

interest or late payment charges, or both. The period of time, rate of interest, and late payment charge shall be as recommended by the committee and approved by the Secretary. When such interest or late payment charges are in effect, they shall be applied to all assessments not paid within the prescribed period of time.

12. Amend § 928.52 by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 928.52 Issuance of regulations.

(a) * * *

(3) Fix the size, capacity, weight, dimension, marking, or pack of the container, or containers, which may be used in the packaging or handling of papayas.

(4) Prescribe different requirements under paragraphs (a)(1) through (a)(3) of this section for the handling of any variety of papayas to destinations within any geographical area or market type identified and recommended by the committee and approved by the Secretary.

13. Amend § 928.55 by adding a new paragraph (c) to read as follows:

§ 928.55 Inspection and certification.

(c) * * *

(c) The committee, with the approval of the Secretary, may prescribe such rules and regulations as it may deem necessary to assure compliance with this section and provide for identification of containers of papayas which have been inspected and certified for handling.

14. Revise § 928.64 to read as follows:

§ 928.64 Termination.

(a) The Secretary may at any time terminate the provisions of this order by giving at least one day's notice by means of a press release or in any other manner which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this order whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this order at the end of any fiscal year whenever the Secretary finds by a referendum or otherwise that continuance is not favored by the majority of producers who, during a representative period determined by the Secretary, were engaged in the production area in the production of papayas for market: *Provided*, That such majority has produced for market during such period more than 50 percent of the

volume of papayas produced in the production area. Such termination shall be effective only if announced on or before December 15 of the then current fiscal year.

(d) Upon recommendation of the committee, received not later than October 1 of an even-numbered year, the Secretary shall conduct a referendum prior to December 1 of such year to ascertain whether continuance of this order is favored by the producers.

(e) The Secretary shall conduct a continuance referendum every sixth fiscal year prior to October 1, with the first such referendum to be conducted within six years from the effective date of this amendment of this section, to ascertain whether continuance of this order is favored by producers. The Secretary may terminate the provisions of this order at the end of any fiscal year in which the Secretary has found that continuance of this order is not favored by producers, who, during a representative period determined by the Secretary, have been engaged in the production for market of papayas in the production area. Such termination of the order shall be effective only if announced on or before December 15 of the then current fiscal year.

(f) The provisions of this order shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

Effective date: January 14, 1988.

Signed at Washington, DC, on: January 6, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88-630 Filed 1-13-88; 8:45 am]

BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 75]

Staff Accounting Bulletin No. 75

AGENCY: Securities and Exchange Commission.

ACTION: Publication of staff accounting bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's views regarding certain accounting and disclosure issues relevant to a proposed Mexican Debt Exchange transaction.

DATE: January 4, 1988.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Jones, Office of the Chief Accountant (202/272-2130); or Howard

P. Hodges, Jr., Division of Corporation Finance (202/272-2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Jonathan G. Katz,

Secretary.

January 4, 1988.

PART 211—[AMENDED]

Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 75 to the table found in Subpart B.

Staff Accounting Bulletin No. 75

The staff hereby adds Sub-Section 2 to Topic 11.H of the staff accounting bulletin series. Topic 11.H.2 discusses the staff's views regarding certain accounting and disclosure issues relevant to a proposed Mexican Debt Exchange transaction.

Topic 11: Miscellaneous Disclosure

* * * * *

H. Disclosures by Bank Holding Companies Regarding Certain Foreign Loans

* * * * *

2. Accounting and Disclosures by Bank Holding Companies for a "Mexican Debt Exchange" transaction

Facts: Inquiries have been made of the staff regarding certain accounting and disclosure issues raised by a proposed "Mexican Debt Exchange" transaction which could involve numerous bank holding companies with existing obligations of the United Mexican States ("Mexico") or other Mexican public sector entities (collectively, "Existing Obligations"). The key elements of the Mexican Debt Exchange are as follows:

Mexico will offer for sale bonds ("Bonds"), denominated in U.S. dollars, which will pay interest at a LIBOR-based floating rate and mature in twenty years. Mexico will undertake to list the Bonds on the Luxembourg Stock Exchange. The Bonds will be secured, as to their ultimate principal value only, by non-interest bearing securities of the U.S. Treasury ("Zero Coupon Treasury Securities") which will be purchased by Mexico. The Zero Coupon Treasury

Securities will be pledged to holders of the Bonds and held in custody at the Federal Reserve Bank of New York and will have a maturity date and ultimate principal value which match the maturity date and principal value of the Bonds. While the Bonds will have default and acceleration provisions, the holder of a Bond will not be permitted to have access to the collateral prior to the final scheduled maturity date, at which time the proceeds of the collateral will be available to pay the full principal amount of the Bonds. As such, the holder of a Bond ultimately will be secured as to principal at maturity; however, the interest payments will not be secured. The Bonds will not be subject to future restructurings of Mexico's Existing Obligations, and Mexico has indicated that neither the Bonds nor the Existing Obligations exchanged therefor will be considered part of a base amount with respect to any future requests by Mexico for new money.

The Mexican Debt Exchange will be structured in such a way that potential purchasers of the Bonds will submit bids on a voluntary basis to the auction agent. These bids will specify the face dollar amount of existing restructured commercial bank obligations of Mexico or of other Mexican public sector entities that the potential purchaser is willing to tender and the face dollar amount of Bonds that the purchaser is willing to accept in exchange for the Existing Obligations. Following the auction date, Mexico will determine the face dollar amount of Bonds to be issued and will exchange the Bonds for Existing Obligations taking first the offer of the largest face dollar amount of Existing Obligations per face dollar amount of Bonds, and so on, until all Bonds which Mexico is willing to issue have been subscribed. It is therefore possible that a greater amount of Existing Obligations could be tendered than Mexico is willing to accept.

Question 1: How should the Mexican Debt Exchange transaction be accounted for?

Interpretive Response: GAAP allows loans to be carried at historical cost only if the holder has both the intent and ability to hold the loans to maturity. The staff believes that tendering Existing Obligations to the auction agent is inconsistent with an intent to hold such tendered loans to maturity. Accordingly, the tender of the obligations is an event that must be given accounting recognition either (i) by writing the loans down to the price at which the bank has agreed to accept Bonds in the tender (tender price) or (ii) by increasing

as necessary the allowance for loan losses to an amount sufficient to result in a net carrying value for the loans tendered that equals the tender price.

Under the second approach, the staff believes that at the tender date, management has a responsibility to assess the allowance for losses relative to its LDC portfolio to determine if it is sufficient to result in a net carrying value for the loans tendered which is the same as the tender price. If it is not sufficient, an increase in the allowance through a provision for loan losses charged to income is necessary. Disclosure of the amount and nature of any change to the allowance or the reasons why one is not considered necessary should be made.

Under the second approach, at the date the Existing Obligations are accepted by Mexico and the bank receives the Bonds, the Existing Obligations accepted should be removed as an asset from the balance sheet, the fair value of the Bonds received should be recorded as an asset, and the allowance for losses should be reduced by the difference between these two amounts.

Of course, pursuant to Statement of Financial Accounting Standards No. 5, "Accounting for Contingencies," management has a continuing responsibility to assess the adequacy of the allowance for loan losses relative to the Mexican debt not tendered and the remaining LDC portfolio to insure that the allowance is adequate to provide for losses due to ultimate collectibility including anticipated losses from sale, swap or other exchange of loans.

Question 2: What financial statement and other disclosure issues regarding the Mexican Debt Exchange and the Bonds received should be considered by registrants?

Interpretive Response: The staff believes that disclosure of the nature of the transaction would be necessary, including:

- Carrying value and terms of Existing Obligations exchanged;
- Face value, carrying value, market value and terms of Bonds received;
- The effect of the transaction on the allowance for loan losses and the provision for losses in the current period; and
- Annual interest income on Existing Obligations exchanged and annual interest income on Bonds received.

On an ongoing basis, the staff believes that the terms, carrying value and market value of the Bonds should be disclosed, if material, due to their unique features.

Question 3: What disclosure with respect to the Bonds received would be acceptable under Industry Guide 3?

