not been correctly applied may appeal to the Merit Systems Protection Board under provisions of the Board's regulations.

§ 359.806 Notice

(a) An appointee is entitled to a 30 days' advance written notice of a furlough. The full notice period may be shortened, or waived, only in the event of unforseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities.

(b) The written notice shall advise the appointee of:

(1) The reason for the agency decision to take the furlough action.

(2) The expected duration of the furlough and the effective dates;

(3) The basis for selecting the appointee for furlough when some but not all Senior Executive Service appointees in a given organizational unit are being furloughed;

(4) The reason if the notice period is less than 30 days;

(5) The place where the appointee may inspect the regulations and records pertinent to the action; and

(6) The appointee's appeal rights, including the time limit for the appeal and the location of the Merit Systems Protection Board office to which the appeal should be sent.

§ 359.807 Records.

The agency shall preserve all records relating to an action under this subpart for at least one year from the effective date of the action.

[FR Doc. 83-7304 Filed 3-21-83; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 271

Food Stamp Program; Eligibility Criteria and Reduction or Termination of Benefits

Correction

In FR Doc. 82-33824 beginning on page 55903 in the issue of Tuesday, December 14, 1982, make the following corrections:

In § 271.2, page 55908, center column, in the 19th line from the top, "benefits states or" should have read "benefits stated or".

BILLING CODE 1505-01-M

Packers and Stockyards Administration

9 CFR Part 201

General Bonding Regulations

Correction

In FR Doc. 83-5207 beginning on page 8804 in the issue of Wednesday, March 2, 1983, make the following corrections.

1. On page 8807, third column, eighth line of the third complete paragraph, "to" should read "on".

2. On page 8808, first column, tenth line of the third paragraph, "other such" should read "such other". In the same column, the last word of the fifth line of paragraph (b) reading "of", should read "on".

3. On page 8808, second column, eleventh line of paragraph (c), "amounts" should read "amount"; and in the thirteenth line, "obtaining" should read "obtained".

BILLING CODE 1505-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Agents and Associated Persons of Futures Commission Merchants; Statement of Policy

AGENCY: Commodity Futures Trading Commission.

ACTION: Statement of policy.

SUMMARY: Recent amendments to the Commodity Exchange Act ("Act") will eliminate the current category of unregistered "agents" of futures commission merchants ("FCMs") and will further require many of those agents to be registered with the Commodity Futures Trading Commission ("Commission") as "introducing brokers." In addition, individuals employed by such agents as associated persons ("APs") would no longer be required to be registered as APs of the sponsoring FCM but could instead be registered under the sponsorship of the introducing broker. The Commission has announced that it will continue to accept applications for registration and related reports filed in accordance with the Commission's existing regulations until such time as it makes effective final regulations implementing the above-described statutory changes.

EFFECTIVE DATE: March 22, 1983.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Rosenzweig, Assistant Chief Counsel, or Robert P. Shiner, Assistant Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone: (202) 254-8955 or 254-9703, respectively.

SUPPLEMENTARY INFORMATION: The Futures Trading Act of 1982 ("FTA") has amended the Commodity Exchange Act, *inter alia*, to require the registration with the Commission of "introducing brokers" and to eliminate the former unregistered statutory category of "agents" of futures commission merchants.[1] As a result, most agents of FCMs will be required to register with the Commission as introducing brokers,[2] which is defined in the FTA to mean:

> any person, except an individual who elects to be and is registered as an associated person of a futures commission merchant, engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.[3]

Section 212 of the FTA further provides generally that any person associated with an introducing broker in any capacity which involves the solicitation or acceptance of customers' orders or the supervision of any persons so engaged must be registered with the Commission as an AP of that introducing broker. By comparison, prior to the enactment of the FTA, Section 4k of the Act and § 3.12 of the Commission's regulations thereunder (17 CFR 3.12) specified that such an individual could be registered as an

[1] *See* Futures Trading Act of 1982, Pub. L. No. 97-444, sections 207, 208, 212, 96 Stat. 2302, 2303-04 (January 11, 1983), *amending* Sections 4d, 4f, and 4k of the Commodity Exchange Act (7 U.S.C. 6d, 6f, 6k).

[2] *See, e.g.*, H.R. Rep. No. 97-565, 97th Cong., 2d Sess. 87 (1982).

[3] Futures Trading Act of 1982, Pub. L. No. 97-444, section 201(1), 96 Stat. 2297, *amending* Section 2(a) of the Act (7 U.S.C. 2). Persons who now do business as agents of FCMs could, of course, become branch offices of an FCM if the agent and its employees were properly registered as associated persons and other conditions of the Commission's regulations (*see, e.g.*, 17 CFR 3.10(c), 3.31) were met.

associated person only if he was associated, through the agent, with a futures commission merchant.

These new statutory requirements have not yet become effective.[4] The Commission's staff has nonetheless received inquiries as to whether persons who may be affected by these statutory changes may continue in business as agents of FCMs or as associated persons of those FCMs. In particular, the question has arisen as to whether the Commission will continue to accept notifications from FCMs of new agency relationships and whether FCMs may continue to "sponsor" the registration of APs who will be associated with the FCM through its agent.

The Commission wishes to give notice that until such time as regulations implementing the above-described statutory changes have become effective, the Commission will continue to accept applications for registration and related reports which are filed in accordance with its presently-existing registration regulations. The Commission expects that affected individuals and firms will continue to comply with those regulations and, if necessary, will take appropriate action to enforce those requirements. In this regard, the Commission wishes to emphasize that a futures commission merchant is fully responsible for the acts of both its agents and the individual persons associated with the futures commission merchant through an agent.[5] The Commission further wishes to emphasize that until an agent becomes registered with the Commission as an introducing broker pursuant to regulations adopted by the Commission for that purpose, an agent may continue to engage in activities which would otherwise require registration as an introducing broker only if it remains an agent (or in the case of an individual, an associated person) of a futures commission merchant.

Issued in Washington, D.C. on March 16, 1983, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 83-7404 Filed 3-21-83; 8:45 am]

BILLING CODE 6351-01-M

[4] Section 239 of the FTA provides that Sections 207 and 212 of the FTA, which respectively establish the new registration requirements for introducing brokers and for APs of introducing brokers (as well as for APs of commodity trading advisors and commodity pool operators) "shall be effective [May 11, 1983], or such earlier date as the Commodity Futures Trading Commission shall prescribe by regulation." 96 Stat. 2327.

[5] Section 2(a) of the Act, 7 U.S.C. 4; 45 FR 80485, 80491 (December 5, 1980).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 77P-0413]

Labeling of Firming Ingredients

Correction

In FR Doc. 83-4714 appearing on page 8053 in the issue of Friday, February 25, 1983, make the following correction:

On page 8053, third column, last line on the page, "the change has little impact" should have read "the change has very little impact".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-83-1066]

Minimum Property Standards; Withdrawal of Incorporation by Reference

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

ACTION: Withdrawal of incorporation by reference.

SUMMARY: HUD is withdrawing its Use of Materials Bulletin No. 74, which sets forth the conditions for acceptance of urea-formaldehyde foam insulation and stipulates limitations for its use. This withdrawal has the effect of disapproving further use of urea-formaldehyde foam insulation in HUD's mortgage insurance and low income Public Housing program pursuant to the Consumer Product Safety Commission's ban of urea-formaldehyde foam insulation in residences and schools.

EFFECTIVE DATE: May 2, 1983.

FOR FURTHER INFORMATION CONTACT: Donald K. Baxter, Director, Construction Standards Division, Office of Manufactured Housing and Construction Standards, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410; telephone (202) 755-5718. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: HUD Minimum Property Standards are published in handbooks: Minimum Property Standards for One- and Two-Family Dwellings in Handbook 4900.1, Multifamily Housing in Handbook 4910.1, and Care-Type Housing in Handbook 4920.1. The Minimum Property Standards are incorporated by reference into Part 200, Subpart S, 24 CFR 200.927. In addition, 24 CFR 200.933 requires that changes in Minimum Property Standards be made in accordance with HUD policy for the adoption of rules and regulations.

On October 13, 1977, the Department published a notice in the **Federal Register** (42 FR 55143) promulgating its Use of Materials Bulletin No. 74 which set forth conditions for acceptance of urea-formaldehyde foam insulation and stipulated certain limitations for its use. The Bulletin sets forth the physical properties, test methods, installation guidelines and labeling requirements for such insulation. The Bulletin was then referenced in the Minimum Property Standards.

On April 2, 1983, the Comsumer Product Safety Commission issued a rule banning urea-formaldehyde foam insulation in residences and schools (47 FR 14366). The rule became effective August 10, 1982. On August 13, 1982, the Department reminded all Regional Administrators, DHUD Office managers, Service Office Supervisors and Housing Division Directors of Valuation and Endorsement Stations by telegram of the effective date of the ban, and of HUD's intention to notify the public by publication in the **Federal Register** of withdrawal of UM 74 as a HUD publication and its removal from all volumes of the Minimum Property Standards where it is incorporated by reference. This action by the Department is based solely on the action taken by the Consumer Product Safety Commission. The Department has made no independent assessment of the grounds underlying the action taken by the CPSC, and no inference is to be drawn that the Department either endorses or questions the conculsion drawn by CPSC. The Department does not anticipate that its withdrawal will have any practical effect, given the present unavailability of use of the product due to the CPSC ban. However, the Department considers it appropriate to remove an apparent inconsistency between a Departmental publication and the ban issued by the CPSC.

Because this action is based on the prior action of the CPSC and will have no separate practical effect, the Secretary has determined that prior notice and public procedure is unnecessary and that good cause exists for publishing this withdrawal as a final rule. Accordingly, the Department now withdraws UM 74 and deletes all instances where it is incorporated by reference in the Minimum Property Standards.

This rule does not constitute a "major rule" as that term is defined in section 1(h) of the Executive Order 12291. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(c) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, D.C. 20410.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because the Department's removal of urea-formaldehyde foam insulation from the Minimum Property Standards is based on a ban of that insulation by the Consumer Product Safety Commission for use in schools and residences and is merely a formalization of the ban with respect to the Department's regulations.

This withdrawal of an incorporation by reference was not listed in the Department's Semi-Annual Agenda of regulations published on October 28, 1982 (47 FR 48422) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance does not apply.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Reporting and recordkeeping requirements, Loan programs—Housing and community development, Mortgage insurance, Organization and functions (Government agencies).

Accordingly, HUD's Use of Materials Bulletin No. 74 is hereby withdrawn, and its incorporation by reference 24 CFR 200.927 is terminated.

