process. Second, the change allows loan correspondents to continue to participate in the FHA loan origination process, but without having to undergo the lender approval process.

2. *Ineligibility To Participate in Origination of FHA–Insured Loans.* In addition to limiting the FHA lender approval process to mortgagees, this proposed rule incorporates criteria specified in section 203 of the HFSH Act that precludes any lending entity not approved by the Secretary to participate in FHA programs or not in compliance with the following eligibility requirements from originating an FHA-insured loan. Section 203(b) of the HFSH Act adds a new subsection (d) to section 202 of the National Housing Act, provides as follows:

''LIMITATIONS ON PARTICIPATION IN ORIGINATION AND MORTGAGEE APPROVAL.—

- ''REQUIREMENT.—Any person or entity that is not approved by the Secretary to serve as a mortgagee, as such term is defined in subsection (c)(7), shall not participate in the origination of an FHA-insured loan except as authorized by the Secretary.
- ''ELIGIBILITY FOR APPROVAL.—In order to be eligible for approval by the Secretary, an applicant mortgagee shall not be, and shall not have any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the applicant mortgagee who is—
  - ''currently suspended, debarred, under a limited denial of participation (LDP), or otherwise restricted under part 25 of title 24 of the Code of Federal Regulations, 2 Code of Federal Regulations, part 180 as implemented by part 2424, or any successor regulations to such parts, or under similar provisions of any other Federal agency;
  - ''under indictment for, or has been convicted of, an offense that reflects adversely upon the applicant's integrity, competence or fitness to meet the responsibilities of an approved mortgagee;
  - ''subject to unresolved findings contained in a Department of Housing and Urban Development or other governmental audit, investigation, or review;
  - ''engaged in business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility;
  - ''convicted of, or who has pled guilty or nolo contendre to, a felony related to participation in the real estate or mortgage loan industry—
  - ''during the 7-year period preceding the date of the application for licensing and registration; or
  - ''at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;
  - ''in violation of provisions of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 *et seq.*) or any applicable provision of State law; or

○ ''in violation of any other requirement as established by the Secretary.''

Given the specificity of the statutory language, implementation of the criteria does not require rulemaking and the restrictions are, therefore, currently in effect. These criteria were announced by the Mortgagee Letter entitled ''Strengthening Counterparty Risk Management,'' issued September 18, 2009, and can be found as document number 09–31 at *http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/index.cfm.* This rule proposes to update HUD's regulations to conform to the statutory requirements. Although these are statutory criteria which the Department does not have the discretion to alter, HUD nevertheless welcomes comment on these criteria and on any other comparable requirements that HUD should add to preclude participation in the origination of FHA-insured loans, and welcomes comment on any of the criteria for which an affected party seeks elaboration or guidance.

While this rule proposes to codify the new statutory ineligibility criteria, this rule does not propose to revise current procedures in place in FHA regulations and handbooks that are applicable to appeals of adverse determinations. Additionally, these new statutory criteria do not require HUD to propose enforcement mechanisms and procedures beyond those already in place for enforcement of FHA requirements. While the HFSH Act strengthens FHA's enforcement authority by expanding HUD's ability to impose civil money penalties and strengthening the authority of the Mortgagee Review Board, this increased authority does not require additional enforcement procedures. The procedures already in place by which FHA may take action against mortgagees in violation of FHA requirements continue to be sufficient.

B. Strengthening the Capacity of FHA-Approved Mortgagees

FHA proposes to increase the net worth requirement for approved mortgagees and those applicants seeking approval as mortgagees from $250,000 to $2.5 million. In addition, FHA proposes to require investing mortgagees to comply with the new net worth requirements. In order to provide mortgagees with time to adjust to the new requirements, the proposed rule would phase in the net worth increases over a 3-year period.

Within one year of the effective date of the final rule resulting from this rulemaking process, supervised and nonsupervised mortgagees and investing mortgagees would be required to have a minimum net worth of $1 million, of which at least 20 percent must be liquid assets consisting of cash or its equivalent acceptable to the Secretary. Mortgagees would be required to comply with the minimum net worth requirement of $2.5 million within 3 years of the effective date of the final rule, with at least 20 percent of such net worth consisting of liquid assets.

The net worth requirements have not been updated since 1993. HUD's proposal to increase the net worth requirements for FHA-approved mortgagees is consistent with recent increases in net worth requirements by the government sponsored enterprises. In September 2008, both Fannie Mae and Ginnie Mae increased the net worth requirements for their business partners. Ginnie Mae now requires a net worth of $1 million and Fannie Mae requires a net worth of $1.65 million. As of December 31, 2009, Fannie Mae's net worth requirements will be increased further to $2.5 million plus a dollar amount that represents one-quarter of one percent (.25 percent) of the outstanding principal balance of the lender's total portfolio of mortgages serviced for Fannie Mae. As is evidenced by the actions of Ginnie Mae and Fannie Mae, the increases in required net worth proposed by FHA are consistent with industry norms for counterparty risk management.

The net worth increases proposed in this rule reflect not only necessary adjustments for inflation, but also the lessons learned as a result of the housing market crisis. The changes will help to ensure that FHA-approved lenders, including investing mortgagees, are sufficiently capitalized to meet the potential needs associated with the financial services they provide.