Interpretive Response: Instruction (4) to Item III.C.3. of Industry Guide 3 states: "The value of any tangible, liquid collateral may also be netted against cross-border outstandings of a country if it is held and realizable by the lender outside of the borrower's country." Given the unique features of the Bonds in that the ultimate repayment of the principal amount (but not interest) at maturity is assured, the staff will not object to either of two presentations. Under the first presentation, the carrying value of the Bonds, including any accrued but unpaid interest, would be included as a "cross-border outstanding" to the extent it exceeds the current fair value of the Zero Coupon Treasury Securities which collateralize the bonds. Alternatively, under the second presentation, the carrying value of the bond principal would be excluded from Mexican cross-border outstandings provided (a) disclosure is made of the exclusion, (b) for purposes of determining the 1% and .75% of total assets disclosure thresholds of Item III.C.3. of Industry Guide 3, such carrying values are not excluded, and (c) all the Guide 3 disclosures relating to cross-border outstandings continue to be made, as discussed further below.

For registrants that adopt the alternative disclosure approach and whose Mexican cross-border outstandings (excluding the carrying value of the Bond principal) exceed 1% of total assets, appropriate footnote disclosure of the exclusions should be made. Such footnote should indicate the face amount and carrying value of the Bonds excluded, the market value of such Bonds, and the face amount and current fair value of the Zero Coupon Treasury Securities which secure the Bonds.

If the Mexican cross-border outstandings (excluding the carrying value of the Bond principal) are less than 1% of total assets but with the addition of the carrying value of the Bond principal would exceed 1%, the carrying value of the Mexican cross-border outstandings may be excluded from the list of countries whose cross-border outstandings exceed 1% of total assets provided that a footnote discloses the amount of Mexican cross-border outstandings (excluding the carrying value of the Bond principal) along with the footnote-type disclosure concerning the Bonds discussed in the previous paragraph. This disclosure and any other material disclosure specified by Item III.C.3. of Industry Guide 3 would

continue to be made as long as Mexican exposure, including the carrying value of the Bond principal, exceeded 1%.

If the Mexican cross-border outstandings (excluding the carrying value of the Bond principal) are less than .75% of total assets but with the addition of the carrying value of the Mexican Bond principal would exceed .75% but be less than 1%, cross-border outstandings disclosed pursuant to Instruction (7) to Item III.C.3. of Industry Guide 3 may exclude Mexico provided a footnote is added to the aggregate disclosure which discloses the amount of Mexican cross-border outstandings and the fact that they have not been included. The carrying value of the Bond principal may be excluded from the amount of Mexican cross-border outstandings disclosed in the footnote provided the footnote-type disclosure discussed in the second preceding paragraph is also made.

In essence, the alternative discussed herein results in a change only in the method of presenting information, not in the total information required.¹

[FR Doc. 88-640 Filed 1-13-88; 8:45 am]

BILLING CODE 8010-01-M

¹ The following represents proposed disclosure using the alternative method discussed above. Of course, it would be necessary to supplement this disclosure with the additional disclosures regarding foreign outstandings that are called for by Guide 3 (e.g., an analysis of the changes in aggregate outstandings), and the disclosures called for by the Interpretive Responses to Questions 1 and 2.

The appropriate disclosure would depend on the level of Mexican cross-border outstandings as follows:

A. Assuming that the remaining Mexican cross-border outstandings are in excess of 1% of total assets:

—Mexican cross-border outstandings (which excludes the total amount of the carrying value of Bond principal) would be disclosed in the table presenting all such outstandings in excess of 1%.

—Proposed footnote disclosure—

Not included in this amount is \$— million of Mexican Government Bonds maturing in 2008, with a carrying value of \$— million [if different from face value]. These Mexican Government Bonds had a market value of \$— million on [reporting date].

The principal amount of these bonds is fully secured, at maturity, by \$— million face value of U.S. zero coupon treasury securities that mature on the same date. The current fair value of these U.S. Government securities is \$— million at [reporting date]. This collateral is pledged to holders of the bonds and held in custody at the Federal Reserve Bank of New York.

The details of the transaction in which these bonds were acquired was reported in the Corporation's Form (8-K, 10-Q or 10-K) for [date]. Accrued interest on the bonds, which is not secured, is included in the outstandings reported [amount to be disclosed if material]. Future interest on the bonds remains a cross-border risk.

B. Assuming that remaining Mexican cross-border outstandings are less than 1% of total assets but with the addition of the carrying value of the Mexican Bond principal would exceed 1%:

—There would not be any disclosure included in any cross-border table.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 270, 273, 375, and 381

[Docket No. RM86-14-001]

Revisions to the Purchased Gas Adjustment Regulations

Issued: January 11, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing for purpose of further consideration.

—The total amount of remaining cross-border Mexican outstandings would be disclosed in a footnote to the table. Such footnote would also explain that the Mexican outstandings are excluded from the table.

—Additional footnote disclosure—(same disclosure in A above).

—The disclosure required under this paragraph (plus any other disclosure required by Item III.C.3. of Guide 3) would continue so long as Mexican exposure, including the carrying value of the Mexican Bond principal, exceeded 1%.

C. Assuming that the remaining Mexican cross-border outstandings are less than .75% of total assets but with the addition of the carrying value of the Mexican Bond principal is greater than .75% but less than 1%:

—Mexico would not be included in the list of names of countries required by Instruction 7 to Item III.C.3. of Industry Guide 3 and the amount of Mexican cross-border outstandings would not be included in the aggregate amount of outstandings attributable to all such countries.

—A footnote would be added to this disclosure of aggregate outstandings which discusses the Mexican outstandings and the Mexican Bonds. An example follows:

Not included in the above aggregate outstandings are the Corporation's cross-border outstandings to Mexico which totalled \$— million at [reporting date]. This amount is less than .75% of total assets. [The remaining portion of this footnote is the same disclosure in A above.]

D. Assuming that the total of the Mexican cross-border outstandings plus the carrying value of the Bond principal is less than the .75% of total assets:

—No disclosure would be required.

—However, same disclosure as in A above would be provided if any other aspects of the financial statements are materially affected by this transaction (such as the allowance for loan losses).

Changes in aggregate outstandings to certain countries experiencing liquidity problems are required to be presented in tabular form in compliance with Instruction (6)(b) to Item III.C.3. In this table, Existing Obligations exchanged for the Bonds would generally be included in the aggregate cross-border outstandings at the beginning of the period during which the exchange occurred. For registrants using the alternative method, the amount of Existing Obligations which were exchanged would be included as a deduction in the "other changes" caption in the table. In addition, a footnote will be provided to the table as follows:

—Relates primarily to the exchange of unsecured Mexican outstandings for Mexican bonds. The principal amount of these bonds is secured at maturity by \$—face U.S. Zero Coupon Treasury Securities which mature on the same date and have a current fair value of \$—. Future interest on the bonds remains a cross-border risk.

SUMMARY: On November 10, 1987, the Federal Energy Regulatory Commission issued a final rule to amend its regulations governing the procedures by which an interstate natural gas pipeline company passes through the cost of purchased gas to its jurisdictional customers.

In this order, the Commission grants rehearing of its decision solely for the purpose of further consideration.

EFFECTIVE DATE: January 11, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew S. Katz, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8020.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt, and C. M. Naeve.

Order Granting Rehearing Solely for the Purpose of Further Consideration

On November 10, 1987, the Federal Energy Regulatory Commission (Commission) issued a final rule to amend its regulations governing the procedures by which an interstate natural gas pipeline company passes through the cost of purchased gas to its jurisdictional customers. Revisions to the Purchased Gas Adjustment Regulations, 52 FR 43854 (Nov. 17, 1987) (to be codified at 18 CFR 154.301, *et seq.*).

The Commission received petitions for rehearing of this final rule by the persons listed in the Appendix to this order. To have sufficient time to consider the issues raised in these petitions, the Commission grants rehearing of its final rule solely for the purpose of further consideration. This order is effective on the date of issuance. This action does not constitute a grant or denial of a petition on its merits, either in whole or in part. As provided in § 385.713 of the Commission's Rules of Practice and Procedure (18 CFR 385.713), no answers to these petitions will be entertained by the Commission.