(Sec. 7(d) of the Department of Housing and Urban Development Act of 1965 (42 U.S.C. 3535(d)); sec. 211 of the National Housing Act (12 U.S.C. 1715(b)))

Dated: March 14, 1983.

Philip Abrams,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 83-7307 Filed 3-21-83; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Parts 200, 203, 233, 234, and 237

[Docket No. R-83-1037]

Mutual Insurance Programs Under the National Housing Act; Direct Endorsement Processing

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

ACTION: Final rule.

SUMMARY: This rule amends Parts 200, 203, 233, 234 and 237 to implement a new program involving direct underwriting of insured single family mortgage loans by approved mortgage lenders. Under this program, the lender underwrites and closes the mortgage loan, and submits the loan to HUD for insurance endorsement, without obtaining a prior HUD commitment. This Direct Endorsement program does not replace the conditional and firm commitment application procedure, but is offered in addition to the existing procedure. The purpose of the program is to simplify and expedite the process by which mortgagees can secure mortgage insurance endorsements from HUD.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver. Notice of the effective date of the final rule will be published in the **Federal Register.** The information collection requirements of §§ 200.163 and 200.164 are under review at OMB. The effective date for these information collection requirements will be announced by separate notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: John Coonts, Director, Single Family Development Division, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone, (202) 755-6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

A proposed rule, to amend Parts 200, 203, 233, 234 and 237 to implement a program involving the underwriting and closing of insured mortgage loans by approved lenders without prior HUD review, was published in the **Federal Register** for public comment on November 24, 1982 (47 FR 53038). This program represents a significant departure from current HUD/FHA endorsement procedures because HUD relies on approved mortgagees to make underwriting determinations. To expedite the procedure for obtaining a HUD insurance endorsement for certain single family mortgages, HUD will rely on mortgagee certifications that specific statutory and regulatory requirements have been satified. Because of this reliance, HUD is placing significant emphasis on mortgagees' qualifications and on quality control reviews of participating mortgagees' underwriting activities. The rule sets forth specific qualification requirements, certifications, and quality control procedures.

II. Summary of Proposed Direct Endorsement Program

The proposed Direct Endorsement program was applicable only to the section 203(b), section 245 graduated and modified graduated payment, section 221(d)(2) moderate income and displaced persons, and section 234(c) individual condominium unit programs. The program applied to proposed construction, rehabilitation, and existing home purchases as well as refinancing existing indebtedness and financing the acquisition of property for non-occupant owners.

To qualify for this program mortgagees had to be HUD-approved "supervised" or "non-supervised" mortgagees in good standing with at least five years of experience in the origination and servicing of HUD/FHA insured single family mortgages. In addition, except for "supervised" mortgagees, the mortgagees had to be approved either as Federal National Mortgage Association (FNMA) seller/servicers or as issuers of Government National Mortgage Association (GNMA) Mortgage-Backed Securities.

The mortgagee had to employ, or retain for fee, qualified professionals to conduct mortgage credit examinations, inspections, and architectural and engineering functions. The underwriter had overall responsibility for assuring compliance with all HUD instructions, for coordinating all phases of processing, and for the quality of the decisions made in appraisals, compliance inspection and credit analyses under the program. The mortgagee was to use appraisers assigned by HUD from the fee panel.

Each mortgagee was required also to utilize a Quality Control Plan for managing the conduct and review of the underwriting of mortgage loans submitted for Direct Endorsement. The primary purpose of such a plan was to assure that the procedures and the personnel used when underwriting loans met all HUD requirements. An additional purpose was to provide a procedure for correcting problems once the mortgagee became aware of their existence, either through its own management review procedures or when brought to its attention by HUD.

To be approved for participation in the program, mortgagees were to apply to each HUD field office within whose jurisdiction loans were to be made. Applications were to include a nomination of the underwriter and the technical personnel to be used, the applicant's business history, and when appropriate, an indication of secondary market experience. The applicant mortgagee was to satisfactorily pass a HUD review of the first twenty-five mortgages submitted by the mortgagee to each HUD field office.

Upon successful completion of these approval steps, mortgagees were granted unconditional approval, renewable by application of the mortgagee on an annual basis, to process loans under the Direct Endorsement program. HUD's decision to renew a mortgagee's approval would be based on past program experience. Mortgagees could continue to process loans until HUD notified them, in writing, that their reapplication had been denied.

When processing mortgages for endorsement the mortgagee would be responsible for checking those aspects of property eligibility, valuation and mortgage credit as set forth in the various HUD regulations and handbooks. As part of the loan application, the mortgagee's underwriter was required to certify that a prescribed set of statutory and regulatory requirements had been met before endorsement. These certifications were in addition to certifications presently required in HUD Forms 92800 and 92900 that deal with items such as builder's warranty, and non-discrimination with regard to rental or sale of property. Certification to these items would not have relieved participating mortgagees from the general requirement of meeting all HUD regulation and handbook requirements.

HUD would have limited its review of documents, prior to endorsement, to determine that: (1) All necessary documents had been submitted and were properly executed; (2) the mortgage had been executed on a form approved, by HUD, for use in the jurisdiction in which the property covered by the mortgage was situated; (3) the mortgage term, interest rate and amount met the applicable statutory and regulatory requirements; (4) the ratio of loan to value or replacement costs, as stated on a property appraisal form approved by HUD and completed by a HUD-approved appraiser, met applicable statutory and regulatory requirements; and (5) all required certifications had been made by the HUD-approved mortgage underwriter.

Failure to satisfy this review would have resulted in a denial of insurance endorsement by HUD until such time as discrepancies were corrected.

Following endorsement HUD/FHA reviewed all documents submitted by the mortgagee to determine whether the mortgage satisfied the requirements of the Direct Endorsement program. Also, at least ten percent of endorsed mortgages were subject to a detailed, quality control review covering architectural, property value and mortgage credit analysis.

Because HUD's review for program compliance occurred after the endorsement of individual mortgages, HUD would take remedial actions as soon as problem mortgagees were identified. The proposed program specified that HUD could place the mortgagee on probation and require that the mortgagee revise certain procedures, repeat part of the training, and/or require the mortgagee to take other actions, including, but not limited to periodic reporting to HUD, or submission to HUD of internal audits. HUD could temporarily suspend a mortgagee from participation in the programs or, if the infraction was of sufficient severity, withdraw the mortgagee's status as an approved mortgagee under HUD's other programs.

The final rule is substantially similar to the proposed rule. The principal changes incorporated into the final rule are listed below with a fuller explanation for the changes provided in Section III.

1. The proposed rule was applicable to only the section 203(b), section 245 (Graduated Payment), section 221(d)(2) and section 234(c) mortgage insurance programs. The final rule adds section 203(i) as an eligible program. (See 24 CFR 200.163(a)(1)). (Unless otherwise noted, all references are to 24 CFR.)

2. The final rule contains a limitation to the section 221(d)(2) program. A seldom used provision of the program, which permits a builder-mortgagor to sell the property to a displaced family on a deferred basis, is not available in the Direct Endorsement program. (See § 200.163(a)(2)).

3. The rule makes explicit that a mortgagee has a duty to use due diligence when underwriting mortgages. Due diligence means the same care which would be exercised in originating a loan in which the mortgagee would be entirely dependent on the property as security to protect the mortgagee's investment. The Secretary is publishing guidelines which describe the procedures which constitute the minimum exercise of due diligence. (§§ 200.163(b) (1) and (2)).

4. The proposed rule did not address the use of Veterans Administration certificates of reasonable value (CRVs), Veterans Administration master certificates of reasonable value (MCRVs), HUD conditional commitments, or HUD master conditional commitments. Both the HUD conditional commitment and the CRV pertain to single properties while the master commitment and MCRV cover properties in approved subdivisions. The final rule permits the use of CRVs, MCRVs, HUD conditional commitments and HUD master conditional commitments, in lieu of the mortgagee submitting an appraisal, for those mortgage loan submissions involving properties classified by the VA or HUD as proposed construction. (§ 200.163(b)(3)).

5. The Underwriter's Certification has been modified in the following ways:

a. The underwriter is to certify that he/she has personally reviewed the application and loan documents and has been duly diligent in this regard. The underwriter is also to certify that the mortgage complies with the specific items of certification for the given mortgage type. The Secretary is to publish a list of mortgages by type which are eligible for Direct Endorsement processing along with a particularized list of certifications to be made for each mortgage type. (§ 200.163(c)).

b. The certifications pertaining to graduated and modified graduated payment mortgages have been consolidated. (§ 200.163(c) (4) & (5)).

c. The underwriter is required to certify that the mortgage amount is not greater than the maximum mortgage amount permissible by law and regulation. Under the proposed rule, the underwriter only certified to the loan-to-value requirements. (§ 200.163(c)(8)).

d. An explicit certification covering situations involving negotiated interest rates has been added. (§ 200.163(c)(19)).

e. An explicit certification covering properties in outlying areas has been added. (§ 200.163(c)(20)).

6. Section 200.163(c)(16) sets forth a specific certification for refinancing under Section 221 of the National Housing Act. Refinancing under other programs covered by the Direct Endorsement program is likewise eligible for Direct Endorsement processing. The stated mortgage amount for a mortgage refinancing a mortgage must satisfy the limitations set forth in 24 CFR 203.18, 203.18a, 203.18b, 203.29, or 203.29 as incorporated by reference in §§ 221.1, 221.10, 221.11, 221.20, 221.50, 234.29, 234.49, as applicable, and such further limitations as prescribed by the Secretary.

7. Section 200.163(f) is a new provision which permits the Secretary to add, in the Direct Endorsement Handbook, additional certification requirements which, on the basis of program experience, he deems necessary. The rule sets forth procedures whereby the Secretary is to provide notice in the **Federal Register** of new certification items.

8. The proposed rule stated that mortgagees were to have specific experience originating and servicing HUD/FHA insured mortgages. Under the final rule mortgagees are not required to have specific experience originating HUD/FHA loans; nor are mortgagees required to have specific experience servicing either FHA or conventional loans. The final rule requires that mortgagees have experience originating single family mortgages. (§ 200.164(c)(1)).

9. The proposed rule stipulated that to participate in the Direct Endorsement program all mortgagees, other than supervised mortgagees, had to establish that they were approved either as Federal National Mortgage Association (FNMA) seller/servicers or as issuers of Government National Mortgage Association (GNMA) mortgage-backed securities. The final rule permits governmental institutions as mortgagees and provides that a non-supervised mortgagee with a net worth of $250,000 may qualify for participation in the Direct Endorsement program. The final rule modifies the FNMA seller/servicer alternative by requiring that the mortgagee need be only an approved FNMA seller. (§ 200.164(c)(2)).