The proposed rule would also simplify the net worth requirements by establishing uniform requirements for Title I and Title II mortgagees. Under the current regulations at 24 CFR 202.5(n), Title II supervised and unsupervised mortgagees (except multifamily mortgagees) are required to maintain additional net worth in excess of the existing requirements of not less than one percent of the mortgage volume exceeding $25 million, but total net worth is not required to exceed $1 million. This proposed rule would eliminate the additional net worth requirements for title II mortgagees.

C. Use of HUD Registered Business Name and Business Changes

In addition to the two significant proposed changes presented in Sections II.A. and II.B. of this preamble, HUD proposes to codify the statutory requirement presented in section 203 of the HFSH Act, which directs FHA-approved mortgagees to use their HUD-registered business names in all advertisements and promotional materials related to FHA programs. HUD-registered business names include any alias or ''doing business as'' (DBA) on file with FHA. In addition to codifying this statutory requirement, this rule also proposes to codify the requirements specified in FHA's Strengthening Counterparty Risk Management Mortgagee Letter, issued September 18, 2009, and found at *http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/index.cfm,* which directs FHA-approved mortgagees to maintain copies of all advertisements and promotional materials for a period of 2 years from the date that the materials are circulated or used for advertisement purposes.

Through this rule, HUD also proposes to codify the requirement in section 203 of the HFSH Act that requires mortgagees to notify FHA if individual employees of the lender are subject to any sanction or other administrative action. In incorporating this requirement, HUD also is proposing to codify its existing requirements pertaining to notification to FHA of business changes, such as changes in legal structure, which are currently found in HUD Handbook 4060.1, REV–2, Chapters 2 and 6.

D. The General Approval Standards for Mortgagees (24 CFR 202.5)

Section 202.5 of HUD's FHA regulations sets forth the general approval standards for FHA-approved mortgagees. Because this section sets forth the approval standards, this is the principal regulation that is proposed to be amended by this rule. However, with the exception of adding new provisions in § 202.5(b) to address the use of business name, and non-FHA approved entities, all other changes proposed by this rule are changes to existing provisions. For example, paragraph (f) concerning business changes, and paragraph (j), which pertains to ineligibility, are expanded to include the statutory requirements of the HFSH Act. Section 202.5(g), which addresses financial statements, is proposed to be amended to include reference to the requirement to submit an audited financial statement within 90 days of the end of a mortgagee's fiscal year. The requirement to submit an audited financial statement was initiated in FHA's Strengthening Counterparty Risk Management Mortgagee Letter, issued September 18, 2009. (*See http://*

www.hud.gov/offices/adm/hudclips/letters/mortgagee/index.cfm.)

III. Justification for Shortened Public Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. The Department, however, is reducing its usual 60-day public comment period to 30 days for this proposed rule. As discussed in the preamble, although this rule proposes to no longer approve loan correspondents as approved participants in FHA programs, and to limit approval to mortgagees, this does not mean that loan correspondents may no longer participate in the FHA-insured loan origination process. Loan correspondents would continue to be authorized to participate in the origination of FHA loans through association with an FHA-approved mortgagee, but they would no longer be subject to the rigorous FHA lender-approval process, which is more appropriate for those entities that underwrite the loans. The FHA-approved mortgagee will, in turn, act as sponsor as it has in the past, and the sponsoring mortgagee will assume responsibility for any loan correspondent that works with the mortgagee in the FHA-insured loan, and assume liability for the FHA-insured loan underwritten and closed in the name of the FHA-approved mortgagee. Therefore, this change should not result in any loss of business by any currently FHA-approved lending entity.

Additionally, although the proposed rule would raise the net worth requirement for FHA-approved mortgagees, which have not been increased in more than 15 years, the net worth requirements proposed are at a level comparable to industry standard, as already discussed in the preamble and as further discussed in Section IV of this preamble. Additionally, to provide FHA-approved mortgagees with sufficient time to meet the new requirements, HUD would phase in the net worth increases over a 3-year period from the effective date of the final rule resulting from this rulemaking. Within one year from the effective date of the final rule, FHA-approved mortgagees would be required to have a net worth of $1 million. At present, 60 percent of approved mortgagees have a net worth of $1 million or more. Those that do not currently meet the $1 million net worth requirement may choose to increase their net worth to meet the new requirements or may participate by partnering with an approved FHA mortgagee, as is the case for loan correspondents. Within 3 years from the effective date of the final rule, mortgagees would be required to have a net worth of $2.5 million, a figure that is consistent with industry practice. It is HUD's view, therefore, that this change, given the proposed net worth requirement and the time to meet such requirement, as well as the other avenues of participation in FHA programs available to those mortgagees not able to meet the new net worth requirements, would not significantly restrict any currently FHA-approved mortgagees from the opportunity to participate in FHA programs.

The proposed rule would also update HUD's regulations to incorporate criteria specified in the HFSH Act that precludes any lending entity not approved by the Secretary to participate in FHA programs or not in compliance with applicable eligibility requirements from originating an FHA-insured loan. These are statutory restrictions, which HUD does not have the authority to modify in response to comment. The statutory provisions are currently in effect and the proposed regulatory changes merely update HUD's regulations to conform to the language of the HFSH Act.