By the Commission.

Lois D. Cashell,
Acting Secretary.

Appendix

ANR Pipeline Company
Colorado Interstate Gas Company
Arizona Direct Customers
Northwest Pipeline Corporation
Consolidated Gas Transmission Corporation
Natural Gas Pipeline Company of America
Transcontinental Gas Pipe Line Corporation
Northwest Natural Gas Company
El Paso Natural Gas Company

Tennessee Gas Pipe Line Company
 Enron Interstate Pipelines
 Columbia Gas Distribution Companies
 Great Lakes Gas Transmission Company
 Williams Natural Gas Company
 Panhandle Eastern Pipe Line Company
 Trunkline Gas Company
 National Fuel Gas Supply Corporation
 Texas Eastern Transmission Corporation
 Producer Associations
 Columbia Gas Transmission Corporation
 [FR Doc. 88-677 Filed 1-13-88; 8:45 am]
 BILLING CODE 6717-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary of Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-88-1233; FR-2064]

Mutual Mortgage Insurance and Rehabilitation Loans; Conveyance of One- to Four-Family Properties Occupied by Tenants or Former Mortgagees

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

ACTION: Final rule.

SUMMARY: This final rule revises the current regulations at 24 CFR 203.670 through 203.683 under the general heading of Occupied Conveyance. Included in this rule are revised criteria for determining when HUD will accept conveyance of a one- to four-family property by a mortgagee when there are tenants or former mortgagees in occupancy. The purpose of this rule include: (1) Modification of the habitability and eligibility criteria for occupied conveyance in accordance with the Department's policy of maximizing its ability to reduce its inventory of acquired properties, while providing necessary protections for the occupants of acquired properties; and (2) Revision of the notice and occupant appeal procedures governing departmental decisions involving occupied conveyance. This rule modifies the proposed rule published in the *Federal Register* of February 25, 1986 (51 FR 6556).

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule

following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Jacqueline B. Campbell, Director, Single Family Property Disposition Division, Department of Housing and Urban Development, Room 9172, 451 Seventh Street SW., Washington, DC 20410. Telephone number (202) 755-5740. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

Under the Department's single family mortgage insurance programs, HUD insures mortgages securing loans for the purchase of one- to four-family properties. See, e.g., section 203, 204 and 221(d)(2) of the National Housing Act, 12 U.S.C. 1709, 1710 and 1715(d)(2). The insurance contract provides that HUD will pay an insurance claim to a mortgagee upon the assignment of the mortgage or upon conveyance of the property to HUD after a default. As a condition to the receipt of mortgage insurance benefits in connection with a foreclosure or a deed in lieu of foreclosure, a mortgagee must ensure that the property is vacant, and must transfer good marketable title to the property to the Secretary of HUD. In addition, section 204(g) of the National Housing Act (12 U.S.C. 1710(g)) provides a broad authorization to the Secretary to manage and dispose of property acquired through the mortgage insurance program: "Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, the Secretary shall have power to deal with, complete, rent, renovate, modernize, insure, or sell for cash or credit, in his discretion, any properties conveyed to him * * *"

HUD regulations at 24 CFR Part 203, Subpart B contain the terms of the contract of mortgage insurance, as well as provisions for the conveyance of a one- to four-family property to HUD upon the foreclosure of a HUD-insured mortgage. In certain circumstances, HUD will accept transfer of the property with tenants or former mortgagees in occupancy. The criteria and procedures governing "occupied conveyance" were stated in 24 CFR 203.670 through 203.683, as promulgated in regulations published in the *Federal Register* of September 10, 1980 (45 FR 59563).

Under current HUD regulations, HUD may approve occupied conveyance in the following situations:

1. (a) Occupancy of the property is essential to protect it from vandalism; or HUD owns a number of vacant homes in the area; or (in the case of two- to four-family dwellings) the property's marketability would be enhanced by occupied conveyance; or

(b) A resident suffers from a temporary illness or injury that would be aggravated by the process of moving from the property; and

2. The property is habitable; and

3. The occupants meets specified eligibility criteria.

This final rule makes a number of changes to the above-summarized criteria, and to the procedures governing "occupied conveyances." In addition, it makes several revisions to the proposed rule published on February 25, 1986 (51 FR 6556). In promulgating these revisions, HUD believes that the following policies, reflected in the current regulations, are important for implementing section 204(g) of the NHA:

(1) HUD's Single Family Property Disposition Program must remain essentially a sales program, and its primary objective must be to reduce the inventory of acquired properties in a manner that will ensure the maximum return to the mortgage insurance funds.

(2) Because HUD does not have the resources to perform effectively the role of a large scale landlord in conjunction with its Property Disposition Program, occupied conveyance should be approved only as a temporary measure to support the sales program.

In the preamble to the proposed rule, which was published in 1986 (51 FR 6557), HUD cited various nationwide trends since the promulgation of the current regulations in 1980. Included among the nationwide trends from 1980 to 1985 cited in that preamble were the nationwide decrease in the size of HUD's inventory for acquired properties and HUD's significantly improved turnover rate for acquired one- to four-family properties. However, since the publication of the proposed rule, HUD's inventory of acquired properties has increased substantially.

From September 1985 to September 1987, HUD's inventory of acquired one- to four-family properties has increased from 16,000 to 38,000 properties. This increase has been particularly significant for HUD Regions VI-X. The inventory of acquired properties in those Regions, as a percentage of HUD's nationwide total, has increased from 50 percent in September 1985 to 72 percent in September 1987. HUD's turnover rate for the sale of acquired one- to four-family properties has increased from 5.3

months in September 1985 to 7.2 months in September 1987.

II. Final Rule

The key distinctions between the proposed rule and the current regulations were discussed in the preamble of the proposed rule at 51 FR 6556-6559. The following paragraphs summarize the key distinctions between this final rule and the current regulations, with references to the proposed rule where appropriate.

A. Properties Eligible for Occupied Conveyance

This rule maintains the criteria for determining the Secretary's interest under current § 203.671 and the definition of "residential area" under current § 203.672. However, it revises § 203.670 to eliminate any examination of the habitability of a HUD-owned property as affecting persons suffering from a temporary illness or injury which would be aggravated by the process of moving from the property. This revision reflects HUD's concern that a requirement that properties occupied by ill or injured persons be "habitable" would require HUD to make substantial repairs on those acquired properties. In addition, HUD's expenditure for these repairs would be unwarranted, given the temporary (maximum of three months) duration of the occupancy.

The proposed rule would have eliminated the criteria pertaining to vandalism and the presence of HUD-owned vacant, unsold properties in a designated "residential area." In addition, the proposed rule would have limited the occupied conveyance of one-family properties to situations involving a temporary illness or injury. Although HUD is aware of situations where occupied one-family properties generally result in decreased marketability, the Department has determined that there does not currently exist sufficient nationwide data to justify revising current §§ 203.670 and 203.671 to limit HUD's approval of continued occupancy in acquired one-family properties.

A new paragraph (c) is added to current § 203.670 to provide for HUD's acceptance of occupied conveyance where: (1) The Department has notified the mortgagee that it was considering a request for continued occupancy, (2) no further notification of HUD's decision on the request has been received by the mortgagee, and (3) ninety days have elapsed since the mortgagee notified HUD of pending acquisition. (However, where the mortgagee is not notified by HUD, within forty-five days from the date of HUD's notification of pending

acquisition, that a request for continued occupancy is under consideration, the mortgagee must convey the property vacant unless otherwise directed by HUD (see § 203.678(b)). These revisions are designed to create greater predictability for mortgagees concerning HUD's occupied conveyance decisions.