10. The proposed rule did not permit mortgagees to use staff appraisers. The final rule permits the use of HUD-approved staff appraisers. However, mortgagees cannot use staff appraisers or inspectors in situations where the mortgagee has a financial interest in, is owned by or is affiliated with a building or selling entity. (§ 200.164(d)).

11. The proposed rule provided that HUD would perform, prior to unconditional approval of a mortgagee, a detailed review of the first twenty-five mortgage loan applications submitted by the mortgagee. The final rule has been revised to provide that HUD will review no less than the first fifteen submissions. This review of mortgagee loan submissions may be continued until the Department is satisfied that the mortgagee is competent to participate in the program. (§ 200.164(g)).

12. The final rule incorporates negotiated interest rates for use in the Direct Endorsement program. (§ 203.51(a)(2)).

13. Presently, the regulatory provision at 24 CFR 203.405, provides that debentures shall bear interest at the rate in effect as of the day the commitment was issued, or as of the date the mortgage was endorsed for insurance, whichever is higher. This section has been amended to reflect the new Direct Endorsement program. Since no commitment is issued under this program, debentures will bear interest at the rate in effect as of the date the mortgage was endorsed for insurance.

III. Discussion of Comments

Forty-one comments were received in response to the proposed rule. Sixteen letters were from, or on behalf of, mortgage companies, five from local trade associations, four each from national trade associations and home building companies, three from commercial banks, two from savings banks, two from independent appraisers, and one each from a private mortgage insurance company, a real estate company, and a national professional organization. Two comments were received from HUD field offices. The principal comments are summarized below, along with HUD's response to them.

A. Mortgagee Qualifications (§ 200.164)

1. Experience. The proposed rule stated that mortgagees were to have specific experience originating and servicing HUD/FHA insured mortgages. One comment pointed out that certain mortgage banking companies originate mortgage loans but do not retain the servicing contracts when the mortgage loans are sold to investors. The comment suggested that the quality of loan origination is not dependent upon retention of servicing.

HUD agrees with this comment. The Direct Endorsement program covers the origination, not the servicing, of mortgages. Therefore, the requirement for servicing experience is inappropriate and has been eliminated. For the same reason, the provision that a mortgagee can satisfy part of its approval requirements by being an approved FNMA seller/servicer is modified to allow approved FNMA sellers to qualify.

A trade association commented that many of its members, single family mortgage lenders, have not been active in the HUD/FHA programs in recent times due to a combination of record high interest rates, severe earnings pressures, disintermediation, and the increased flexibility of conventional loan programs. The association urged that general single family origination experience be acceptable for participation in the program.

The Department agrees that an experienced originator of conventional single family mortgages, if it can successfully complete the training and initial case review under this program, should not be excluded from the Direct Endorsement program. Accordingly, the requirement that mortgagees have experience originating HUD/FHA loans has been removed.

2. Automatic Approval. Several comments recommended that certain mortgage lenders receive automatic approval as Direct Endorsement mortgagees based upon their participation in currently operating programs which contain features similar to the Direct Endorsement program. Similar programs cited were HUD's Demonstration program, the Veterans Administration's (VA) Automatic Approval program and the Federal National Mortgage Association's (FNMA) Delegated Underwriting program.

The Department previously considered such automatic approval and decided against it. The Department has again decided against automatic approvals because of the basic differences between the Direct Endorsement program and the other programs cited above. For example, the VA automatic approval program only gives lenders authority to make the determination of borrower eligibility; the property underwriting function is retained by the VA. For this reason, the VA-approved underwriter is required only to have mortgage credit expertise. Similarly, HUD's Demonstration program, described in the proposed rule, did not require the lender to assume the property underwriting responsibility. The lender had the option of performing only the mortgage credit analysis. Therefore, there will be underwriters who were approved for the demonstration program who may not qualify for participation in the Direct Endorsement program.

With respect to the FNMA Delegated Underwriting program, FNMA now requires all mortgage loan sellers to deliver mortgages to FNMA without prior approval. While such experience may demonstrate the ability of a lender to originate satisfactorily, this neither indicates experience originating HUD/FHA mortgages nor takes into account the FNMA buy back requirement. FNMA's program incorporates a contractual commitment under which the mortgagee must buy back problem mortgages, a feature not present in HUD's program. Because of the buy back protection, the risk to FNMA of using unqualified mortgagees is manageable. HUD's program does not include a buy back requirement, and, therefore, HUD has to rely on basic eligibility requirements and, for this reason, will require all mortgagees who seek approval under the Direct Endorsement program to establish that they meet these requirements.

3. Field Office Approval. Three mortgagees suggested that it would be more efficient if mortgagees were approved on a national basis, rather than by each HUD field office in which the mortgagee does business. The Department is not persuaded by this request. The most important component of the mortgagee's application to participate in the Direct Endorsement program will be the qualifications of the underwriter. The certifications to be signed by the underwriter require familiarity with the market area in which the property is located. The decision to approve at the field office level reflects the conclusion that most mortgagees will use different underwriters in different regions. In most situations where an individual underwriter has been approved by one field office, the application process will be simplified so that the underwriter can more easily obtain approval in other offices.

4. Annual Recertification. Three comments suggested that the Department reconsider the requirement that lenders reapply for eligibility each year. Two of these comments suggested that the approval not be limited to one year. The third comment suggested that the reapproval process be simplified.

The final rule does not limit mortgagee approval to one year. The annual recertification requirement has been deleted. Instead, the final rule requires notification from mortgagees when the mortgagee's qualifications change (e.g., use of a new underwriter).

The original purpose of the annual recertification was to provide a point in time when a mortgagee's experience can be formally reviewed and a decision can be made as to continued participation in the program. Upon reconsideration, the Department believes that an annual recertification is not the most appropriate time for such a review. Given the significant responsibilities placed upon approved mortgagees, HUD intends to maintain an on-going review of each mortgagee through its post-endorsement review of mortgages processed. HUD can detect problems with mortgagee performance during this post-endorsement check. Correction of mortgagee procedures or removal of mortgagees should be done when the problem arises. This can be effectively, and efficiently, handled through the procedures set forth in section 200.164(h) "Mortgagee sanctions".

5. Net Worth. A national trade association suggested that a minimum net worth of $250,000 be required of all non-supervised lenders. The comment suggested that this dollar amount would be sufficient to lessen the opportunity for abuse by mortgage originators who enter the business for short periods of time. Another comment, from a mortgage lender, suggested that FNMA or GNMA approval should not be required for lenders who do not qualify as supervised lenders or governmental institutions, since there are qualified HUD/FHA mortgage originators who market their mortgage loans to other secondary market investors.

The primary qualification of a lender for the Direct Endorsement program is the ability to originate mortgage loans which meet all of the Department's underwriting requirements. The Department believes that net worth is an important component of mortgagee eligibility; it ensures that the mortgagee is sufficiently capitalized to be able to assume the responsibilities (including quality control) imposed under the Direct Endorsement program. For this reason the proposed rule required that non-supervised lenders were required to have either FNMA or GNMA approval. FNMA requires its lenders to have a minimum net worth of $250,000. GNMA has a sliding scale for determining net worth, a $100,000 minimum with an added requirement based on mortgage backed security activity.

The Department has determined that non-supervised lenders which are not governmental institutions, and which do not participate in FNMA or GNMA programs, should not be precluded from participating in the Direct Endorsement program. Therefore, the final rule adds a third basis on which non-supervised lenders may qualify for participation in the Direct Endorsement program—a minimum adjusted net worth of $250,000. (Adjusted net worth is defined in HUD Handbook 4060.1, Mortgagee Approval Handbook).

6. Governmental Agencies (§ 200.164(b)). The final rule has also been modified to permit Federal, State or municipal government agencies, empowered to hold mortgages insured under the National Housing Act, and meeting the general approval requirements of § 203.2, to serve as mortgagees under the Direct Endorsement program. The Department has determined that there is no reason to exclude such mortgagees. These mortgagees are not required to be approved as Federal National Mortgage Association sellers or as issuers of Government National Mortgage Association mortgage-backed securities.

B. Twenty-Five Case Review (§ 200.164(g))

The proposed rule provided that HUD would perform a detailed review, before endorsement, of the first twenty-five mortgage loan applications submitted by the mortgagee to each HUD field office. The purpose of the review is to ensure that program requirements are understood and are being followed.

Four comment letters suggested that this twenty-five case review be waived, or reduced, for those mortgagees which have successfully participated in the Department's demonstration Delegated Processing program. Another comment suggested that, regardless of previous program experience, twenty-five cases were too many and review of a fewer number, such as ten to fifteen, would serve the same objective. A national trade association suggested that supervised lenders not be required to participate in the review phase of the program.

The Department agrees that flexibility is required to adequately respond to different levels of demonstrated ability. However, the Department believes that the unique features of the Direct Endorsement program necessitate that mortgagees demonstrate to each HUD field office a complete understanding of the program requirements before receiving unconditional approval to participate in the program. In some circumstances, even twenty-five cases will not establish that program guidelines are understood and/or being followed. For these reasons the final rule requires that HUD review no less than the first fifteen submissions before endorsement for issuance of commitments. This review and issuance of commitments may be continued until the Department is satisfied that the mortgagee is competent to participate in the program. Once the review reveals acceptable processing, the mortgagee will be approved to close subsequent mortgages and submit them directly for endorsement in accordance with the process set forth in § 200.163 of the regulation. If the mortgagee does not perform in an acceptable manner following an extended period of review, the mortgagee will be denied participation in the program in accordance with § 200.164(g).

C. Underwriter Qualifications

The preamble to the proposed rule stated the Department's intention to require the mortgagee's underwriter to have specific experience in the origination of HUD/FHA-insured mortgages. One comment suggested that a mortgage loan underwriter with knowledge and experience of conventional originations could, with the proper training, satisfactorily underwrite HUD/FHA mortgage loan applications. The Department agrees with this comment and will delete the HUD/FHA requirement from the HUD Handbook.