Given that the changes proposed by this rule bring FHA up to date with current industry standards and conform to explicit statutory language, and would not result in significant changes to current FHA participation, FHA believes a 30-day public comment period presents a sufficient period for comment. Although HUD has determined that a reduced comment period is merited in this case, the Department continues to value public input in the rulemaking process. As noted, the proposed rule solicits public comment for a period of 30 days, and all comments received will be considered in the development of the final rule.

IV. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). A determination, as provided below, was made that this proposed rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order).

The changes to the lender-approval process do not prevent participation by entities that have to date been involved in FHA programs, but rather limits the actual approval process to those entities that underwrite, service, or own FHA-insured mortgages. Therefore, loan correspondents and other non-FHA approved lenders can continue to be involved in FHA loan origination by working with FHA-approved mortgagees. Loan correspondents and other third-party originators would be exempt, however, from completing the FHA lender approval process.

The increase in net worth requirements, while seemingly a significant increase from the current net worth requirements established in 1993, is not significant when one considers the following: the net worth requirement for FHA-approved lending entities has not been increased in more than 15 years; the net worth increase would not apply to loan correspondents; and, as previously discussed in this preamble, the proposed net worth requirements are consistent with those currently required by other Federal financial institutions with which FHA-approved mortgagees conduct business and whose requirements they must meet. The following provides further analysis of the estimated impact of the increase in net requirements that supports HUD's determination that this rule is not an economically significant rule as defined by Executive Order 12866.

FHA does not presently collect audited financial statements from supervised institutions. As a result, it is not possible to determine if any of these entities that are currently FHA-approved would be unable to meet the proposed increased net worth requirements. Therefore, for the purposes of the following analysis, only data from approved non-supervised mortgagees is considered. However, based upon the fact that supervised institutions must meet much higher capital standards established by Federal banking regulators (and to comply with international Basel II standards), it is very unlikely that any supervised institutions would fail to meet the proposed net worth requirements. As a proxy, FHA analyzed Ginnie Mae net worth data for its supervised lender issuers and discovered that none of these lenders had a net worth below FHA's proposed requirement. In fact, the average net worth of this cohort was $2.4 billion.

The enactment of the proposed rule would present two options to mortgagees that currently possess a net worth below the proposed $2,500,000 requirement:

1. Increase their net worth, within the 3 years of enactment of the final rule, from the current $250,000 to $2.5

million, 20 percent of which must be held in liquid assets; or

2. Relinquish their status as an FHA-approved mortgagee and continue conducting FHA business as a loan correspondent by initiating a relationship with an approved mortgagee.

The actual economic impact of the proposed rule is the opportunity cost of option 1 and the lost revenue and additional costs associated with option 2. For mortgagees that choose option 1, it is anticipated that the increase in net worth would be met largely by changing the title of existing assets from the individual holdings of a mortgagees' owners to those of the institutions. Returns on the assets would be earned by the same individuals, whether they were held in the names of the individuals or by the mortgagees that they owned. Thus, increasing the minimum net worth requirement affects only the rate of return of the capital invested, which is the true measure of the economic impact of option 1. The impacts associated with this option are further discussed below.

For mortgagees that choose option 2, the functional impact of the option is that they no longer would be able to underwrite and process the loans they originate. The economic impact that would result from those limitations would be the loss of income from those aspects of the FHA mortgage lending process they no longer would be permitted to perform and the added costs they would be required to pay to their sponsor for processing and underwriting. An analysis of the impacts for mortgagees in choosing this option also is provided below.

If all mortgagees selected option 1 and transferred title from existing assets, the actual impact of such an action is the opportunity cost of holding those assets as net worth rather than investing them in other potentially higher-yielding investments. The true measure of economic impact is found by drilling down even farther to consider only the opportunity cost associated with those assets that must be converted to liquid form. Because assets held for net worth may still be invested elsewhere, it is only the 20 percent liquid asset portion of a mortgagee's capital that is affected by the increased net worth requirement. However, the analysis below depicts both the opportunity cost of the total capital transfer required to meet the higher net worth standard, and the opportunity cost of the liquid assets necessary to meet the requirement.

Table 1 below calculates the opportunity cost for mortgagees in meeting the proposed net worth requirements based upon total net worth needed. Table 2 calculates the opportunity cost in terms of required liquid assets. Based on data from FHA's Lender Assessment SubSystem (LASS), 24 mortgagees have a net worth equal to $250,000, 465 mortgagees have a net worth between $250,000 and $1 million, 350 mortgagees have a net worth between $1 million and $2.5 million, and 369 mortgagees have a net worth of greater than $2.5 million.

In Table 1 below, Column A lists the number of lenders in the aforementioned categories. Column B lists the average net worth of the mortgagees in each category. Column C subtracts the average net worth from the new requirement of $2.5 million per mortgagee. Column D then calculates the average opportunity cost per lender for each stratum.