B. Modification of the Habitability Criteria for Occupied Conveyance Decisions

Section 203.673 of this rule substantially revises the current habitability criteria. This final rule includes the following restrictions on HUD's repair costs to bring the property up to minimum standards of habitability as defined in revised § 203.673:

- (1) Limitation of repair costs to five percent of the fair market value of the property (excluding the cost of abating any lead-based paint hazards); and
- (2) Replacement of certain standards for the performance of mechanical systems in occupied properties with standards more focused on "habitability" or hazard-prevention concerns—e.g., that the property be free from hazards that may adversely affect the health and safety of the occupants (see § 203.673(b)(2)).

Proposed § 203.671(a) has been revised to exclude from the cost limitations (five percent of the fair market value of the property) necessary repair costs related to the abatement of lead-based paint hazards as required by HUD regulations promulgated under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846).

HUD is revising the current standard of fifteen percent of the repaired value of the acquired property because:

- (1) Given the emphasis of the Single Family Property Disposition Program on protecting HUD's mortgage insurance funds from excessive losses, repair costs must be held to a minimum. (The five percent standard in this rule reflects HUD's statistical data for average repair costs for acquired properties sold during the period August 1986 through August 1987. HUD has determined that the average repair cost for acquired properties sold during the period August 1986 through August 1987 has been approximately \$2,000, and the average sales price has been approximately \$37,000. The substantial majority of these acquired properties were one-family properties.)

- (2) The capacity of most HUD Field Offices successfully to supervise substantial repairs on many acquired properties is limited, particularly with occupants in residence in those properties.

(3) HUD has revisited the administrative record to the 1980 rulemaking on this matter and has found no statistical basis for the current standard of 15 percent of the repaired value of the property.

Although the sale of HUD-acquired properties returns funds to the FHA insurance fund, the average loss during the period of August 1986 through August 1987 was approximately \$19,000 per property. HUD does not believe that this trend would be reversed by additional investment in acquired properties. Given the limited staff resources in Field Offices, HUD's capacity to properly supervise substantial repairs is seriously restricted. In addition, repairing properties will require HUD's holding acquired properties in its inventory for longer periods, thereby increasing both the turnover rate and HUD's holding costs for the property.

C. Modification of the Eligibility Criteria for Occupied Conveyance Decisions

Concerning the eligibility criteria for HUD's occupied conveyance decisions, § 203.674 of this rule continues the substance of current § 203.674. Tenants remaining in occupancy after conveyance are required to execute a month-to-month lease with HUD, to pay a "fair market rent" established by HUD based on comparable properties, to permit access by HUD staff or representatives for inspections and repairs, and to permit access by sales brokers. This rule also continues the use of an affordability test for all occupied conveyances. In § 203.674, paragraphs (a)(3) and (b)(5) reduce the standard under current § 203.674(c) from 40 percent to 38 percent of the occupant's "net effective income" (defined in this rule as gross income less Federal income taxes). In addition, this rule includes, as a possible "compensating factor" for allowing a higher percentage of the occupant's net effective income to meet housing costs, situations where the occupant is able to rely on cash savings or contributions from family members. Under the eligibility criteria in this rule, occupants must have occupied the property for at least 90 days before the date the mortgagee acquires title—instead of the minimum of 60 days provided under the current rule. This revision will minimize current mortgagee problems in providing effective notice in typical occupancy situations under this rule, which involve tenancies of more than 90 days. (See section III.E.3 of the preamble for a fuller discussion of the problem.)

Section 203.674(a) of this rule substantially revises the current requirements for continued occupancy based on temporary illness or injury. Included among these revisions are a limitation on continued occupancy to three months (unless extended by the Secretary) and a different treatment of this category (as compared to occupied conveyances based on other criteria) with respect to the habitability standards in revised § 203.673. HUD believes, given its limited capacity for substantial rehabilitation of acquired properties under the Property Disposition Program, the habitability requirements in § 203.673 should not be applied to occupied conveyances based on temporary illness or injury.

D. Notice Requirements for the Inspection of HUD-Acquired Properties

Paragraphs (a)(4) and (b)(5) of § 203.674 of this rule provide that, as a part of the eligibility requirements for continued occupancy, occupants must agree to allow access to the property, during normal business hours and upon at least two days advance notice, by HUD Field Office staff or by a HUD representative, so that the property may be inspected and any necessary repairs accomplished. This notice may consist of a telephone communication with the occupant or a member of the occupant's family, a letter addressed to the occupant, or other method of actual notice. HUD intends that this change in the timing of the notice (from 15 days in advance to two days) provide adequate notice to the occupant while facilitating the HUD Field Office's scheduling of inspections and repairs and the operations of sales brokers.

E. Procedural Requirements for Notice of Pending Acquisition, Requests for Continued Occupancy, and the Department's Final Decision on Requests

This rule retains, in modified form, the procedural guarantees of the current regulations for full notice and participation by occupants of HUD-acquired properties. Under § 203.675 of this rule, notice of pending acquisition must be transmitted by the mortgagee, 60 to 90 days before acquisition, (1) to the mortgagor and to the heads of household who are actually occupying the respective units of the affected property, and (2) to the HUD Field Office. (Under the current regulations, this 60- to 90-day advance notification is only required to be given by the mortgagee to the HUD Field Office, which subsequently notifies the occupant.) During notification from the mortgagee to the occupant will provide

more expeditious actual notice than the current practice of the mortgagee's notification to the HUD Field Office, which in turn notifies the occupant.

This rule maintains the substance of other procedural safeguards in the current regulations providing for full participation of occupants in HUD's determination whether to grant occupied conveyances (see §§ 203.676 and 203.677). HUD believes that these provisions will continue to provide due process protections for affected occupants, while focusing the scope and time of occupants' review to avoid unnecessary burdens on HUD Field Offices. Section 203.677 specifies that the initial HUD Field Office decision on continued occupancy requests will be made by the Chief, Property Disposition and any appeal will be decided by the Field Office Manager or a designated representative of the Field Office Manager (other than the Chief, Property Disposition).

Revised § 203.677 of this rule limits access to material that directly pertains to the conditions for which continued occupancy was denied, and makes it available only after an appeal or request for a conference has been filed. Current § 203.677(a) permits occupants to review relevant information in HUD's possession after a request for continued occupancy is denied, without regard to whether an appeal is filed. Since HUD's staff resources are limited, the retrieval, assembly, photocopying, mailing and explaining of materials to current occupants who are not requesting a conference or filing an appeal would constitute an administrative burden, particularly since many occupants will not file an appeal. HUD believes that this revision will not sacrifice any essential procedural rights of current occupants in preparing for an informal conference or an appeal of an adverse initial decision.

F. Procedures for the Disposition of HUD-Acquired Properties

Section 203.678 provides for the conveyance of vacant HUD-acquired property where the occupant fails to request permission for continued occupancy within the time period specified in the rule. Section 203.679 maintains the grounds set out in the current regulations for the Department's commencement of eviction actions.

III. Summary of Public Comments on the Proposed Rule

A. Vandalism and Vacancy Criteria in Current § 203.671

Several tenant organizations commented that the proposed

elimination of the vandalism and vacancy criteria in current § 203.671 would be detrimental to the interests of occupants of HUD-acquired properties. These organizations stated that because of the adverse impact of the proposed rule on the availability of low income housing in certain cities (e.g., New York City), the rule constitutes an "unreasonable exercise of delegated authority" under certain statutes including the NHA. (These commenters also cited general policy provisions of various Federal statutes, e.g., as stated in 42 U.S.C. 1441 (Housing Act of 1949) and 42 U.S.C. 4621 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970), to support their argument that the proposed rule was contrary to "[F]ederal housing policy".) The tenant organizations commented that the national statistics HUD cited in the preamble to the proposed rule do not accurately reflect the need for the occupied conveyance of HUD-acquired properties in specific residential areas with crime or homelessness problems or a lack of affordable housing. A consultant for the mortgage banking industry concurred that there would be little advantage in eliminating the criteria in current § 203.671.

HUD has determined that the vandalism and vacancy criteria in current § 203.671 should be maintained. Concerning these criteria, HUD intends to provide clarification to HUD Field Offices on: (1) The delineation of "residential areas" under § 203.672, and (2) the vandalism and vacancy criteria in § 203.671.