Several comments stated that the underwriter's qualifications discussed in the preamble of the proposed rule were overly restrictive. One comment suggested that the requirements for underwriters established by the VA Automatic Approval procedure should be adopted for the Direct Endorsement program. The Department does not believe that the qualifications are too restrictive or that VA's Automatic Approval procedure should be adopted for this program. The Department is requiring a minimum of three years full-time experience (or equivalent, part-time) reviewing credit and property applications associated with one-to-four family properties. The underwriter must be knowledgeable of the principles, practices and techniques of mortgage underwriting, including real estate appraisal, mortgage credit evaluation, and factors affecting property values and real estate trends. These qualifications are somewhat less than the five years credit reviewing experience required by the VA Automatic Approval program. However, the Direct Endorsement program requires the underwriter to determine property eligibility (which is not part of the VA Automatic Approval program). Therefore, it is necessary that underwriters have property evaluation experience as well as credit experience.

D. Underwriting Procedures (§ 200.163(b)(1))

Section 200.163(b)(1) imposes a duty of due diligence on mortgagees when underwriting mortgage loans to be processed under the Direct Endorsement program. This requirement was implicit in the proposed program. All mortgagees, approved to originate mortgages under any single family housing program insured by HUD, are obligated to comply with "such additional conditions and requirements as the Commissioner [FHA] may impose." (§ 203.2(a)(6)). HUD Handbook 4000.2 REV-1, Mortgagees' Guide, Application Through Insurance (Single Family) (Revised April 1982) states the mortgagee's loan origination responsibility as follows:

> HUD requires the originators of insured mortgages to develop such loans in accordance with accepted practices of prudent lending institutions and HUD requirements. They must obtain and verify information with at least the same care that would be exercised in originating a loan in which the mortgagee would be entirely dependent on the property as security to protect its investment. Chapter 5, paragraph 5-1.

The duty of due diligence owed the Department by approved mortgagees is based not only on these regulatory requirements, but also on civil case law. This is best summarized in *United States* v. *Bernstein,* 533 F.2d 775 (2nd Cir., 1976), *cer't den'd,* 429 U.S. 998, when the court said:

> Under the analogous civil case law the mortgagee, knowing that the federal insurer [FHA] is "relying on its professional judgment in a business relationship" has an affirmative duty "to use due care in providing information and advice" to the federal mortgage guarantor * * * [citations deleted] The entire scheme of FHA mortgage guaranties presupposes an honest mortgagee performing the initial credit investigation with due diligence and making the initial judgment to lend in good faith after due consideration of the facts found. *Id.* at 797.

Because of the importance of mortgagee processing under the Direct Endorsement program, HUD has made explicit this duty of due diligence by expressly incorporating it into the regulation. HUD considers the exercise of due diligence an affirmative duty on the part of mortgagees participating in the program. Thus, procedures a prudent mortgagee would use if it looked solely to the property as security to protect its interest, should be used to assure that information collected and used to make underwriting decisions is accurate, current and complete. These procedures are to be made a part of the mortgagee's Quality Control Plan.

HUD does not intend to require mortgagees to follow set procedures specified by HUD. HUD will issue guidelines, as part of the Mortgagee's Guide to the Direct Endorsement Program, defining what the Department considers the minimum set of procedures. These are minimum procedures because due diligence will vary by the circumstances surrounding a particular transaction or pattern of transactions. If mortgagees follow these procedures, their actions will be deemed an exercise of due diligence. Undoubtedly, these guidelines will be modified in response to experience gained under the program.

E. Underwriter Certification (§ 200.163(c))

The underwriter will be required to certify as part of the loan application, that a prescribed set of statutory and regulatory requirements have been met for purposes of endorsement. These certifications are important as HUD will rely upon them for purposes of endorsing the mortgage loan, thereby eliminating the necessity for a detailed HUD review of the loan prior to endorsement. The proposed rule requested public comment on whether each loan submission by the mortgagee should include an itemized list of all the certifications applicable to the specific mortgage, or instead, just one general certification that the mortgagee has satisfied all HUD requirements. A total of sixteen comment letters addressed this issue. Thirteen favored the use of a general certification. Two preferred the itemized list, suggesting it would be advantageous to the mortagee and underwriter to be fully aware of the specific criteria which the mortgage loan must satisfy. One suggested that the underwriter execute a detailed master certification once a year; for each mortage loan submitted; individual certifications would be referenced by short titles on a pre-printed form.

The Department has decided to accept a general certification. While an itemized certification would be a helpful check for the mortgagee, it is not considered essential for the operation of the program. HUD will provide, in the Mortgagees' Guide to the Direct Endorsement Program, a list of required certifications as required under § 200.163(c) for specific mortgage types. The underwriter can use this listing in the handbook as a checksheet for his review and control of the underwriting process.

The underwriter will execute an underwriter certification for and on behalf of the mortgagee on a form prescribed by the Secretary. The certification form will contain the following information: HUD case number, program section of the act, single family or condominium, number of dwelling units in the structure, local jurisdiction identification, date of mortgagor approval, date or mortgage closing, statement that there is a negotiated interest rate (if applicable), and certification language. As to the latter, the underwriter will certify that (1) the application and accompanying documents have been reviewed personally by the underwriter with due diligence; and (2) the mortgage complies with the required certifications set forth in § 200.163 for the mortgage type, as detailed in the Mortgagees' Guide to the Direct Endorsement Program, and such other certifications as are published in the **Federal Register** pursuant to § 200.163(f).

The Secretary will publish in the Mortgagees' Guide to the Direct Endorsement Program guidelines for underwriting procedures. Compliance with these procedures will constitute the exercise of due diligence in underwriting loans.

F. Use of Staff Appraisers (§ 200.163(b))

The proposed rule did not permit mortgagees to use staff appraisers. Twenty-eight comment letters specifically addressed this issue. Of the twenty-eight, ten were either from, or on behalf of, mortgage banking companies which had used staff appraisers under the Department's Delegated Processing demonstration program. They strongly favored a similar policy for the Direct Endorsement program. Of the other eighteen, thirteen favored the option to use staff appraisers. These thirteen included three depository institutions, three national trade associations, two mortgage banking companies, one professional association and four home building companies. Two comments pointed out that HUD was expecting mortgagees to certify to property eligibility determinations which are to be made by fee appraisers selected for the mortgagees by HUD. These mortgagees stated that if they are expected to make such certifications they should be permitted to use their own staff appraisers with whose expertise and judgment they are familiar. Five mortgage banking companies advised against the use of staff appraisers; principally, they cited potential conflicts of interest as their reason.

The Department has reconsidered this issue and, in light of the comments received, has decided to permit the use of staff appraisers. The Department believes that the post-endorsement monitoring system for the Direct Endorsement program will reveal improper appraisals whether conducted by staff or HUD fee appraisers. Prompt actions to correct improper appraisal practices, or removal of mortgagees from the program, can minimize the number of these problems.

Staff appraisers must meet the same qualifications as HUD fee appraisers. Further, mortgagees cannot use approved staff appraisers or inspectors in situations where the mortgagee has a financial interest in, is owned by, or is affiliated with a building or selling entity; in these cases, mortgagees must use appraisers and inspectors assigned by HUD. HUD does not expect all, or even most, mortgagees to use staff appraisers because the economics of the business warrant payment for such services when required instead of carrying appraisal staff as overhead.

G. Selection of Fee Appraiser (§ 200.163(b)(3))

Another issue commented upon was whether the selection of a HUD approved fee appraiser to appraise a particular property should be made by HUD or the mortgagee. Three mortgagees suggested that HUD should not select appraisers. These mortgagees urged that they be permitted to select the appraiser they feel can do an efficient and capable job in any given case. A national trade association suggested that HUD, in lieu of allowing a mortgagee to select an appraiser, should provide the mortgagee with the names of two approved appraisers. The mortgagee could then select between the two.

Two letters of comment were received from independent appraisers presently serving on HUD fee panels. One of these, a minority appraiser, expressed concern that mortgagees, if permitted to select their own appraisers, would discriminate against minority appraisers. The second appraiser urged that HUD continue to appoint appraisers so as to prevent appraisers from providing favorable reports in return for anticipated future assignments.

To ensure that all appraisers in good standing on the HUD fee panels receive a fair share of the appraisal assignments generated by HUD/FHA single family programs, the Department has elected to retain the assignment responsibility in all cases where staff appraisers are not used.

One mortgagee commented that there are appraisers on a HUD/FHA panel in his area who do not perform satisfactory work. This mortgagee does not wish to be forced to utilize unqualified appraisers. The Department will review every appraisal submitted in the Direct Endorsement program. Fee appraisers who perform unsatisfactorily will be removed from the HUD/FHA panel. In addition, the Department will investigate reports from mortgagees concerning unsatisfactory performance by fee appraisers.

H. Acceptance of VA Certificates of Reasonable Value and HUD Conditional Commitments (§ 200.163(b)(3))

The proposed rule did not specifically address the use of VA certificates of reasonable value (CRVs), VA master certificates of reasonable value (MCRVs), HUD conditional commitments and HUD master conditional commitments. The proposed rule stated that each mortgage loan must include a property appraisal when submitted for endorsement. When a mortgagee applies for a VA CRV, or a HUD conditional commitment, the mortgagee is not responsible for analyzing the appraisal report; the appraisal is sent directly to, and reviewed by, the VA or HUD.

Six comments were received concerning VA CRVs and VA MCRVs. One mortgagee and one local trade association urged that since HUD accepts VA CRVs and MCRVs in its regular programs these certificates should be accepted here. Two national trade associations and a mortgagee commented that CRVs and MCRVs are particularly important when processing a large group of loans involving proposed construction (e.g., a proposed subdivision). A mortgagee suggested that there are many instances when a VA CRV is obtained prior to the sale of the property. The mortgagee suggested that for such cases to be eligible for Direct Endorsement processing, another appraisal would have to be performed. In this case, the parties to the transaction might be unwilling to accept a new appraisal.

The issue here is not reciprocity between VA and HUD; rather the issue is under what conditions should HUD accept a HUD or VA appraisal as part of the Direct Endorsement process. It is the Department's intent that the mortgagee under the Direct Endorsement program assume all the underwriting responsibilities involved in the origination of a HUD/FHA single family mortgage. To accept HUD conditional commitments in those cases where the mortgagee reasonably could be expected to have the appraisal performed would be contrary to the intent of the program and would provide a disincentive for mortgagees to assume the appraisal responsibility. Similarly, to accept the VA CRVs and not HUD conditional commitments could have the effect of shifting the property eligibility determination to the Veterans Administration, in lieu of the mortgagee assuming the responsibility, thereby contravening the intent of the program.