The aggregate cost of this provision totals the opportunity cost of holding the amount shown in Column C in net worth rather than investing it in other potentially higher-yielding investments. The opportunity cost in Column D therefore is calculated as the difference between the average market rate of return and the risk-free interest rate. The average market rate is represented by the real annualized return of the S&P 500 between 1990 and 2008, which equals 4.5 percent. The risk-free interest is the average 10-year Treasury rate between 1990 and 2008, which equals 2.7 percent. The difference between these two rates equals 1.8 percent. Finally, the average opportunity cost of the increase in the net worth requirement per mortgagee, shown in Column D, was multiplied times Column A, the number of mortgagees in each category, to calculate the total cost of the net worth requirement imposed by this regulation, shown in Column E. As shown in Table 1, the total opportunity cost for all mortgagees of holding the additional funds in net worth totals $23.4 million.

TABLE 1—CALCULATION OF OPPORTUNITY COST TO FHA-APPROVED MORTGAGEES FOR FULL CAPITALIZATION

Net worth	(A) Number of mortgagees	(B) Average net worth	(C) Average required increase in net worth	(D) = (C)*1.8% Average opportunity cost	(E) = (A)*(D) Aggregate opportunity cost
$250K	24	$250,000	$2,250,000	$40,500	$972,000
$250K	465	539,345	1,960,655	35,292	16,410,780
$1M–$2.5M	350	1,537,509	962,491	17,325	6,063,750
>$2.5M	369	164,252,737			
Total	1,208				23,446,530

Table 2 below further extrapolates this data to assess the opportunity cost associated with only that portion of net worth held in liquid assets. The actual cost of this provision totals the opportunity cost of holding 20 percent of total net worth as liquid assets rather than investing it in other potentially higher-yielding investments. The opportunity cost therefore is calculated in essentially the same fashion as for Table 1. However, Column D of Table 2 lists the average increase in required liquid assets for lenders in each category. The opportunity cost is then calculated in the same fashion as described for Table 1, by multiplying the amount shown in Column D times 1.8 percent. This figure is shown in Column E. The total cost of the provision was then determined by multiplying the amount in Column E times the number of lenders in each stratum listed in Column A. As shown in Table 2, the opportunity cost of holding the additional required liquid assets in net worth totals $4.7 million.[1]

[1] Even if the percentage of required net worth held in liquid assets were to yield no return whatsoever, utilizing the 4.5 percent average market rate of return mentioned previously, the total opportunity cost of the uninvested liquid assets would total just $11,723,184.

TABLE 2—CALCULATION OF OPPORTUNITY COST TO FHA-APPROVED MORTGAGEES FOR LIQUID HOLDINGS

Net worth	(A)	(B)	(C)	(D) = (C)*20%	(E) = (D)*1.8%	(F) = (A)*(E)
	Number of mortgagees	Average net worth	Average required increase in net worth	Average increase in liquid assets	Aggregate opportunity cost	Aggregate opportunity cost
$250K	24	$250,000	$2,250,000	$450,000	$8,100	$194,400
$250K	465	539,345	1,960,655	392,131	7,058	3,282,137
$1M–$2.5M	350	1,537,509	962,491	192,498	3,465	1,212,738
>$2.5M	369	164,252,737				
Total	1,208					4,689,275

If all mortgagees selected option 2, the economic impact again would issue from lost revenue derived from those aspects of the FHA mortgage lending process they no longer would be permitted to perform and the added costs they would be required to pay to their sponsor for processing and underwriting. There are four primary ways in which a lender can receive income from the mortgage business: (1) Origination fees, (2) servicing release premiums, (3) servicing fees, and (4) income derived from securitization. The potential income derived from these revenue streams is as follows:

(1) FHA origination fees are capped at 1 percent of the loan amount.

(2) The industry standard for servicing release premiums is between 75 to 100 basis points of a loan's unpaid principal balance at the time of sale.

(3) The average annual servicing fee of an FHA loan is 30 basis points on the unpaid principal balance.

(4) Income derived from securitization will not be considered because a mortgagee must meet the higher net worth already required by Ginnie Mae, Fannie Mae, and Freddie Mac in order to participate in the respective securitization programs.

FHA analyzed the origination patterns of the mortgagees that would be affected over a 2-year period from August 31, 2007 to September 30, 2009. It should be noted that the vast majority of lenders reviewed do not service a mortgage portfolio but rather sell their mortgages to aggregators.

As is seen in Table 3 below, of the 489 lenders with a net worth less than the proposed $1 million, 355 have originated at least one loan in the 2-year sample period. Of the 350 lenders above the proposed $1 million net worth but below the proposed $2.5 million, 299 have originated at least one loan during the 2-year sample period. Since the affected mortgagees still would be permitted to originate FHA loans for a fee and would be entitled to income streams derived from servicing release premiums, the only economic impact would be from the costs these lenders pay to FHA-approved lenders for the processing and underwriting of the mortgages sold. Table 3 provides information regarding the economic impact if all lenders opted to relinquish their FHA approval and operate via a relationship with an FHA-approved mortgagee. Column A lists the number of lenders in each net worth category. Column B lists only the number of lenders in each category that originated at least one loan in the 2-year period from August 31, 2007, to September 30, 2009. Column C provides the average yearly originations performed by each stratum for the 2-year period. Column D calculates the average number of originations performed per lender by dividing Column C by column B. Column E calculates the average total processing and underwriting fees paid by loan correspondents for loans they originated by multiplying the amount in Column D times $200, the average fee required by a mortgagee for these services. Column F calculates the total cost of these fees for loan correspondents by multiplying Column E by Column B. As is seen from Table 3, the economic impact of this option is $45.1 million.