Concerning § 203.672, HUD intends that Field Offices not be limited to any particular delineation of a "residential area" for HUD-acquired properties. However, a Field Office should delineate an area of a manageable size and justify that delineation in writing, based on a defensible rationale. Concerning the appropriate delineation of "residential areas", Field Offices should consult with (and place substantial weight on the comments of) persons active in the local real estate industry (e.g., local real estate boards or appraisers).

B. Temporary Illness or Injury Criteria in Current § 203.674

A tenant organization commented that the temporary illness or injury criterion in the proposed rule (and in the current regulations) is too narrow, and that it should be expanded to cover permanent disabilities (in particular, the permanent disabilities of the elderly). Other tenant organizations commented that the

temporary illness or injury criterion should not be limited to three months.

HUD disagrees with the comments of these tenant organizations and believes that an expansion of the temporary illness or injury criteria in the manner proposed by these organizations would prevent HUD from carrying out its primary objective under section 204(g) of the NHA—disposing of acquired properties in the shortest feasible time. HUD is attempting to balance its interest in accommodating the needs of ill or injured occupants with its interest in rapidly disposing of its inventory of acquired properties. The three-month limit for occupied conveyances should permit adequate time for facilitating moving arrangements by ill or injured occupants.

C. Regulatory Presumption Concerning the Marketability of Occupied Two- to Four-Family Properties in Current § 203.671

Several tenant organizations criticized HUD's proposed deletion of current § 203.671(c)—the presumption that, with respect to two- to four-unit properties, the marketability of those properties would be improved by retaining occupancy of one or more units. These organizations stated that occupancy by tenants in two- to four-unit properties acquired by HUD after foreclosure by the mortgagee often will improve the marketability of those properties.

HUD has determined that in certain local housing situations, the current occupancy of multi-unit properties could improve their marketability. The Department has decided to retain the regulatory presumption in current § 203.671(c).

D. Habitability Criteria (Current § 203.673)

Several tenant organizations commented that HUD should continue the habitability criteria in current § 203.673. In particular, these organizations suggested that certain features of the current regulations should be maintained, i.e., that the maximum repair cost to meet the habitability criteria should be set at 15 percent of the value of the property after rehabilitation and that maximum repair limits should exclude costs related to the abatement of lead-based paint hazards. According to these comments, the inclusion of the cost of abating any lead-based paint hazards under the habitability standard would be contrary to HUD's obligations under the Lead-Based Paint Poisoning Prevention Act as interpreted in *Ashton v. Pierce*, 716 F.2d 56 (D.C. Cir. 1983). However, these organizations agreed with the proposed

revision of current § 203.673(b) to eliminate the standard that the habitability of residential structures depends on the long-term soundness of their mechanical systems.

In addition, these comments stated that the cost limitations for rehabilitation efforts under the proposed rule (prohibiting the occupied conveyance of properties that require repair in excess of \$500 for each residential unit and \$500 for the external or common areas to bring units up to acceptable habitability standards) would result in HUD's rejection of requests for occupied conveyance in most situations.

HUD has determined that proposed § 203.671(a) should be revised to exclude costs for the abatement of lead-based paint hazards from the cost limitations otherwise imposed on unit repairs. In addition, HUD has determined that the proposed limitations on repair costs should be modified to minimize rejections of requests for continued occupancy. The repair cost limitation in this rule is five percent of the fair market value of the property. (This repair cost limitation reflects HUD's experience with typical repair costs under its Single Family Property Disposition Program).

HUD has published revised rules under the Lead-Based Paint Poisoning Prevention Act to set standards for the elimination of lead-based paint hazards in certain HUD housing assistance programs. For a background on this rulemaking and HUD's obligations under *Ashton v. Pierce*, see the *Federal Register* of January 15, 1987 (52 FR 1876). Requirements affecting HUD's single family property disposition program are contained in § 200.815 of that rule (see 52 FR 1891).

E. Eligibility for Continued Occupancy (Current § 203.674)

1. *Eligibility criteria based on net effective income.* Tenant organizations commented that certain eligibility criteria in the proposed rule would discriminate against low income tenants of HUD-acquired properties. (Proposed § 203.672(b)(5) restricted the maximum percentage of an occupant's income used for rent to 35 percent of the occupant's "net effective income" (gross income, less city, State and Federal income taxes and Social Security taxes).) These organizations cited national statistics indicating that the standard of 35 percent of "net effective income" in the proposed rule would result in a rejection of requests for occupied conveyance in most instances. For example, in 1985, median rent in the United States as a percentage of median

occupant income was 37.6 percent, and in certain states (Arizona, California, Florida, New Hampshire, and Vermont), the median rent for tenants was 40 percent or more. In addition, these organizations cited statistics showing that in 1984, one-third of all New York City tenants were paying more than 40 percent of their income for rent.

A consultant for the mortgage banking industry commented that the eligibility criterion under proposed § 203.672(a)(3) should be revised to a standard of 38 percent of "net effective income". According to this comment, a 38 percent standard would be consistent with current HUD mortgage credit practice. In addition, this commenter stated that to be in accord with current FHA mortgage credit practice, "net effective income" should be defined as gross income less Federal income taxes (but not less city and State income taxes and Federal Social Security taxes).

HUD has determined that the eligibility standard of 35 percent of "net effective income" is too strict and should be revised to accord with current HUD mortgage credit practice. Accordingly, paragraphs (a)(3) and (b)(3) of § 203.672 of this rule set an eligibility standard of 38 percent of "net effective income" and include a definition of "net effective income" as gross income less Federal income taxes. In addition, to provide some flexibility for HUD Field Offices, § 203.672(b)(5) of this rule maintains a consideration for "compensating factors" to allow occupants to qualify under the eligibility criteria despite paying more than 38 percent of their "net effective income" to meet their total housing cost (rent plus utility costs to be paid by the occupant). The category of utility costs has been added to provide a more accurate test of an occupant's ability to reasonably afford future rental payments.

2. *Notice requirements for the inspection of HUD-acquired properties.* Concerning paragraphs (a)(4) and (b)(4) of proposed § 203.672, tenant organizations commented that notice requirements for the inspection of HUD-acquired properties should not be changed to an advance notice of only two days by telephone communication with the occupant or any member of the occupant's family, or by a letter addressed to the occupant. These organizations suggested that the notice requirements in the current regulations (15 days) be maintained and that the method of notice should be through both certified and regular mail.

HUD disagrees with this comment. The notice provisions in paragraphs (a)(4) and (b)(4) of revised § 203.674

provide for an appropriate time and manner of notice for inspections. Given the management constraints of HUD Field Offices in conducting necessary repairs under § 203.673, the Field Offices of their agents (Area Management Brokers) often do not have the capacity to schedule inspections sufficiently in advance to meet the current 15-day notice requirement. Since the purpose of these inspections is to ensure that necessary repairs to units are expeditiously determined and accomplished in accordance with the habitability standards under § 203.673, a two-day notice requirement is important to the successful operation of the Property Disposition Program.

3. *Eligibility requirement for continued occupancy.* The Mortgage Bankers Association commented that proposed § 203.672(b)(3) should be revised to state that the occupant must have been in occupancy for at least 90 days (instead of 60 days, as under proposed) § 203.672(b)(3) before the date that the mortgagee acquires title to the property. According to this comment, problems have occurred where the notice to the occupant arrives between 60 to 90 days before the expected date of acquisition of title, but the occupancy changes after the arrival of the notice and before the end of the 90-day period. (Under proposed § 203.673(a), the mortgagee would be required to provide the occupant with notice of pending acquisition at least 60 days, but not more than 90 days, before the date on which the mortgagee reasonably expects to acquire title.) For example, if the mortgagee provides notice to an occupant 70 days before acquisition of title and the occupancy changes at 60 days before acquisition, the new occupant could be denied notice.

HUD agrees that proposed § 203.673(a) should be revised to set a 90-day eligibility requirement for continued occupancy. Section 203.674(b)(3) of this rule responds to the concerns of the Mortgage Bankers Association. This slight increase in the eligibility criteria for continued occupancy in acquired properties will resolve the above-mentioned notice problems cited by the Mortgage Bankers Association. These notice problems concern typical occupancy situations covered under this rule (involving tenancies of more than 90 days). HUD is attempting to minimize the possibility that occupants will not receive proper notification of the occupied conveyance procedures.