With respect to the comment that there are instances when a VA CRV is obtained prior to the sale of an existing property, the Department is aware that home sellers will often obtain CRVs, as well as HUD conditional commitments, as a marketing tool. In these cases, the Department expects the mortgagee to utilize the regular commitment procedure rather than perform a new appraisal for Direct Endorsement purposes. The Direct Endorsement program is not designed to mix mortgagee and HUD processing, except for proposed construction as discussed below.

In response to the comments, the Department acknowledges that proposed construction deserves special consideration. With proposed construction cases, in order to qualify for a favorable loan to value ratio, the mortgagee must have the appraisal performed, and the plans and specifications approved, prior to the start of construction. Properties are rarely sold prior to the start of construction. The mortgagee, therefore, would not yet know whether the potential purchaser will seek VA, HUD/FHA or conventional financing. Because the Veterans Administration, at present, will not accept the appraisals performed for lenders under the Direct Endorsement program, the Department recognizes that it would be unrealistic to expect a mortgagee to have an appraisal made prior to construction for the Direct Endorsement program, which would preclude subsequent VA financing.

Hence, in order to permit mortgagees to meet VA requirements and still use the Direct Endorsement program the Department has elected to permit, at time of endorsement, the use of VA CRVs, VA MCRVs, HUD conditional commitments and HUD master conditional commitments, in lieu of the mortgagee submitting the appraisal, for those mortgage loan submissions involving properties classified by the VA or HUD as proposed construction.

The Department recognizes that there will be instances when the mortgagee knows, prior to the start of construction, that the purchaser will be utilizing HUD/FHA financing. In such instances, the mortgagee may wish to perform the required property analysis.

If the mortgagee does not use a HUD conditional commitment or CRV, for proposed construction, the Direct Endorsement program provides the mortgagee three processing options to qualify the property for a high loan to value ratio. Under the first option, the mortgagee submits the plans and specifications to HUD, prior to both the start of construction and performance of the appraisal, for HUD review and approval. Once HUD approval has been received, the mortgagee has the appraisal and compliance inspections performed; the mortgagee is responsible for review of the appraisal and inspections. Under the second option, the mortgagee is responsible for review of the plans and specifications and determines compliance with the applicable standards. Under this approach, the mortgagee, prior to the start of construction and performance of the appraisal, uses either a staff construction analyst approved by HUD, or an analyst assigned by HUD, who reviews the plans and specifications and, if acceptable, certifies that they comply with the applicable HUD standards; the mortgagee is responsible for the appraisal and compliance inspections. Under the third option, the property must be covered by a consumer protection or warranty plan acceptable to HUD. The appraisal may be done prior to, during or after construction. The mortgagee must obtain a certification from a registered architect or a licensed engineer that the plans and specifications meet HUD's property standards for proposed construction. In addition to architects and engineers making the certification, a builder may make the certification provided: (1) He has successfully completed a training session conducted by HUD on the use of the standards and applicable review requirements; and (2) the first five certifications are reviewed by HUD prior to the appraisal.

I. Quality Control Plan (§ 200.164(e))

In accordance with § 203.2(a)(10), each mortgagee must implement a written Quality Control Plan which assures compliance with regulations and other HUD issuances concerning loan origination. Section 200.164(e) requires that these plans be revised, if necessary, to reflect the added responsibilities of the mortgagee under the Direct Endorsement program. The proposed rule requested public comment on the necessity or desirability of HUD review of the Quality Control Plan as a precondition to mortgagee approval. Thirteen comments addressed this issue.

Several homebuilding associations and homebuilding companies urged that HUD permit mortgagees to develop these plans during their first year of participation. The Department disagrees with these comments; the Department believes that it is critical that an acceptable quality control process exist before the mortgagee begins to originate mortgages under the Direct Endorsement program.

Three mortgagees and two national trade associations suggested that HUD review of the plan not be a precondition for approval to participate in the Program. One mortgagee suggested that HUD review, as a precondition to approval, conflicts with the Department's intent to place maximum reliance on mortgagee determinations. One mortgagee felt that HUD should review the plan.

The Department does not agree that review of the Quality Control plans is inconsistent with the intent of the program. The Department has determined that this program can be offered only if the mortgagees have acceptable Quality Control plans and, of course, if the Department carefully monitors the endorsed mortgages. Hence, as a precondition to mortgagee approval, the Department will require each mortgagee to have a Quality Control Plan to manage, conduct and review the underwriting of mortgage loans which are to be submitted for Direct Endorsement. The primary purpose of these plans is to assure that prudent procedures and qualified personnel are used when underwriting loans so that HUD requirements are met. An additional purpose is to provide procedures for quality control reviews and for correcting problems once the mortgagee becomes aware of their existence.

The mortgagee shall submit its Quality Control Plan, as revised to reflect the requirements of the Direct Endorsement program, as part of the application for approval in accordance with § 200.164. Because HUD does not specify the exact content, style or format of the Plans, HUD's review will be limited to whether the mortgagee has addressed the requirements for the Direct Endorsement program. HUD may require revisions if the Plan fails to address specific provisions. HUD review, however, will not constitute approval of specific provisions.

A national trade association suggested that HUD establish clear guidelines for Quality Control Plans. The Department already provides guidelines for mortgagees applying for HUD mortgagee approval pursuant to section 203 in HUD Handbook 4060.1, Mortgagee Approval Handbook. The Department will provide guidelines concerning those controls for the Direct Endorsement program which must be addressed in the plan. (See III. D. above.) Each mortgagee must develop a system which will ensure that HUD requirements are being followed by its personnel. The Department believes that the additional responsibilities assumed by the Direct Endorsement mortgagee will require review of the existing plan. It may be necessary to amend the plan to reflect these added responsibilities.

J. Mortgagee Compensation

Presently, mortgagees are permitted to charge up to one percent of the original principal amount of the mortgage for transactions involving existing construction. The proposed rule did not provide for additional compensation to mortgagees for expenses incurred originating and closing mortgage loans.

Five mortgagees and two national trade associations commented on this issue. In general, all stated that participation in the Direct Endorsement program will result in higher staffing costs for mortgagees; they stressed that these costs will result in loan origination expenses in excess of the maximum one percent origination fee. One national trade association suggested that the origination fee be increased to one and one-half percent or the the mortgagee be permitted to charge an underwriting fee for each loan; if increased compensation is not permitted, this association suggested, mortgagees will simply pass on the added costs to sellers in the form of higher mortgage loan discount points. There other mortgagees also recommended either increasing the origination fee or allowing underwriting fees. One party suggested that an origination fee of $300.00 per case be permitted. Another urged that an underwriting fee be permitted of $65.00 per case. The third mortgagee suggested an underwriting fee of $15.00 per case.

The Department has decided not to increase the fee which a mortgagee can charge. The Direct Endorsement process offers an optional procedure for obtaining FHA insurance. Those mortgagees which determine that the added costs of using the program are greater than the benefits realized by the expedited process can continue using the present commitment process. The Department believes that the benefits realized from using the program—including a more efficient and predictable period for loan origination and closing—significantly offset the additional costs incurred.

The Department has, however, allowed the mortgagee who uses staff to conduct appraisals or inspections to recoup from the borrower the reasonable and customary charges for such appraisals and inspections (§ 203.27(a)(3)(v) as amended by this rule).

K. Eligible Mortgage Insurance Programs (§ 200.163(a)(1))

The proposed rule provided that the program would be made applicable to only the Section 203(b), Section 245 Graduated Payment, Section 221(d)(2) and Section 234(c) mortgage insurance programs. Comment was specifically requested on whether or not graduated payment mortgages, and mortgages secured by properties with leasehold provisions, should be included in the Program.

Fourteen comments addressed both issues. All suggested permitting both graduated payment mortgages and leaseholds; that mortgagees would have no difficulties dealing with either situation. Hence, both are permitted in the final rule.

A national trade association suggested that the Section 203(i) program for outlying area properties be included as an eligible program. Because the underwriting requirements of Section 203(i) are very similar to Section 203(b), the final rule includes Section 203(i) as an eligible program.

The final rule contains a limitation to the Section 221(d)(2) program. A seldom used provision of the program, which permits a builder-mortgagor to sell the property to a displaced family on a deferred basis, is not available in the Direct Endorsement program.

L. Application Forms

Six comments were received which suggested that the Department accept the mortgage credit application and appraisal forms which are widely accepted in the primary and secondary conventional mortgage markets.

The Department recognizes the advantages for mortgagees and appraisers who are more familiar with conventional mortgage documents. The Mortgagees' Guide to the Direct Endorsement Program will permit mortgagees using staff appraisers to submit property appraisals on the appropriate appraisal forms used by FNMA and the Federal Home Loan Mortgage Corporation. In such cases, the mortgagee must also submit the applicable certifications on the HUD Form 92800, Application For Property Appraisal.

For the borrower's mortgage credit application, at this time the Department will require the HUD Form 92900, Application For HUD/FHA Insured Mortgage to be used for all Direct Endorsement cases. HUD will continue to work towards greater flexibility and use of common forms.

M. Withdrawal of Approval (§ 200.164(h))

The proposed rule specifically requested the public to comment on the adequacy of the post-endorsement review as a means of detecting mortgagee practices in violation of HUD requirements; also, comment was requested concerning the sanctions HUD proposed to apply to those mortgagees who underwrite mortgages which, under the conventional processing procedures, would not have been accepted by HUD for endorsement. Six comments, three from mortgagee lenders, two from national trade associations and one from a local trade association, addressed this issue. All agreed that once a problem mortgagee is identified, HUD must take immediate action. The proposed rule provided that such action would vary according to the severity of the problem. Depending upon the nature and extent of the infractions detected during the HUD review, HUD could place the mortgagee on probation, temporarily deny participation in the Direct Endorsement program, withdraw Direct Endorsement status or withdraw HUD/FHA approval status.

To avoid confusion, the temporary denial of participation sanction has been deleted. The final rule provides withdrawal of approval procedures developed specifically for the Direct Endorsement program.

The new procedures provide that HUD may: (1) Place the mortgagee on probation for a specified period of time for the purpose of evaluating the mortgagee's compliance with the requirements of the Direct Endorsement program; (2) withdraw the mortgagee's approval to participate in the Direct Endorsement program upon written notice which states the grounds for the action and provides the right to an informal hearing before the decision maker; or (3) withdraw the mortgagee's HUD/FHA approval for serious non-compliance with the requirements of the Direct Endorsement program. If a mortgagee is placed on probation it still may process mortgage applications under the Direct Endorsement program. HUD may, however, place conditions on the mortgagee's participation. For example, HUD may require that the mortgagee correct certain procedures, undertake additional training, or repeat the mortgage review process pursuant to § 200.163(g).