TABLE 3—CALCULATION OF LOST REVENUE FOR MORTGAGEES THAT RELINQUISH THEIR FHA APPROVAL

	(A)	(B)	(C)	(D) = (C)/(B)	(E) = (D)*$200	(F) = (E)*(B)
	Total number of lenders	Lenders w/originations in 2-year period	Avg. number of yearly originations	Avg. number of orig/lender	Avg. loan processing fee/lender	Aggregate loan processing fee
>$250K < $1M	489	355	87,455	246	$49,200	$17,466,000
$1M–$2.5M	350	299	138,289	463	92,600	27,687,400
Total						45,153,400

As is evidenced above, under either option a mortgagee adopts to accommodate the proposed increase in net worth requirements, the total economic impact is below $100 million. FHA believes that the method of assessment outlined here is the most true and accurate accounting of the economic impacts of this proposed rule.

As part of the public comments that HUD is soliciting on this rule, HUD also solicits public comment on its analysis and welcomes feedback on potential effects that commenters believe this rule will have on competition in financial and housing markets, with particular emphasis on the ability of mortgagees to transfer assets in order to increase their net worth.

The docket file 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, please schedule an appointment to review the docket file 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.

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.

Currently, there are 13,831 FHA-approved lending entities. Of these approved entities, 28 percent are approved mortgagees, 68 percent are approved correspondents, and the remaining 4 percent constitute government mortgagees or investing mortgagees. Of FHA-approved mortgagees, only 60 percent currently have a net worth of $1 million or more. An additional 20 percent of approved mortgagees have a net worth greater than $500,000. Thus, a significant portion of these mortgagees could be expected to achieve a net worth of $1 million within the one year period prior to the net worth requirement taking effect. Those that are unable to meet the new net worth requirement in that time would still be able to participate in FHA programs by partnering with an approved mortgagee.

The small entities that participate in the FHA loan origination have, to date, largely been loan correspondents. As discussed in this preamble, the proposed rule would not deny loan correspondents the ability to continue to participate in the origination of FHA-insured loans. Rather, the proposed regulatory changes would alleviate the administrative burden imposed on loan correspondents by no longer requiring them to apply separately for FHA approval. The changes proposed by this rule allow smaller entities to continue to be involved in the origination of FHA-insured loans without having to come under the FHA approval process and meet net worth requirements.

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 the preamble to this rule.

Environmental Impact

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. This rule is limited to the eligibility of those entities that may be approved as FHA-approved lenders. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

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 proposed rule would 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 would not impose any Federal mandates on any State, local, or Tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number is 14.183.

List of Subjects in 24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR part 202 as follows:

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

1. The authority citation for 24 CFR part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

2. In § 202.2, the definition *mortgagee or Title II mortgagee* is revised to read as follows:

§ 202.2 Definitions.

* * * * *

Mortgagee or Title II mortgagee means a mortgage lender that is approved to participate in the Title II programs as a supervised mortgagee under § 202.6, a nonsupervised mortgagee under § 202.7, an investing mortgagee under § 202.9, or a governmental or similar institution under § 202.10.

* * * * *

3. In § 202.3, revise paragraphs (a) introductory text and (a)(1) to read as follows:

§ 202.3 Approval status for lenders and mortgagees.

(a) *Initial approval.* A lender or mortgagee may be approved for participation in the Title I or Title II programs upon filing a request for approval on a form prescribed by the Secretary and signed by the applicant. The approval form shall be accompanied by such documentation as may be prescribed by the Secretary.

(1) Approval is signified by:

(i) The Secretary's agreement that the lender or mortgagee is considered approved under the Title I or Title II programs, except as otherwise ordered by the Mortgagee Review Board or an officer or subdivision of the Department to which the Mortgagee Review Board has delegated its power, unless the lender or mortgagee voluntarily relinquishes its approval;

(ii) Consent by the lender or mortgagee to comply at all times with the general approval requirements of § 202.5, and with additional requirements governing the particular class of lender or mortgagee for which it was approved as described under subpart B at §§ 202.6 through 202.10; and

(iii) Under the Title I program, the issuance of a Contract of Insurance constitutes an agreement between the Secretary and the lender and which governs participation in the Title I program.

* * * * *

4. Revise § 202.5 to read as follows:

§ 202.5 General approval standards.

To be approved for participation in the Title I or Title II programs, and to maintain approval, a lender or mortgagee shall meet and continue to meet the general requirements of paragraphs (a) through (n) of this section (except as provided in § 202.10(b)) and the requirements for one of the eligible

classes of lenders or mortgagees in §§ 202.6 through 202.10.

(a) *Business form.* (1) The lender or mortgagee shall be a corporation or other chartered institution, a permanent organization having succession, or a partnership. A partnership must meet the requirements of paragraphs (a)(1)(i) through (iv) of this section.

(i) Each general partner must be a corporation or other chartered institution consisting of two or more persons.