F. Notice to Occupants of Pending Acquisition (Current § 203.675)

Tenant organizations commented that the proposed rule would shift from HUD to the mortgagee the duty to provide notice to occupants of acquired properties, and would decrease the probability that occupants actually would receive appropriate notice. These organizations stated that without the notice requirements of current § 203.676 (requiring that HUD notify the occupant that acquisition is pending and describing the procedure for requests for continued occupancy), tenants in acquired properties might not receive adequate (if any) notice from mortgagees.

In addition, these organizations commented that the shift of responsibility from HUD to mortgagees could create notification problems where a foreclosed HUD-insured property is purchased at the foreclosure sale by a party other than the mortgagee. These commenters stated that without the requirements in current § 203.676 (including the Department's obligation to notify the tenants that HUD soon will be acquiring the property and that the occupants may request permission from HUD to remain in occupancy), mortgagees may decide to bypass HUD's occupied conveyance procedures and to notify occupants that they must vacate the property without sending a copy of the notification to HUD.

These tenant organizations recommended that:

(1) Both HUD and the mortgagee be required to notify occupants of their rights by certified and regular mail, and that the mortgagee also be required to file an affidavit with HUD certifying its compliance with the notification requirements; and

(2) Copies of the notification to tenants transmitted by the mortgagee to HUD should certify that adequate notification has been served on all the named occupants and that all the occupants of the property have been included in the notification.

The Mortgage Bankers Association commented that proposed § 203.673 should be revised as follows:

(1) Mortgagees should be required to fulfill the notification requirement through regular mail service—not by certified or registered mail; and

(2) Proposed § 203.673(a) should be clarified to specify the mortgagee's responsibility for notification to occupants in situations where acquisition by HUD is delayed by bankruptcy filings, litigation, or for any other reason.

A consultant for the mortgage banking industry also criticized proposed § 203.673(a), because it would shift the burden of occupant notification to the mortgagee instead of HUD.

HUD disagrees with the commenters that the shifting of notification burdens from HUD to mortgagees will increase the likelihood that mortgagors and current tenants will not receive adequate notice. HUD doubts that such problems will occur, since HUD will receive a copy of the notification and will be in a position to monitor whether a mortgagee has complied with § 203.675(a) of this rule. Similarly, HUD disagrees with the tenant organizations' request that the notification requirements in proposed § 203.673 be revised to include strict requirements for the use of certified mail service and related mortgagee certification. HUD believes that regular mail service will be effective in providing adequate notification to mortgagors and occupants of the potential acquisition of the property by HUD.

HUD also believes that the Mortgage Bankers Association (MBA)'s proposed revisions to this rule are inappropriate. MBA requested that HUD revise the current regulations to address specifically mortgagees' notification responsibilities where the acquisition of a one- to four-family property by HUD is delayed by bankruptcy filings, litigation, or for any other reason. MBA's request for clarification of the notification requirements in the event of these types of intervening events involves HUD Field Offices' interpretation of the phrase "[a]t least 60 days, but not more than 90 days, before the date on which the mortgagee reasonably expects to acquire title to the property" (emphasis added) in § 203.675(a). HUD Headquarters will monitor HUD Field Offices' interpretation of this phrase, to require renotification by mortgagees, where appropriate, in situations involving intervening events. Where appropriate, guidance will be provided by HUD Headquarters concerning Field Offices' response to situations involving intervening events.

G. Decision to Approve or Deny A Request (Current § 203.677)

Several tenant organizations commented that proposed § 203.675(a) should be revised to reflect the following concerns: (1) An appeal of HUD's decision not to grant continued occupancy should be set at 20 days after the receipt of the notice of HUD's decision, not 20 days after the issuance date of HUD's notice; (2) the deadline for a request for an informal conference

should be the same as the deadline for an administrative appeal of HUD's decision—20 days after the date of HUD's notice, not 10 days after that date; (3) the rule should be revised to acknowledge that if an occupant does not respond to the initial notice of acquisition, lack of proper notice or any other "good cause" should be considered as an appropriate reason for an appeal of HUD's decision to require vacant delivery of foreclosed property; and (4) the rule should be revised to provide for an "impartial fact-finder" to decide an appeal of HUD's decision not to grant a request for continued occupancy.

HUD has determined that the specific deadlines for an appeal or an informal conference under § 203.677(a) provide a reasonable accommodation of the various interests involved in occupants' appeals of an initial HUD decision not to grant a request for continued occupancy. HUD believes that the appeal procedures afford adequate procedural due process protections. Under these procedures, such factors as a lack of proper notice or any other "good cause" could be considered, among other reasons, in HUD's decision on an occupant's appeal. However, HUD agrees with the tenant organizations that there should be a formal designation of two tiers of HUD decision making. Section § 203.677(a) of this rule designates the Chief, Property Disposition as the decision maker at the first tier, with the Field Office Manager or a designated representative (other than the Chief, Property Disposition) as the decision maker on appeal.

Tenant organizations also urged that proposed § 203.675(b) be revised to allow for the availability, at any time, of all material in HUD's possession concerning an occupied conveyance situation under review. HUD has decided to maintain § 203.675(b), as proposed, as part of this final rule. HUD has determined that without reasonable limitations on tenants' searching through administrative records, Field Offices would continue to be exposed to an administrative burden concerning searches of departmental files by tenants who might not request an appeal or conference. HUD believes that limiting tenants' access to Field Office files to situations involving their preparation for a future informal conference with HUD or for an appeal of the Department's decision will preserve limited staff resources, without sacrificing any essential procedural rights of current occupants in preparing for a future informal conference or an

appeal of an adverse decision by the Chief, Property Disposition.

H. Conveyance of Vacant Property (Current § 203.678)

A consultant for the mortgage banking industry criticized the removal of current § 203.679(b) and the substitution of proposed § 203.676(b). According to this commenter, these revisions have resulted in an excessive shift of responsibility to mortgagees. (Under current § 203.679(b), HUD must accept occupied conveyance where 90 days have elapsed since the mortgagee notified HUD of pending acquisition without any notification from HUD of a request for continued occupancy. However, under § 203.678(b) of this rule, if the mortgagee has not been notified by HUD, within 45 days of the date of the notification of pending acquisition, that a request for continued occupancy from a tenant has been received by HUD, the mortgagee must convey the property vacant, unless otherwise directed by HUD).

The Mortgage Bankers Association raised similar concerns. According to the Association's comment, proposed § 203.676(b) could create situations where the mortgagee would move to evict current tenants despite HUD's receipt of the occupant's request for continued occupancy. (This scenario assumes that HUD fails to notify the mortgagee on a timely basis of the Department's receipt of the occupant's request.) In addition, the Association emphasized the importance of current § 203.679(b) as a mechanism for forcing the expeditious conveyance of a FHA-insured property to HUD after a default. Several tenant organizations also criticized the proposed removal of current § 203.679(b).

HUD agrees that current § 203.679(b) should be included in this final rule to provide a deadline for the Department's consideration of a request for continued occupancy. A new paragraph (c) is being added to § 203.670 as part of this final rule to recognize HUD's acceptance of occupied conveyance where (1) 90 days have elapsed since the mortgagee notified HUD of pending acquisition, (2) the Department notified the mortgagee that it was considering a request for continued occupancy and (3) no subsequent communication from HUD has been received by the mortgagee. HUD believes that this provision will clarify mortgagee decision making in situations where a Field Office has not notified the mortgagee in a timely manner of the Field Office's decision on a request for continued occupancy. (Similarly, § 203.678(b) clarifies situations where the mortgagee has not

been given timely notice by HUD that a request for continued occupancy is under consideration.)