N. Waiver (§ 200.164a)

The final rule includes a waiver provision. This provision permits the Secretary in an individual case to waive any requirement which would adversely affect achievement of the purposes of the National Housing Act and the Direct Endorsement program.

O. Negotiated Interest Rates (§ 203.51(a)(2))

The proposed rule did not specifically address the Negotiated Interest Rate provision which may apply to mortgages insured under section 203(b) although HUD intended the Direct Endorsement program to cover such mortgagee loans. This provision which was authorized by section 332 of the Housing and Community Development Act of 1980, permits a limited number of section 203(b) mortgages to be executed at interest rates exempt from the maximum HUD single family rate. Instead, the interest rate and the number of discount points are negotiable between the borrower and the lender. The final rule incorporates the Negotiated Interest Rate provision for use in the Direct Endorsement program. However, because the Department's authority to insure with this provision is limited, mortgagees will be required to obtain authorization from the HUD field office prior to entering into the Negotiated Rate binding agreement. An amendment has been made to §203.51 in order to address the differences resulting from the Direct Endorsement program.

IV. Findings and Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. A Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices of consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

The Catalog of Federal Domestic Assistance numbers are 14.105 through 14.165.

This rule is not listed in the Department's Semiannual Agenda of Regulations published on October 28, 1982 (47 FR 48422) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs—Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards.

24 CFR Part 203

Home improvement, Loan programs—Housing and urban development, Mortgage insurance, Solar energy.

24 CFR Part 233

Loan programs: housing and community development, Mortgage insurance, Experimental housing, Projects.

24 CFR Part 234

Condominium, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 237

Low and moderate income housing, Mortgage insurance.

IV. Final Rule

Accordingly, 24 CFR Parts 200, 203, 233, 234 and 237 are amended as follows:

PART 200—[AMENDED]

1. Part 200 is amended by revising the table of contents, for Subpart E—Mortgage Insurance Procedures and Processing, to read as follows:

Subpart E—Mortgage Insurance Procedures and Processing

Claims for Losses

Sec.

2. Part 200 is amended by revising § 200.141 to read as follows:

§ 200.141 Procedure in general.

(a) All mortgage insurance programs, with the exception of the single family Direct Endorsement and coinsurance programs, involve four steps. First, application for insurance; second, commitment for insurance; third, insurance endorsement; and fourth, where applicable, a claim for loss.

(b) Except as set forth in §§ 200.163(b) and 200.164(g), commitments are not issued by HUD under the single family Direct Endorsement program.

3. Part 200 is amended by revising paragraph (b) of § 200.145 to read as follows:

§ 200.145 Technical analysis and underwriting processing.

* * * * *

(b) Underwriting processing involves consideration of the elements having to do with eligibility for insurance including review of the planning, construction, and specifications, cost estimation and valuation, and credit analysis. The findings are included in a report and recommendation which is the basis for the commitment. Except as set forth in §§ 200.163(b) and 200.164(g) commitments are not issued by HUD under the single family program of Direct Endorsement.

4. Part 200 is amended by revising paragraph (a) of § 200.146 to read as follows:

§ 200.146 Acceptance, rejection and reconsideration.

(a) If an application for mortgage insurance meets the eligibility requirements, a commitment for insurance is issued. Except as set forth in §§ 200.163(b) and 200.164(g) commitments are not issued by HUD under the single family program of Direct Endorsement. Under this program the Department reviews the executed loan documents in accordance with the procedure set forth in § 200.163 and, if the documents are acceptable, the mortgage is endorsed.

* * * * *

5. Part 200 is amended by revising § 200.147 to read as follows:

§ 200.147 Issuance of commitment.

After a determination that the mortgagor and the property offered for security meet the standards and requirements as to eligibility, a commitment is prepared at the request of the mortgagee and forwarded over the signature of the Authorized Agent to the approved mortgagee setting forth the terms and conditions under which the mortgage transaction will be insured. The commitment is a binding contract between HUD and the mortgagee presenting the application. Except as set forth in §§ 200.163(b) and 200.164(g), commitments are not issued by HUD under the single family Direct Endorsement program.

6. Part 200 is amended by revising § 200.150 to read as follows:

§ 200.150 Request for endorsement.

(a) When all conditions of the commitment are fully met, the commitment, together with all supporting documents such as the note, mortgage and any other exhibits as required by the terms of the commitment, are returned to HUD by the mortgagee for endorsement for insurance.

(b) For applications involving mortgages originated under the single family Direct Endorsement program, the mortgagee shall submit to the Secretary, within 30 days, or such additional time as approved by the Secretary, after the date of closing of the loan, the documents required by § 200.163 and shall certify that the principal amount of the loan has been disbursed to the mortgagor or for the mortgagor's account.

7. Part 200 would be amended by revising § 200.152 to read as follows:

§ 200.152 Endorsement for insurance.

(a) When it has been determined that the terms and conditions of the commitment have been fully complied with, the Secretary insures the mortgage and evidences the insurance by the issuance of a Mortgage Insurance Certificate. After issuance of the mortgage insurance certificate, the mortgagee is entitled to the benefits of insurance subject to compliance with the administrative regulations which are a part of the insurance contract.

(b) For applications involving mortgages originated under the single family Direct Endorsement program, if the mortgagee submits to the Secretary within 30 days after the date of closing of the loan, or such additional time as permitted by the Secretary, the documentation required by § 200.163, the Secretary will insure the loan and evidence the insurance by the issuance of a Mortgage Insurance Certificate. After issuance of the mortgage insurance certificate, the mortgagee is entitled to the benefits of insurance subject to compliance with the regulations which are a part of the insurance contract.

8. Part 200 is amended to add the center caption "Direct Endorsement" to appear before § 200.163.

9. In Part 200, § 200.163 is added to read as follows:

Direct Endorsement

§ 200.163 Direct endorsement.

(a) *Definition and Applicability.* Single family mortgage insurance applications, eligible for processing under this section, are underwritten and closed by eligible mortgagees and the documentation required by paragraphs (b) and (c) of this section are submitted to HUD/FHA for mortgage insurance endorsement in accordance with paragraph (d) of this section. HUD/FHA does not review applications for mortgage insurance or issue commitments except as provided by paragraph (b) of this section and § 200.164(g) before the mortgage is executed and submitted to be considered for endorsement.

(1) Single family mortgage insurance loans defined under sections 203(b), 203(i), 221(d)(2), 234(c) and 245 of the National Housing Act are eligible for processing under this section.

(2) Single family mortgages insured under any of the programs listed in paragraph (a)(1) of this section pursuant to sections 244, 223, 225 and 238(c) of the National Housing Act are not eligible for processing under this section. The provision contained in 24 CFR 221.55 which permits a builder-mortgagor to sell a property to a displaced family on a deferred basis is not available in the Direct Endorsement program.

(3) The Secretary shall publish in the Mortgagees' Guide to the Direct Endorsement program a list of the mortgage loans by type which are eligible for Direct Endorsement processing under this section. Such listing shall set forth with particularity the required certifications applicable to each mortgage type.

(b) *Mortgagee Underwriting and Submission for Endorsement.*—(1) *Underwriting/due diligence.* A mortgagee, authorized to submit mortgages under this section, shall exercise due diligence when underwriting mortgages processed under this section. Due diligence means that care which a mortgagee would exercise in obtaining and verifying information for a loan in which the mortgagee would be entirely dependent on the property as security to protect its investment. Mortgagee procedures that evidence such due diligence shall be incorporated as part of the Quality Control Plan required under § 200.164(e).

(2) *Guidelines for underwriting procedures.* The Secretary shall publish guidelines for underwriting procedures in the Mortgagees' Guide to the Direct Endorsement Program. Compliance with these guidelines is deemed to be the minimum exercise of due diligence in underwriting mortgage loans.

(3) *Appraisal.* An approved mortgagee shall appraise the property, using an appraiser assigned by HUD from its current fee panel or a staff appraiser approved by HUD. In those cases where the mortgagee has a financial interest in, is owned by or is affiliated with a building or selling entity, the mortgagee shall use an appraiser and inspector assigned by HUD from its fee panel. In lieu of appraising the property, an approved mortgagee may, for those properties which HUD accepts as proposed construction, utilize a HUD conditional commitment or master conditional commitment, or a Veterans Administration certificate of reasonable value or master certificate of reasonable value.

(4) *Mortgagor's income.* The mortgagee shall determine whether the mortgagor's income is and will be adequate to meet the periodic payments under the mortgage, and shall review the eligibility of the property and prospective mortgagor under 24 CFR Parts 203, 221, or 234.

(5) *Submission for endorsement.* Upon a determination by the mortgagee that the proposed mortgage is eligible for insurance under 24 CFR Part 203, 221, or 234 the mortgage is executed. Within 30 days, or such other time as is approved by the Secretary, after the date of closing of the loan, the mortgagee shall submit the following documents, as are appropriate, and which are properly executed, to HUD/FHA at which point the loan is considered for endorsement in accordance with paragraph (d) of this section:

(i) Property appraisal upon a form prescribed by the Secretary (or HUD conditional commitment or master conditional commitment, or Veterans Administration certificate of reasonable value or master certificate of reasonable value) and all accompanying documents required by the Secretary;

(ii) An application for insurance of the mortgage upon a form prescribed by the Secretary and all accompanying documents required by the Secretary;

(iii) A certified copy of the mortgage and note executed upon forms approved by the Secretary for use in the jurisdiction in which the property covered by the mortgage is situated;

(iv) A warranty of completion, on a form prescribed by the Secretary, (for proposed construction cases);

(v) An Underwriter Certification that the requirements of paragraph (c) of this section have been satisfied;

(vi) Where applicable, a certificate under oath and contract regarding use of the dwelling for transient or hotel purposes in accordance with §§ 203.16 and 203.36, or §§ 203.16 and 203.36 as incorporated by reference in §§ 221.1, or §§ 234.15 and 234.67;

(vii) Where applicable, a certificate of intent to occupy by military personnel, in accordance with § 203.31, or § 203.31 as incorporated by reference in § 221.1, or § 234.51;

(viii) Where a mortgage for an existing property is to be insured under section 221(d)(2) of the National Housing Act, a letter from the local government official that the property meets applicable code requirements if appropriate;

(ix) For proposed construction, where an individual water or sewer system is being used, approval letter from local health authority indicating approval of the water supply and/or sewage disposal installation; and

(x) For proposed construction, where the mortgagee does not obtain a VA CRV, VA MCRV, HUD conditional commitment, HUD master conditional commitment or a consumer protection or warranty plan, or submit the plans and specifications for HUD's prior approval, a certification by a HUD-approved architect, engineer or construction analyst that the plans and specifications comply with the applicable property standards.