(ii) One general partner must be designated as the managing general partner. The managing general partner shall comply with the requirements of paragraphs (b), (c), and (f) of this section. The managing general partner must have as its principal activity the management of one or more partnerships, all of which are mortgage lenders or property improvement or manufactured home lenders, and must have exclusive authority to deal directly with the Secretary on behalf of each partnership. Newly admitted partners must agree to the management of the partnership by the designated managing general partner. If the managing general partner withdraws or is removed from the partnership for any reason, a new managing general partner shall be substituted, and the Secretary shall be immediately notified of the substitution.

(iii) The partnership agreement shall specify that the partnership shall exist for the minimum term of years required by the Secretary. All insured mortgages and Title I loans held by the partnership shall be transferred to a lender or mortgagee approved under this part prior to the termination of the partnership. The partnership shall be specifically authorized to continue its existence if a partner withdraws.

(iv) The Secretary must be notified immediately of any amendments to the partnership agreement that would affect the partnership's actions under the Title I or Title II programs.

(2) *Use of business name.* The lender or mortgagee must use its HUD-registered business name in all advertisements and promotional materials related to FHA programs. HUD-registered business names include any alias or ''doing business as'' (DBA) on file with FHA. The lender or mortgagee must keep copies of all print and electronic advertisements and promotional materials for a period of 2 years from the date that the materials are circulated or used to advertise.

(3) *Non-FHA-approved entities.* A lender or mortgagee that accepts a loan application by a non-FHA-approved entity must determine that the non-FHA-approved entity is not subject to the sanctions or administrative actions listed in paragraph (j) of this section, and that the entity's legal name and Tax ID number are included in the FHA loan origination system record for the subject loan. The loan to be insured by FHA must be underwritten by and closed in the name of the FHA-approved lender or mortgagee.

(b) *Employees.* The lender or mortgagee shall employ competent personnel trained to perform their assigned responsibilities in consumer or mortgage lending, including origination, servicing, and collection activities, and shall maintain adequate staff and facilities to originate and service mortgages or Title I loans, in accordance with applicable regulations, to the extent the mortgagee or lender engages in such activities.

(c) *Officers.* All employees who will sign applications for mortgage insurance on behalf of the mortgagee or report loans for insurance shall be corporate officers or shall otherwise be authorized to bind the lender or mortgagee in the origination transaction. The lender or mortgagee shall ensure that an authorized person reports all originations, purchases, and sales of Title I loans or Title II mortgages to the Secretary for the purpose of obtaining or transferring insurance coverage.

(d) *Escrows.* The lender or mortgagee shall not use escrow funds for any purpose other than that for which they were received. It shall segregate escrow commitment deposits, work completion deposits, and all periodic payments received under loans or insured mortgages on account of ground rents, taxes, assessments, and insurance charges or premiums, and shall deposit such funds with one or more financial institutions in a special account or accounts that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, except as otherwise provided in writing by the Secretary.

(e) *Servicing.* A lender shall service or arrange for servicing of the loan in accordance with the requirements of 24 CFR part 201. A mortgagee shall service or arrange for servicing of the mortgage in accordance with the servicing responsibilities contained in subpart C of 24 CFR part 203 and in 24 CFR part 207, with all other applicable regulations contained in this title, and with such additional conditions and requirements as the Secretary may impose.

(f) *Business changes.* The lender or mortgagee shall provide prompt notification to the Secretary, in such form as prescribed by the Secretary, of:

(1) All changes in its legal structure, including, but not limited to, mergers, terminations, name, location, control of ownership, and character of business; and

(2) Any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, loan originator, or employee of the lender or mortgagee, or the lender or mortgagee itself, that is subject to one or more of the sanctions in paragraph (j) of this section.

(g) *Financial statements.* The lender or mortgagee shall furnish to the Secretary a copy of its annual audited financial statement within 90 days of its fiscal year end, furnish such other information as the Secretary may request, and submit to an examination of that portion of its records that relates to its Title I and/or Title II program activities.

(h) *Quality control plan.* The lender or mortgagee shall implement a written quality control plan, acceptable to the Secretary, that assures compliance with the regulations and other issuances of the Secretary regarding loan or mortgage origination and servicing.

(i) *Fees.* The lender or mortgagee, unless approved under § 202.10, shall pay an application fee and annual fees, including additional fees for each branch office authorized to originate Title I loans or submit applications for mortgage insurance, at such times and in such amounts as the Secretary may require. The Secretary may identify additional classes or groups of lenders or mortgagees that may be exempt from one or more of these fees.

(j) *Ineligibility.* For a lender or mortgagee to be eligible for FHA approval, neither the lender or mortgagee, nor any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, loan originator, or employee of the lender or mortgagee shall:

(1) Be suspended, debarred, under a limited denial of participation (LDP), or otherwise restricted under 2 CFR part 2424 or 24 CFR part 25, or under similar procedures of any other Federal agency;

(2) Be indicted for, or have been convicted of, an offense that reflects adversely upon the integrity, competency, or fitness to meet the responsibilities of the lender or mortgagee to participate in the Title I or Title II programs;

(3) Be subject to unresolved findings as a result of HUD or other governmental audit, investigation, or review;

(4) Be engaged in business practices that do not conform to generally accepted practices of prudent

mortgagees or that demonstrate irresponsibility;

(5) Be convicted of, or have pled guilty or nolo contendre to, a felony related to participation in the real estate or mortgage loan industry:

(i) During the 7-year period preceding the date of the application for licensing and registration; or

(ii) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust or money laundering;

(6) In violation of provisions of the Secure and Fair Enforcement (SAFE) Mortgage Licensing Act of 2008 (12.U.S.C. 5101 *et seq.*) or any applicable provision of State law; or

(7) In violation of any other requirement established by the Secretary.