IV. Miscellaneous

Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will thereafter publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. The Department intends to delay the effectiveness of this final rule pending conforming handbook and mortgagee letter changes. Whether or not the statutory waiting period has expired, this rule will not become effective until HUD's separate notice is published announcing a specific effective date.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President in 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 for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have 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 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned has determined that this rule would not have a significant economic impact on a substantial number of small entities. This rule establishes a revised structure for the Department's decisions on occupied conveyances and will not have a significant impact on small mortgagees or other affected small entities.

The information collection requirements contained in this rule have

been submitted to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) and have been assigned OMB control number 2502-0268.

This rule was listed as item number 978 in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358, 40379) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers affected by this rule are 14.108, 14.117, 14.119, 14.120, 14.121, 14.122, 14.123, 14.130, 14.132, 14.133, 14.140, 14.154, 14.159, 14.161, 14.163, 14.165, 14.166, 14.172, and 14.175.

List of Subjects in 24 CFR Part 203

Home improvement, Loan programs: housing and community development, Mortgage insurance, Solar energy.

Accordingly, 24 CFR Part 203 is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for Part 203 continues to read as follows:

Authority: Sections 203 and 211, National Housing Act (12 U.S.C. 1709 and 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. The Table of Contents for Part 203, Subpart C is amended by revising §§ 203.670 through 203.681 and by removing §§ 203.682 and 203.683, to read as follows:

Subpart C—Servicing Responsibilities

Occupied Conveyance

- Sec.
- 203.670 Conveyance of occupied property.
- 203.671 Criteria for determining the Secretary's interest.
- 203.672 Residential areas.
- 203.673 Habitability.
- 203.674 Eligibility for continued occupancy.
- 203.675 Notice to mortgagors and tenant occupants of pending acquisition.
- 203.676 Request for continued occupancy.
- 203.677 Decision to approve or deny a request.
- 203.678 Conveyance of vacant property.
- 203.679 Continued occupancy after conveyance.
- 203.680 Approval of occupancy after conveyance.
- 203.681 Authority of HUD Field Office Managers.

Subpart C—Servicing Responsibilities

Occupied Conveyance

3. Section 203.670 is revised to read as follows:

§ 203.670 Conveyance of occupied property.

(a) It is HUD's policy to reduce the inventory of acquired properties in a manner that will ensure the maximum return to the mortgage insurance funds, consistent with the need to preserve and maintain urban residential areas and communities.

(b) The Secretary will accept conveyance of an occupied property containing one to four residential units if the Secretary finds that:

(1) An individual residing in the property suffers from a temporary illness or injury that would be aggravated by the process of moving from the property, and that the individual meets the eligibility criteria in § 203.674(a); or

(2) It is in the Secretary's interest to accept conveyance of the property occupied under § 203.671, the property is habitable as defined in § 203.673, and each occupant who intends to remain in the property after the conveyance meets the eligibility criteria in § 203.674(b).

(c) HUD consents to accept good marketable title to occupied property where 90 days have elapsed since the mortgagee notified HUD of pending acquisition, the Department has notified the mortgagee that it was considering a request for continued occupancy, and no subsequent notification from HUD has been received by the mortgagee.

4. Sections 203.673 through 203.681 are revised to read as follows:

§ 203.673 Habitability.

(a) For purposes of § 203.670, a property is "habitable" if it meets the requirements of this section in its present condition, or will meet these requirements with the expenditure of not more than five percent of the fair market value of the property. The cost of abating any lead-based paint hazards in the property, as required by HUD regulations promulgated under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), is excluded from these repair cost limitations.

(b)(1) Each residential unit must contain:

(i) Heating facilities adequate for healthful and comfortable living conditions, taking into consideration the local climate;

(ii) Adequate electrical supply for lighting and for equipment used in the residential unit;

(iii) Adequate cooking facilities;

(iv) A continuing supply of hot and cold water; and

(v) Adequate sanitary facilities and a safe method of sewage disposal.

(2) The property shall be structurally sound, reasonably durable, and free from hazards that may adversely affect the health and safety of the occupants or may impair the customary use and enjoyment by the occupants. Unacceptable hazards include, but are not limited to, subsidence, erosion, flood, exposure to the elements, exposed or unsafe electrical wiring, or an accumulation of minor hazards, such as broken stairs.

(c) If repairs, including lead-based paint abatement, are to be made while the property is occupied, the occupant must hold the Secretary harmless against any personal injury or property damage that may occur during the process of making repairs. If temporary relocation of the occupant is necessary during repairs, no reimbursement for relocation expenses will be provided to the occupant.

§ 203.674 Eligibility for continued occupancy.

(a) Temporary occupancy because of illness or injury of an individual residing in the property will be limited to three months (unless extended by the Secretary), and will be permitted only if all the conditions in this paragraph (a) are met:

(1) A timely request is made in accordance with § 203.676, including the submittal of documents required in § 203.675(b)(4).

(2) The occupant agrees to execute a month-to-month lease, at the time of acquisition of the property by the Secretary and on a form prescribed by HUD, and to pay a fair market rent as determined by the Secretary. The rental rate shall be established on the basis of rents charged for other properties in comparable condition after completion of repairs (if any).

(3) The occupant's total housing cost (rent plus utility costs to be paid by the occupant) will not exceed 38 percent of the occupant's net effective income (gross income less Federal income taxes). However, a higher percentage may be permitted if the occupant has been paying at least the required rental amount for the dwelling, or if there are other compensating factors (e.g., where the occupant is able to rely on cash savings or on contributions from family members to cover total housing costs).

(4) The occupant agrees to allow access to the property (during normal business hours and upon a minimum of two days advance notice) by HUD Field Office staff or by a HUD representative, so that the property may be inspected

and any necessary repairs accomplished, or by a sales broker.

(b) An occupant who does not meet the temporary illness or injury criteria is eligible for continued occupancy only if all the conditions in this paragraph (b) are met:

(1) A timely request is made in accordance with § 203.676.

(2) The occupant agrees to execute a month-to-month lease, at the time of acquisition of the property by the Secretary and on a form prescribed by HUD, to pay fair market rent as determined by the Secretary, and to pay the rent for the first month in advance at the time the lease is executed. The rental rate shall be established on the basis of rents charged for other properties in comparable condition after completion of repairs (if any).

(3) The occupant will have been in occupancy at least 90 days before the date the mortgagee acquires title to the property.

(4) The occupant's total housing cost (rent plus utility costs to be paid by the occupant) will not exceed 38 percent of the occupant's net effective income (gross income less Federal income taxes). However, a higher percentage may be permitted if the occupant has been paying at least the required rental amount for the dwelling, or if there are other compensating factors (e.g., where the occupant is able to rely on cash savings or on contributions from family members to cover total housing costs).

(5) The occupant agrees to allow access to the property (during normal business hours and upon a minimum of two days advance notice) by HUD Field Office staff or by a HUD representative, so that the property may be inspected and any necessary repairs accomplished, or by a sales broker.

§ 203.675 Notice to occupants of pending acquisition.

(a) At least 60 days, but not more than 90 days, before the date on which the mortgagee reasonably expects to acquire title to the property, the mortgagee shall notify the mortgagor and each head of household who is actually occupying a unit of the property of its potential acquisition by HUD. The mortgagee shall send a copy of this notification to the appropriate HUD Field Office.

(b) The notice shall provide a brief summary of the conditions under which continued occupancy is permissible and advise them that:

(1) Potential acquisition of the property by the Secretary is pending;

(2) The Secretary requires that properties be vacant at the time of conveyance to the Secretary, unless the

mortgagor or other occupant can meet the conditions for continued occupancy in § 203.670, the habitability criteria in § 203.673, and the eligibility criteria in § 203.674;

(3) An occupant may request permission to remain in occupancy in the event of acquisition of the property by the Secretary by notifying the HUD Field Office in writing, with any required documentation, within 20 days of the date of the mortgagee's notice to the occupant;

(4) If an occupant seeks to qualify for continued occupancy under the temporary illness or injury provisions of § 203.674(a), the occupant shall provide to the HUD Field Office, at the time of the occupant's request for permission to remain in occupancy, documentation to support this claim. Documentation shall include an estimate of the time when the patient could be moved without severely aggravating the illness or injury, and a statement by a State-certified physician establishing the validity of the occupant's claim. HUD may require more than one medical opinion or may arrange an examination by a physician approved by HUD; and

(5) If an occupant fails to make a timely request, the property must be vacated before the scheduled time of acquisition.