(c) *Underwriter Certification.* The underwriter shall personally review the mortgage documents and applications for insurance endorsement processed under this section, and shall execute an Underwriter Certification for and on behalf of such mortgagee on a form prescribed by the Secretary evidencing this review. For each mortgage reviewed, this Underwriter Certification shall include an identification of the mortgage by type, as identified pursuant to § 200.163(a)(3), a statement that the underwriter has personally reviewed the mortgage documents and insurance endorsement application, and a statement that the mortgage complies with the requirements of this subsection. The Underwriter Certification shall include, in addition to such supplemental certification items published pursuant to paragraph (f) of this section, each of the below listed certification items which apply to the mortgage loan submitted for endorsement. The Underwriter Certification is in addition to certifications presently required of the mortgagee and/or mortgagor on current HUD Forms 92800 and 92900.

(1) That the mortgage satisfies the requirements of 24 CFR 203.17, or §§ 221.5, 221.25, 221.30, 221.32, 221.40, 221.35, and 221.45 or 234.25;

(2) That the mortgage shall be on real estate held in fee simple, or on a leasehold under a lease for not less than 99 years which is renewable, or under a lease which otherwise meets the requirements of 24 CFR 203.37, or 203.37 as incorporated by reference in 221.1, or 234.65;

(3) That the mortgaged property is located in a community where the housing standards meet the requirements of the Secretary as required by 24 CFR 203.40;

(4) That the graduated payment mortgage meets the requirements of the Secretary as established under 24 CFR 203.45 or 234.75;

(5) That the modified graduated payment mortgage meets the requirements of the Secretary as established under 24 CFR 203.46 or 234.76;

(6) That the property covered by the mortgagee meets the flood plain requirements set forth in § 203.16a, or § 203.16a as incorporated by reference in § 221.1, or § 234.17;

(7) That there is located on the mortgaged property a dwelling unit designed principally for residential use for not more than four families, as required by 24 CFR 203.38, or 203.38 as incorporated by reference in § 221.1;

(8) That the stated mortgage amount (i) satisfies the requirements of 24 CFR 203.18, 203.18a, 203.18b, 203.29, or 203.29 as incorporated by reference in §§ 221.1, 221.10, 221.11, 221.20, 221.50, 234.27, or 234.49, as applicable; and (ii) for a mortgage given to refinance a mortgage, the stated amount satisfies the limitations set forth in paragraph (c)(8)(i) of this section, and such further limitations as prescribed by the Secretary.

(9) That the mortgagor's monthly mortgage payments will not be in excess of his or her reasonable ability to pay, as required under 24 CFR 203.21, or 203.21 as incorporated by reference in 221.1, or as required under 234.36;

(10) That the mortgagor's income is and will be adequate to meet the periodic payments required for the mortgage submitted for insurance, as required by 24 CFR 203.33, or 203.33 as incorporated by reference in 221.1, or 234.56;

(11) That the mortgagor's general credit standing is satisfactory, as required under 24 CFR 203.34, or 203.34 as incorporated by reference in 221.1, or 234.57;

(12) That the buildings are the property secured by the mortgage comply with the applicable property standards issued by HUD as required by 24 CFR 200.925 *et seq.*, for proposed construction, and the standards set forth in HUD Handbooks 4905.1, for existing construction, and 4940.4, for rehabilitation construction.

(13) In cases where the mortgaged property is subject to a secondary loan or mortgage made or insured, or other secondary lien, held by a Federal, State or local government agency or instrumentality, that the required monthly payments under the insured mortgage and the secondary mortgage or lien do not exceed the mortgagor's reasonable ability to pay, as required under 24 CFR 203.32, or 203.32 as incorporated by reference in 221.1, or 234.55.

(14) That the mortgagor has made the minimum investment as required by 24 CFR 203.19, 221.50 or 234.28;

(15) That no prepaid expenses other than those listed in 24 CFR 221.54 and those specifically approved by the Secretary were included in determining the mortgagor's minimum investment;

(16) That for a mortgage involving refinancing to be insured under 24 CFR 221.21, that the mortgage, in addition to the limitations contained in §§ 221.10, 221.11 and 221.20, does not exceed the estimated cost of repair and rehabilitation and the amount required to refinance the existing indebtedness secured by the property;

(17) That a property designed for a two, three or four family residence has one of the dwelling units occupied by the mortgagor, as required by 24 CFR 221.12;

(18) For a condominium, that the mortgaged property is in a project which has been approved by HUD pursuant to 24 CFR 234.26;

(19) For a mortgage involving a negotiated interest rate, that the mortgage meets the requirements of 24 CFR 203.51;

(20) For a property located in an outlying area that the mortgage meets the requirements of 24 CFR 203.18(d); and

(21) For a mortgage to be insured under section 234(c) of the National Housing Act that the mortgage meets the requirements of 24 CFR 234.59.

(22) In the case of proposed construction, that the subdivision, where applicable, within which the property is located has been granted HUD subdivision approval in accordance with HUD Handbook 4135.1 REV, Procedures for Approval of Single Family Proposed Construction Applications in New Subdivisions.

(23) That the property covered by the mortgage is not located in an area that is precluded from receiving Federal financial assistance pursuant to the Coastal Barrier Resources Act (Pub. L. No. 97-349).

(d) *HUD/FHA Pre-Endorsement Review.* Upon submission by an approved mortgagee of the documents required by paragraphs (b) and (c) of this section, HUD/FHA will review the loan documents to determine:

(1) That the mortgage is executed on a form approved by the Secretary for use in the jurisdiction in which the property covered by the mortgage is situated;

(2) That the mortgage maturity meets the requirements of §§ 203.17, 221.30 or 234.25 as applicable;

(3) That the stated mortgage amount does not exceed the maximum dollar limitation permissible under §§ 203.18, 203.18a, 203.18b, 203.29, or 203.29 as incorporated by reference in §§ 221.1, 203.45, 203.46, 221.10, 221.11, 234.27, 234.49, 234.75, or 234.76 as applicable.

(4) That the mortgage interest rate meets the requirements, as applicable, of §§ 203.20, 203.51, 203.20 and 203.51 as incorporated by reference in § 221.1, or § 234.29;

(5) That all documents required by paragraph (b) of this section are submitted; and

(6) That all necessary certifications are made in accordance with paragraph (c) of this section.

If, following this review, the mortgage is determined to be eligible, it is endorsed for insurance. If the mortgage is determined to be ineligible, HUD will inform the mortgagee in writing of this fact, and include the reasons thereof and any corrective actions that may be taken.

(e) *Post-Endorsement Review.* Following endorsement, HUD/FHA will review all documents required by paragraphs (b) and (c) of this section. If following this review HUD/FHA determines that the mortgage does not satisfy the requirements of the single family Direct Endorsement program, the Department may place the mortgagee on probation, withdraw the authority of the mortgagee to participate in the Direct Endorsement program pursuant to § 200.164(h) or withdraw the mortgagee's HUD/FHA approval pursuant to the provisions of 24 CFR Part 25.

(f) *Supplementary Items.* The Secretary may prescribe supplementary certifications, mortgage types and modifications thereof without prior notice and public procedure. These supplementary items will be published in the Mortgagee's Guide to the Direct Endorsement Program. Specific notice of these supplementary items shall be published in the Federal Register, in accordance with 5 U.S.C. 552 and 24 CFR 15.11. Such notice may incorporate these supplementary items by reference. In addition, these supplementary items will be available for examination and distribution in the Information Center, Room 1104, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, and in each HUD Regional and Area Office.

10. In Part 200, § 200.164 is added to read as follows:

§ 200.164 Approval of direct endorsement mortgagees.

(a) Mortgagees shall comply with the following requirements when applying for approval:

(1) Submit an application to the HUD area office in whose jurisdiction the mortgagee seeks to process loans pursuant to § 200.163;

(2) Submit (i) documentation showing compliance with § 200.164 (b), (c) and (d); (ii) the Quality Control Plan which complies with § 200.164(e); and (iii) other such information as the Secretary may require.

(b) To participate in the Direct Endorsement program set forth in § 200.163, a mortgagee must be an approved mortgagee meeting the requirements of 24 CFR 203.3 or 203.4 or 203.7(a), and this section.

(c) The mortgagee must establish that it meets the following qualifications:

(1) The mortgagee has five years of experience in the origination of single family mortgages. The Department will approve mortgagees with less than five years experience in the origination of single family mortgages if a principal officer has had a minimum of five years of managerial experience in the origination of single family mortgages;

(2) The mortgagee, other than a supervised mortgagee or governmental institution, is approved as a Federal National Mortgage Association (FNMA) seller, as an issuer of Government National Mortgage Association (GNMA) mortgage-backed securities, or has a net worth, in assets acceptable to the Secretary, of not less than $250,000.

(d) The mortgagee, to be approved for participation in the Direct Endorsement program, must have on its permanent staff an underwriter approved by the Department for participation in this program and authorized by the mortgagee to bind the mortgagee on matters involving the origination of mortgage loans under this program. The technical staff utilized in the Direct Endorsement program by the mortgagee, including appraisers, construction analysts, inspectors, mortgage credit examiners, architects and engineers, must also be approved by the Department. The technical staff may be employees of the mortgagee or may be hired on a fee basis from a HUD panel. A mortgagee which has a financial interest in, owns, is owned by, or is affiliated with a building/selling entity may originate, under the Direct Endorsement program and process mortgages for this entity, only if the property appraisals and inspections are done by independent appraisers and inspectors approved, and assigned, by the Department, rather than by appraisers or inspectors on the staff of the mortgagee. For proposed construction, where the mortgagee does not obtain a VA CRV, VA MCRV, HUD conditional commitment, or HUD master conditional commitment, or a consumer protection or warranty plan, or submit the plans and specifications for HUD's prior approval, then the mortgagee must utilize an architect, engineer or construction analyst, approved by HUD, to certify that the plans and specifications meet the applicable standards.

(e) A mortgagee shall implement an acceptable Quality Control Plan that is designed to assure mortgagee compliance with HUD underwriting requirements for the Direct Endorsement program. Such plan will be kept current and available upon request for HUD.

(f) A mortgagee's underwriter and technical staff shall satisfactorily complete a training program on HUD underwriting requirements as a condition to approval under this section.