(k) *Branch offices.* A lender may, upon approval by the Secretary, maintain branch offices for the origination of Title I loans. A branch office of a mortgagee must be registered with the Department in order to originate mortgages or submit applications for mortgage insurance. The lender or mortgagee shall remain fully responsible to the Secretary for the actions of its branch offices.

(l) *Conflict of interest and responsibility.* (1) A mortgagee may not pay anything of value, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person or entity if such person or entity has received any other consideration from the mortgagor, seller, builder, or any other person for services related to such transactions or related to the purchase or sale of the mortgaged property, except that consideration, approved by the Secretary, may be paid for services actually performed. The mortgagee shall not pay a referral fee to any person or organization.

(2) *Responsibility.* FHA-approved lenders and mortgagees assume responsibility for ensuring that the lending entities with which they do business (*e.g.,* loan correspondents, mortgage brokers) are not ineligible (as provided in paragraph (j) of this section) to participate in the origination of FHA-insured loans.

(m) *Reports.* Each lender and mortgagee must submit a yearly verification report on a form prescribed by the Secretary. Upon application for approval and with each annual recertification, each lender and mortgagee must submit a certification that it has not been refused a license and has not been sanctioned by any State or States in which it will originate insured mortgages or Title I loans. In addition, each mortgagee shall file the following:

(1) An audited or unaudited financial statement, within 30 days of the end of each fiscal quarter in which the mortgagee experiences an operating loss of 20 percent of its net worth, and until the mortgagee demonstrates an operating profit for 2 consecutive quarters or until the next recertification, whichever is the longer period; and

(2) A statement of net worth within 30 days of the commencement of voluntary or involuntary bankruptcy, conservatorship, receivership, or any transfer of control to a Federal or State supervisory agency.

(n) *Net worth.* (1) Effective on [*date 1 year after the effective date of final rule*], each supervised or nonsupervised lender or mortgagee approved under § 202.6 and § 202.7 and each investing lender and mortgagee approved under § 202.9 shall have a net worth of not less than $1,000,000, of which no less than 20 percent must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.

(2) Effective on [*date 3 years after the effective date of final rule*], each supervised or nonsupervised lender or mortgagee approved under § 202.6 and § 202.7 and each investing lender and mortgagee approved under § 202.9 shall have a net worth of not less than $2,500,000, of which no less than 20 percent must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.

5. Revise § 202.6 to read as follows:

§ 202.6 Supervised lenders and mortgagees.

(a) *Definition.* A supervised lender or mortgagee is a financial institution that is a member of the Federal Reserve System or an institution whose accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. A supervised mortgagee may submit applications for mortgage insurance. A supervised lender or mortgagee may originate, purchase, hold, service or sell loans or insure mortgages, respectively.

(b) *Additional requirements.* In addition to the general approval requirements in § 202.5, a supervised lender or mortgagee shall meet the following requirements:

(1) *Net worth.* The net worth requirements appear in § 202.5(n).

(2) *Notification.* A lender or mortgagee shall promptly notify the Secretary in the event of termination of its supervision by its supervising agency.

(3) *Fidelity bond.* A Title II mortgagee shall have fidelity bond coverage and errors and omissions insurance acceptable to the Secretary and in an amount required by the Secretary, or have alternative insurance coverage, approved by the Secretary, that assures the faithful performance of the responsibilities of the mortgagee.

6. Revise § 202.8 to read as follows:

§ 202.8 Loan correspondents.

(a) *Definitions.*

Loan correspondent. A loan correspondent lender does not hold a Title I Contract of Insurance and may not purchase or hold loans but may be approved to originate Title I direct loans for sale or transfer to a sponsor or sponsors, as defined in this section, which holds a valid Title I Contract of Insurance and is not under suspension, subject to the sponsor determining that the loan correspondent has met the eligibility criteria of paragraph (b) this section.

Sponsor. (1) With respect to Title I programs, a sponsor is a lender that holds a valid Title I Contract of Insurance and meets the net worth requirement for the class of lender to which it belongs.

(2) With respect to Title II programs, a sponsor is a mortgagee that holds a valid origination approval agreement, is approved to participate in the Direct Endorsement program, and meets the net worth requirement for the class of mortgagee to which it belongs.

(b) *Eligibility to originate FHA insured loans.* A loan correspondent may originate FHA insured loans provided:

(1) The loan correspondent is working with and through an FHA-approved lender or mortgagee; and

(2) The loan correspondent or an officer, partner, director, principal, manager, supervisor, loan processor, or employee of the loan correspondent has not been subject to the sanctions or administrative actions listed in § 202.5, as determined and verified by the FHA-approved lender or mortgagee.