(Approved by the Office of Management and Budget under OMB control number 2502-0268)

§ 203.676 Request for continued occupancy.

An occupant may request permission to continue to occupy the property following conveyance to the Secretary by notifying the HUD Field Office in writing, within 20 days after the date of the mortgagee's notice of pending acquisition. Verification of temporary illness or injury as described in § 203.675(b)(4) shall be submitted within this time period if an occupant seeks to qualify for continued occupancy under the provisions of § 203.674(a). The HUD Field Office will notify the mortgagee in writing that an occupied conveyance has been requested.

(Approved by the Office of Management and Budget under OMB control number 2502-0268)

§ 203.677 Decision to approve or deny a request.

(a) The HUD Field Office will provide written notification of its decision to an occupant who makes a timely request to continue to occupy the property. The decision of the HUD Field Office on this matter will be made by the Chief, Property Disposition. If the decision is to deny the request, the notice to the

occupant will include a statement of the reason or reasons for the decision and of the occupant's right to appeal. The occupant may appeal HUD's decision within 20 days after the date of HUD's notice. The appeal must be addressed to the Field Office Manager and be in writing, and the occupant may provide documentation intended to refute the reasons given for HUD's decision. The occupant may also request an informal conference with a representative of the HUD Field Office Manager. A request for an informal conference must be made in writing within 10 days after the date of HUD's notice. The occupant may be represented at the conference by counsel or by other persons with pertinent expert knowledge or experience.

(b) After notification that HUD has denied a request for continued occupancy, the occupant, on his or her request, shall be permitted to review all relevant material in HUD's possession (including a copy of the inspection report if the request is denied because the property is not habitable as defined in § 203.673). Only material in HUD's possession that directly pertains to conditions for continued occupancy under §§ 203.670, 203.673, and 203.674 may be considered material relevant for an occupant's review under this paragraph. This review shall be limited to a review of material for purposes of the informal conference or the appeal of the Department's decision. The information will only be provided after request for an informal conference or appeal has been submitted to HUD.

(c) After consideration of an appeal, the HUD Field Office will notify the applicant in writing of HUD's final decision. This final decision will be made by the HUD Field Office Manager or a representative of the Field Office Manager (other than the Chief, Property Disposition). If the decision is to deny the occupant's request, the notice to the occupant will reflect consideration of the issues raised by the occupant.

(d) If, after consideration of an appeal, the Field Office Manager denies the request for new or additional reasons, the occupant will be afforded an opportunity to request that the Field Office Manager reconsider its decision under the provisions of paragraph (c) of this section.

§ 203.678 Conveyance of vacant property.

(a) HUD will require that the property be conveyed vacant if the occupant fails to request permission to continue to occupy within the time period specified in § 203.676, or fails to request a conference or to appeal a decision to

deny occupied conveyance within the time period specified in § 203.677(a).

(b) If the mortgagee has not been notified by HUD, within 45 days of the date of the mortgagee's notification of pending acquisition, that a request for continued occupancy is under consideration, the mortgagee shall convey the property vacant, unless otherwise directed by HUD.

§ 203.679 Continued occupancy after conveyance.

(a) Occupancy of HUD-acquired property is temporary in all cases and is subject to termination when necessary to facilitate preparing the property for sale and completing the sale.

(b) HUD will notify the occupant to vacate the property and, if necessary, will take appropriate eviction action in any of the following situations:

(1) Failure of the occupant to execute the lease required by §§ 203.674 (a)(2) and (b)(2), or failure to pay the rental amount required, including the initial payment at the time of execution of the lease, or to comply with the terms of the lease;

(2) Failure of the occupant to allow access to the property upon request in accordance with §§ 203.674 (a)(4) and (b)(5);

(3) Necessity to prepare the property for sale; or

(4) Assignment of the property by the Secretary to a different use of program.

§ 203.680 Approval of occupancy after conveyance.

When an occupied property is conveyed to HUD before HUD has had an opportunity to consider continued occupancy (e.g., where HUD has taken more than 90 days to make a final decision on continued occupancy in accordance with § 203.670(c)), a determination regarding continued occupancy will be made in accordance with the conditions for the initial approval of occupied conveyance. Any such determination shall be in accordance with HUD's obligations under the terms of any month-to-month lease that has been executed.

§ 203.681 Authority of HUD Field Office Managers.

Field Office Managers shall act for the Secretary in all matters relating to assignment and occupied conveyance determinations. The decision of the Field Office Manager under § 203.677 will be final and not be subject to further administrative review.

§§ 203.682 and 203.683 [Removed]

5. Sections 203.682 and 203.683 are removed.

Date: December 30, 1987.

James E. Schoenberger,
General Deputy, Assistant Secretary for
Housing—Federal Housing Commissioner.

[FR Doc. 88-567 Filed 1-13-88; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 887

**Military Personnel; Issuing of
Certificates in Lieu of Lost or
Destroyed Certificates of Separation**

AGENCY: Department of the Air Force,
DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by revising Part 887, Issuing of Certificates in Lieu of Lost or Destroyed Certificates of Separation. This regulation tells who may apply for a certificate in lieu of a lost or destroyed certificate of separation and where and how to apply. This revision provides additional information and makes minor changes to update and to clarify the part.

EFFECTIVE DATE: February 16, 1988.

ADDRESS: HQ AFMPC/DPMDOP,
Randolph AFB, Texas 78150-6001.

FOR FURTHER INFORMATION CONTACT:
Mr. Sal Garcia, telephone (512) 652-2089.

SUPPLEMENTARY INFORMATION: On September 24, 1987, the Department of the Air Force published a proposed rule in the *Federal Register* on issuing of certificates in lieu of lost or destroyed certificates of separation (52 FR 35927). No comments were received.

The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 32 CFR Part 887

Archives and records, Military personnel.

Therefore, 32 CFR Part 887 is revised to read as follows:

**PART 887—ISSUING OF
CERTIFICATES IN LIEU OF LOST OR
DESTROYED CERTIFICATES OF
SEPARATION**

Sec.

887.0 Purpose.

887.1 Explanation of terms.

887.2 Safeguarding certificates.

887.3 Persons authorized CILs.

887.4 Requesting CILs.

887.5 Issuing CILs.

887.6 Who must sign CILs.

887.7 Persons separated under other than honorable conditions (undesirable or bad conduct) or dishonorable discharge.

887.8 Where to apply for certificates.

887.9 Furnishing photocopies of documents.

Authority: 10 U.S.C. 1041.

§ 887.0 Purpose.

This part tells who may apply for a certificate in lieu of a lost or destroyed certificate of separation. It explains where and how to apply. It implements 10 U.S.C. 1041 and DOD Instruction 1332.13, December 23, 1968. This publication applies to ANG and USAFR members. It authorizes collection of information protected by the Privacy Act of 1974. The authority to collect the information is Title 10, U.S.C. 8912 and Executive Order 9397. Each form used to collect personal information has an associated Privacy Act Statement that will be given to the individual before information is collected. System of records notice F035 AF MP C, Military Personnel Records System, applies.

§ 887.1 Explanation of terms.

(a) *Certificate in lieu (CIL).* A certificate issued in lieu of a lost or destroyed certificate of service, discharge, or retirement.

(b) *Service person.* One who:

(1) Is currently serving as a member of the Air Force; or

(2) Formerly served in the active military service as a member of the Air Force and all military affiliation was terminated after September 25, 1947.

(c) *Surviving spouse.* A survivor who was legally married to a member of the service at the time of the member's death.

(d) *Guardian.* A person or group of persons legally placed in charge of the affairs of a service member adjudicated mentally incompetent.

§ 887.2 Safeguarding certificates.

Certificates of separation are important personal documents. Processing applications for CILs is costly to the Air Force. To keep requests for CILs at a minimum:

(a) Personnel officers will tell members of the importance of safeguarding the original certificates.