(g) To be eligible to participate in the Direct Endorsement program, a mortgagee qualified to participate in the program pursuant to this Part must submit initially fifteen mortgages processed in accordance with the requirements set forth under § 200.163. The documents required by § 200.163 will be reviewed by the Department and, if acceptable, commitments will be issued prior to endorsement of the loans. If the underwriting and processing of these fifteen mortgages is satisfactory, then the mortgagee may be approved to close subsequent mortgages and submit them directly for endorsement in accordance with the process set forth in § 200.163. Unsatisfactory performance by the mortgagee at this stage constitutes grounds for denial of participation in the program, or for continued pre-endorsement review of a mortgagee's submissions. If participation in the program is denied, such denial is effective immediately and may be appealed in accordance with the procedures set forth in paragraph (h)(2) of this section.

(h) *Mortgagee Sanctions.* Depending upon the nature and extent of the noncompliance with the requirements of the Direct Endorsement program, as determined by HUD, HUD may take any of the following actions:

(1) *Probation.* HUD may place a mortgagee on probation for a specified period of time for the purpose of evaluating the mortgagee's compliance with the requirements of the single family Direct Endorsement program. During the probation period the mortgagee may continue to process mortgage loans pursuant to § 200.163 subject to conditions required by HUD. HUD may: Require the mortgagee (i) To process mortgages in accordance with paragraph (g); (ii) to submit to additional training; (iii) to make changes in the Quality Control Plan of paragraph (e); and (iv) to take other actions, which may include, but are not limited to, periodic reporting to HUD, and submission to HUD on internal audits.

(2) *Withdrawal of Approval of Direct Endorsement Mortgagees.* (i) HUD may withdraw a mortgagee's approval to participate in the Direct Endorsement program upon written notice which states the grounds for the action and which provides for the right to an informal hearing before a decision maker in the local HUD office. Such hearing shall be expeditiously arranged and the mortgagee may be represented by counsel.

(ii) After consideration of the materials presented, the decision maker in the local HUD office shall advise the mortgagee in writing whether the withdrawal is rescinded, modified or affirmed.

(iii) The mortgagee may appeal such decision to the Assistant Secretary for Housing. A decision by the Assistant Secretary shall constitute final agency action.

(3) *Withdrawal of HUD–FHA Approval.* Serious noncompliance with the requirements of the Direct Endorsement program may also result in withdrawal of a mortgagee's HUD/FHA approval pursuant to 24 CFR Part 25.

(i) *Notification of Changes.* The mortgagee shall promptly notify those field offices which have granted approval under this section of any changes that affect qualifications under paragraphs (b), (c) and/or (d) of this section.

11. In Part 200, § 200.164a is added to read as follows:

§ 200.164a Waivers.

The Secretary in an individual case may waive any requirement not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Provided, however, this waiver requirement does not apply to the requirements in Subpart E, § 200.152 through § 200.162. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing-Federal Housing Commissioner, but shall not be redelegated.

PART 203—[AMENDED]

12. Part 203 is amended by revising § 203.13 to read as follows:

§ 203.13 Approval of application.

(a) Upon approval of an application, acceptance of the mortgage for insurance will, except as provided in paragraph (b) of this section, be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Secretary, the terms and conditions upon which the mortgage will be insured.

(b) Except as set forth in §§ 200.163(b) and 200.164(g), commitments are not issued by HUD under the single family program of Direct Endorsement—which may be utilized only by those sections of the National Housing Act specified in § 200.163. Under this program the Department reviews the executed loan documents in accordance with the procedure set forth in § 200.163, and, if the documents are acceptable, the loan is endorsed.

13. Part 203 is amended by revising § 203.27(a)(3)(v) to read as follows:

§ 203.27 Maximum charges, fees or discounts.

(a) * * *

(3) * * *

(v) Fees paid to an appraiser or inspector approved by the Commissioner for the appraisal and inspection, if required, of the property. Notwithstanding any limitations in this paragraph(a)(3) of this section, if the mortgagee uses the services of staff appraisers and inspectors for processing mortgages pursuant to § 200.163, for mortgages insured under these sections of the National Housing Act specified therein, the mortgagee may collect from the mortgagor the reasonable and customary amounts for such appraisals and inspections.

* * * * *

14. Part 203 is amended by revising § 203.51(a)(2) to read as follows:

§ 203.51 Negotiated interest rate.

(a) * * *

(2)(i) Be binding on the mortgagee for at least thirty calendar days from the date on which the HUD field office receives a lender's commitment signed by mortgagee and mortgagor and accompanied by than application for an FHA firm commitment (Form HUD 92900).

(ii) In the case of mortgages processed pursuant to § 200.163, the firm commitment requirement of paragraph (a)(i) of this section, shall not apply. In such cases the lender's commitment may not be signed by the mortgagor or the mortgagee until the mortgagee has completed its credit underwriting, property appraisal and other processing of the loan application. The lender's commitment shall be binding on the mortgagee for 30 days from the date on which the last party executes the commitment.

(iii) The lender's agreement may be extended by mutual agreement between the mortgagee and mortgagor.

* * * * *

15. Part 203 is amended by revising § 203.255 to read as follows:

§ 203.255 Insurance of mortgage.

(a) Upon compliance with a commitment, the Secretary will insure the loan and will provide evidence of the insurance by the issuance of a Mortgage Insurance Certificate.

(b) For applications involving mortgages originated under the single family Direct Endorsement program, if the mortgagee submits to the Secretary within 30 days after the date of closing of the loan, or such additional time as permitted by the Secretary, the documentation required by § 200.163, for mortgages insured under those sections of the National Housing Act specified in § 200.163 and certifies that the principal amount of the loan has been disbursed to the mortgagor or for the mortgagor's account, the Secretary will insure the loan and evidence the insurance by the issuance of a mortgage insurance certificate. After this endorsement, the mortgagee is entitled to the benefits of insurance subject to compliance with the regulations which are, in effect, a part of the insurance contract.

16. Part 203 is amended by revising the introductory text of § 203.405 to read as follows:

§ 203.405 Debenture interest rate.

Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the day the commitment was issued, or as of the date the mortgage was endorsed for insurance, whichever rate is higher. For applications involving mortgages originated under the single family Direct Endorsement program, debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the date the mortgage was endorsed for insurance.

* * * * *

17. Part 233 is amended by adding § 233.5(a)(6) to read as follows:

§ 233.5 Cross-reference.

(a) * * *

(6) Mortgages and loans processed under the Direct Endorsement program set forth in § 200.163 shall not be eligible under this part.

* * * * *

PART 234—[AMENDED]

18. Part 234 is amended by revising § 234.12 to read as follows:

§ 234.12 Approval and commitment.

(a) Upon approval for an application, acceptance of the mortgage for insurance may be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Secretary, the terms and conditions upon which the mortgage will be insured.

(b) Except as set forth in §§ 200.163(b) and 200.164(g), commitments are not issued by HUD under the single family program of Direct Endorsement. Under this program, the Department reviews the executed loan documents in accordance with the procedure set forth in § 200.163. If the documents are acceptable, the loan is endorsed.

PART 237—[AMENDED]

19. Part 237 is amended by revising § 237.5 to read as follows:

§ 237.5 Cross-reference.

To be eligible for insurance under this subpart, a mortgage shall meet all of the eligibility requirements for insurance under § 203.1 *et seq.*, except § 203.51, (Part 203, Subpart A) of this chapter; § 220.1 *et seq.* (Part 220, Subpart A) of this chapter; § 221.1 *et seq.* (Part 221, Subpart A) of this chapter, or § 234.1 *et seq.* (Part 234, Subpart A) of this chapter, except that the mortgage shall comply with the special requirements of this subpart.

Mortgages and loans processed under the Direct Endorsement program set forth in § 200.163 shall not be eligible under this part.

(Sec. 211, National Housing Act (12 U.S.C., 1715(b)); Section 7(d), Department of HUD Act (42 U.S.C., 3535(d))

Dated: March 14, 1983.

Philip Abrams,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 83-7296 Filed 3-18-83; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 5f

[T.D. 7879]

Temporary Income Tax Regulations Under the Tax Equity and Fiscal Responsibility Act of 1982; Special Transitional Basis Adjustment Rules Concerning Safe Harbor Lease Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides clarification to temporary regulations regarding transitional rules and related matters concerning safe harbor leases. Changes to the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"). These regulations provide guidance to persons executing lease agreements under section 168(f)(8) of the Internal Revenue Code of 1954.

DATE: The regulations apply with respect to certain safe harbor lease agreements executed on or before December 1, 1982.

FOR FURTHER INFORMATION CONTACT: John A. Tolleris of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3294).

SUPPLEMENTARY INFORMATION:

Background

This document contains an amendment to temporary regulations published by Treasury Decision 7850 in the Federal Register for November 10, 1982 (47 FR 50852) concerning transitional rules for certain safe harbor leases executed after July 1, 1982. The amendment provides clarification regarding the circumstances in which parties who have failed to include all direct and indirect costs within the basis of certain property leased under a transitional safe harbor lease after July 1, 1982, may make a retroactive basis adjustment with respect to an additional undivided interest in such property by April 21, 1983. There is a need for immediate guidance relating to these provisions so taxpayers leasing certain property under section 168(f)(8) of the Internal Revenue Code of 1954 can comply with these new provisions. These regulations will remain in effect until superseded by final regulations on this subject.

Explanation of Provisions

Treasury Decision 7850, published in the Federal Register for November 10, 1982, provided guidance regarding transitional rules, enacted by section 208(d) of TEFRA (Pub. L. 97-248, 96 Stat. 439), which for a limited time period permits certain property to be leased under the provisions of Code section 168(f)(8) which were in effect prior to the enactment of TEFRA. However, there was some uncertainty prior to the issuance of Treasury Decision 7850 concerning whether certain direct and indirect costs allocable to the leased property (*e.g.*, installation costs) could be included within the basis of transitional safe harbor lease property. Due to this uncertainty, some taxpayers did not include such costs in the basis of transitional property leased under a safe harbor lease agreement prior to December 1, 1982.

Treasury Decision 7850 provides that if a property qualifies as transitional safe harbor lease property, then virtually all direct and indirect capital costs allocable to such property will be includible in the basis of such property. To provide relief to taxpayers who entered into transitional safe harbor lease agreements before issuance and dissemination of Treasury Decision 7850, the amendment added by this Treasury decision provides that the adjusted basis of a transitional safe harbor lease property leased under an agreement executed on or before December 1, 1982, shall be deemed to include virtually all direct and indirect