7. Revise § 202.11 to read as follows:

§ 202.11 Title I.

(a) *Types of administrative action.* In addition to termination of the Contract of Insurance, certain sanctions may be imposed under the Title I program. The administrative actions that may be applied are set forth in 24 CFR part 25. Civil money penalties may be imposed against Title I lenders and mortgagees pursuant to 24 CFR part 30.

(b) *Grounds for action.* Administrative actions shall be based upon both the grounds set forth in 24 CFR part 25 and as follows:

(1) Failure to properly supervise and monitor dealers under the provisions of part 201 of this title;

(2) Exhaustion of the general insurance reserve established under part 201 of this title;

(3) Maintenance of a Title I claims/loan ratio representing an unacceptable risk to the Department; or

(4) Transfer of a Title I loan to a party that does not have a valid Title I Contract of Insurance.

8. Revise § 202.12(a)(1) to read as follows:

§ 202.12 Title II.

(a) *Tiered pricing.* (1) *General requirements.* (i) *Prohibition against excess variation.* The customary lending practices of a mortgagee for its single family insured mortgages shall not provide for a variation in mortgage charge rates that exceeds two percentage points. A variation is determined as provided in paragraph (a)(6) of this section.

(ii) *Customary lending practices.* The customary lending practices of a mortgagee include all single family insured mortgages originated by the mortgagee, including those funded by the mortgagee or purchased from the originator if requirements of the mortgagee have the effect of leading to violation of this section by the originator.

(iii) *Basis for permissible variations.* Any variations in the mortgage charge rate up to two percentage points under the mortgagee's customary lending practices must be based on actual variations in fees or cost to the mortgagee to make the mortgage loan, which shall be determined after accounting for the value of servicing rights generated by making the loan and other income to the mortgagee related to the loan. Fees or costs must be fully documented for each specific loan.

* * * * *

Dated: November 12, 2009.

David H. Stevens,

Assistant Secretary for Housing–Federal Housing Commissioner.

[FR Doc. E9–28335 Filed 11–27–09; 8:45 am]

BILLING CODE 4210–67–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

32 CFR Part 2004

[NARA–09–0005]

RIN 3095–AB34

National Industrial Security Program Directive No. 1

AGENCY: Information Security Oversight Office, NARA.

ACTION: Proposed rule.

SUMMARY: The Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA), is proposing to amend National Industrial Security Program Directive No. 1. This proposed amendment to Directive No. 1 provides guidance to agencies on release of certain classified information (referred to as ''proscribed information'') to contractors that are owned or under the control of a foreign interest and have had the foreign ownership or control mitigated by an arrangement known as a Special Security Agreement. Currently, there is no Federal standard across agencies on release of proscribed information to this group. The proposed amendment will provide standardization and consistency to the process across the Federal Government, and will enable greater efficiency in determining the release of the information as appropriate. This proposed amendment also moves the definitions section to the beginning of the part for easier use, and adds definitions for the terms ''Cognizant Security Office,'' ''National Interest Determination,'' and ''Proscribed Information,'' to accompany the new guidelines. Finally, this proposed amendment makes a minor typographical change to the authority citation to make it more accurate.

DATES: Submit comments on or before January 29, 2010.

ADDRESSES: NARA invites interested persons to submit comments on this proposed rule. Please include ''Attn: 3095–AB34'' and your name and mailing address in your comments. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* Submit comments by facsimile transmission to 301–837–0319.
- *Mail:* Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Planning Staff, National Archives and Records Administration; Policy and Planning Office; *Attn:* Laura McCarthy, Room 4100, 8601 Adelphi Road, College Park, MD 20740.
- *Hand Delivery or Courier:* Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: William J. Bosanko, Director, ISOO, at 202–357–5250.

SUPPLEMENTARY INFORMATION: As of November 17, 1995, ISOO became a part of NARA and subsequently published Part 2004, National Industrial Program Directive No. 1, pursuant to section 102(b)(1) of E.O. 12829, January 6, 1993 (58 FR 3479), as amended by E.O. 12885, December 14, 1993, (58 FR 65863). The Executive Order established a National Industrial Security Program (NISP) to safeguard Federal Government classified information released to contractors, licensees, and grantees (collectively referred to here as ''contractors'') of the United States Government. This amendment to Directive No. 1 proposes to add guidelines on release of proscribed information to this category of contractors.

ISOO maintains oversight over E.O. 12958, as amended, and policy oversight over E.O. 12829, as amended, and issuing this proposed amendment fulfills one of the ISOO Director's delegated responsibilities under these Executive Orders. Nothing in Directive No. 1 or this proposed amendment shall be construed to supersede the authority of the Secretary of Energy or the Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011, *et seq.*), or the authority of the Director of National Intelligence under the National Security Act of 1947, as amended, E.O. 12333, December 8, 1981, and the Intelligence Reform and Terrorism Prevention Act of 2004.

The interpretive guidance contained in this proposed amendment will only assist agencies to implement E.O. 12829, as amended; users of Directive No. 1 shall refer concurrently to the Executive Order for guidance.

This proposed amendment is not a significant regulatory action for the purposes of E.O. 12866. The proposed amendment is also not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, we certify that the proposed amendment will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies.