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**TR-429**

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Number TR-429

On January 7, 2009 the Board of Directors of the HOPE for Homeowners Program issued an interim final rule amending the HOPE for Homeowners Program regulations to provide additional flexibility and options to lenders as authorized by amendment to section 257 of the National Housing Act.

# Rules and Regulations

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## BOARD OF DIRECTORS OF THE HOPE FOR HOMEOWNERS PROGRAM

### 24 CFR Part 4001

[Docket No. B-2009-F-03]

RIN 2580-AA01

#### HOPE for Homeowners Program: Program Regulations: Upfront Payment Incentive for Subordinate Mortgage Lien Holders and Other Program Changes

**AGENCY:** Board of Directors of the HOPE for Homeowners Program.

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule amends the HOPE for Homeowners Program regulations established by the Board of Directors (Board) of the HOPE for Homeowners Program (Program) and published on October 6, 2008. The regulations are being amended to provide additional flexibility and options to lenders as authorized by amendments to section 257 of the National Housing Act made by the Emergency Economic Stabilization Act, which was signed into law on October 3, 2008, and to make additional changes designed to improve the Program. Specifically, the regulations are amended to expand the Program to include 2-to-4 unit properties as eligible Program properties, which is consistent with the definition of "single family residence" under the National Housing Act. The regulations are also amended to provide for the option of an upfront payment in lieu of a future appreciation payment from the Secretary of Housing and Urban Development (Secretary) to a holder of an existing subordinate mortgage. The upfront payment would be offered by the Secretary as an incentive to facilitate agreement by all mortgage lien holders to release their liens on the mortgage to be refinanced under the Program. The amendments

made by this rule also include increasing the maximum term of Program mortgages from 30 to 40 years, as well as increasing or modifying the allowable loan-to-value and debt-to-income ratios for new mortgages under the Program. The regulations are also amended to modify the equity sharing provision of the Program for borrowers who may have equity in their homes at the time they are accepted into the Program, and to make the timeframe for lenders to obtain endorsement for Program loans consistent with other FHA programs.

All these amendments are designed to expand the number of eligible borrowers and participating lenders and servicers, and improve the Program's operations consistent with the requirements and purposes of the Program. In addition, the regulations are amended to clarify the provisions regarding mortgagor eligibility, total monthly mortgage payment, and shared appreciation in the value of the refinanced property.

**DATES:** *Effective Date:* January 7, 2009.

*Comment Due Date:* March 9, 2009.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Communications should refer to the above docket number and title.

*Comment by Mail.* Please note that due to security measures at all federal agencies, submission of comments by mail often results in delayed delivery.

*Electronic Submission of Comments.* HUD now accepts comments electronically. Interested persons may now submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available for public viewing. Commenters should follow the instructions provided at <http://www.regulations.gov> to submit comments electronically.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title.

*Public Inspection of Public Comments.* All comments and communications submitted will be available, without revision, for inspection and downloading at <http://www.regulations.gov>. Comments are also available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the Regulations Division. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the comments by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Emmanuel Yeow, Secretary of the Board of Directors of the HOPE for Homeowners Program, Department of Housing and Urban Development, 451 7th Street, SW., Room 9110, Washington, DC 20410-8000, telephone 202-708-3600 (this is not a toll-free number). Persons with hearing-or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Background

The HOPE for Homeowners Act of 2008 (Title IV of Division A of the Housing and Economic Recovery Act of 2008 (HERA), (Pub. L. 110-289, 122 Stat. 2654, approved July 30, 2008)), amended Title II of the National Housing Act (NHA) to add a new section 257. New section 257 (12 U.S.C. 1701z-22) establishes within the Federal Housing Administration (FHA), the Program, a temporary FHA program that offers homeowners and mortgage loan holders (or servicers acting on their behalf) insurance on the refinancing of loans for distressed mortgagors to support long term sustainable homeownership and avoid foreclosure. Section 257 of the NHA authorizes the Department of Housing and Urban Development (HUD) acting through FHA, to insure such refinanced eligible mortgages commencing no earlier than October 1, 2008, and the authority to insure new mortgages expires September 30, 2011.

On September 30, 2008, the Board approved regulations that established the core requirements necessary and appropriate for implementation of the Program. These regulations were

published in the **Federal Register** on October 6, 2008, at 73 FR 58418.

Under the Program, refinanced mortgages are offered by FHA-approved mortgagees to eligible borrowers who are at risk of losing their homes to foreclosure. The refinanced mortgage insured by FHA has a principal loan balance below the current appraised value of the home, creating new equity in the mortgaged property. To participate in the Program, eligible borrowers must be unable to afford their existing mortgage payments, must occupy the residence that is the security for the refinanced mortgage as their primary residence, and may not have any present ownership interest in another residence. Investors and investor properties are not eligible for the Program. Under the Program, participating mortgagors share their new equity and future appreciation of the value of the property subject to the refinanced mortgage with FHA. Participation in this Program is voluntary. No mortgagees, servicers, or investors are compelled to participate.

Under the Program, all holders of outstanding mortgage liens on a property to which a mortgage relates must agree to accept the proceeds of the refinanced FHA-insured loan as payment in full of all indebtedness under the existing mortgage(s). The Secretary is directed by HERA to take actions, subject to standards established by the Board, to facilitate coordination and agreement between the holders of the existing senior mortgage and existing subordinate mortgages.

On October 3, 2008, the President signed into law the Emergency Economic Stabilization Act of 2008 (Pub. L. 110-343, 122 Stat. 3765)

(EESA). Section 124 of EESA amended section 257 of the NHA to, among other things, authorize the Secretary, subject to standards established by the Board, to make upfront payments to a holder of an existing subordinate mortgage in lieu of providing the subordinate lien holder a portion of HUD's 50 percent interest in the future appreciation of the value of the property. Upfront payments may provide a more effective incentive to subordinate lien holders to release their liens on a mortgage eligible to be refinanced under the Program, thereby better enabling a borrower to participate in the Program. In addition, section 124 of EESA amended section 257(e)(1)(B) of the NHA to clarify that a borrower's debt-to-income ratio may be calculated for purposes of that section as of March 1, 2008, or may be calculated as of a later date, due to mortgage resets that occur after that date under the mortgage terms in effect on March 1, 2008. Finally, section 124 of EESA amended section 257 of the NHA to give the Board discretionary authority to raise the maximum loan-to-value ratio of a Program mortgage, which was set prior to the amendment at 90 percent.

**This Interim Final Rule**

This interim final rule makes the following changes to the Program regulations at 24 CFR part 4001:

*A. Upfront Payment in Lieu of a Future Appreciation Payment*

As authorized by section 124 of EESA, this interim final rule amends the Board's regulations at 24 CFR 4001.120 (Appreciation Sharing) to permit a holder of an existing subordinate mortgage to receive a payment at the time a mortgage is refinanced under the Program in lieu of a share of any future

appreciation in the value of the property that is owed to HUD. As a condition of receiving such payment, the subordinate mortgage holder must release the borrower of all indebtedness under the loan and release the holder's lien on the property.

The following matrix, codified as Appendix A to the Program regulations, provides the mechanism for determining the risk-adjusted future appreciation payment a holder of an existing subordinate mortgage may be eligible to receive. The Appendix is amended by this final rule to reflect the risk-adjusted upfront payment a holder of an existing subordinate mortgage may be eligible to receive in lieu of the future appreciation payment. Appendix A is also amended to provide that, when calculating a subordinate mortgage lien holder's potential appreciation share, payment will be based upon principal and interest "as of the first day of the month in which the borrower makes application for the Program mortgage" (as opposed to the "date of origination of the Program mortgage," as provided for in the appendix to the final rule issued on October 6, 2008). These amendments are necessary because subordinate mortgage lien holders must be notified in advance of origination of the amount of any upfront or future appreciation share they may be eligible to receive, and they must agree in writing to accept one of these payment options. If the upfront option is selected, the originating lender must provide payment instructions to the closing agent in advance of origination. If the future appreciation option is selected, HUD must prepare and deliver the Appreciation Share Certificate prior to origination.

**CALCULATION OF UPFRONT AND APPRECIATION SHARING PAYMENT**

Subordinate mortgage lien holder's cumulative combined loan-to-value ratio	Upfront payment option Percent of unpaid principal and interest that lien holder is eligible to receive # (percent)	Future appreciation option* Percent of unpaid principal and interest that lien holder is eligible to receive # (percent)
>135% .....	3	9
≤135% .....	4	12

\*A payment to a subordinate mortgage lien holder will depend on actual appreciation of the property, as determined in accordance with 24 CFR 4001.120. Payment will be made according to the subordinate lien holder's position of priority in relation to the property at the time the Program mortgage is originated.

# Payment will be based upon principal and interest as of the first day of the month in which the borrower made application for the Program mortgage and calculated at the pre-default contract rate of interest.

In establishing the upfront payment option, the Board took into account information received from market participants concerning the price currently received in the market for delinquent subordinate mortgages. The

Board expects that the majority of subordinate mortgage liens to be released under the Program will be delinquent. The information provided by market participants indicates that delinquent subordinate mortgages

recently have traded at substantially below their par values, with market values that approximate the ranges established by the Board for the upfront payment option. As a result, the Board believes that the compensation provided

by the upfront payment option at the time of settlement should be sufficient to facilitate the participation of subordinate mortgage lien holders in the Program. The Board believes that providing an upfront payment option of 3 to 4 percent, as provided in this interim final rule, should likely provide the subordinate mortgage lien holder with about the same risk-adjusted compensation as the holder would receive under the right to receive a maximum of 9 to 12 percent of the unpaid principal and interest on the subordinate mortgage out of the future appreciation on the property (as is provided in the final regulations published on October 6, 2008). The upfront payment option will be subject to the same eligibility requirements as the future appreciation option.

#### *B. Increased Loan-to-Value and Income Ratios*

This interim final rule amends § 4001.110 (Underwriting) to increase the allowable loan-to-value ratio (LTV) of a Program mortgage up to 96.5 percent for any mortgagor whose: (i) New total monthly mortgage payment under the Program mortgage will not exceed 31 percent of the mortgagor's monthly gross income, and (ii) total monthly recurring expenses (including mortgage payments) will not exceed 43 percent of the mortgagor's monthly gross income. This amendment is designed to promote Program participation by existing senior mortgage lien holders. Raising the LTV could reduce the gap between the existing mortgage balance and the new Program mortgage, reducing losses that existing primary lien holders may incur in connection with a Program mortgage. At the same time, the changes seek to ensure the new Program mortgage is sustainable by limiting the permissible DTI ratios to  $3\frac{1}{43}$  percent for borrowers with a new LTV of greater than 90 percent. The rule also amends § 4001.110 to allow a mortgagor whose Program mortgage has an LTV that does not exceed 90 percent to qualify immediately for the Program, without any trial modification period, if: (i) The mortgagor's new total monthly mortgage payments will not exceed 38 percent of the mortgagor's monthly gross income; and (ii) the mortgagor's monthly recurring expenses (including mortgage expenses) will not exceed 50 percent of monthly gross income. The trial modification requirement will no longer be required under the Program, and the provisions related to trial modification are removed by this rule.

Together these amendments should expand the number of eligible borrowers

that may qualify for the Program and reduce the operational hurdles and other disincentives for lenders or servicers to participate in the Program. At the same time, the amendments balance a borrower's resulting LTV and mortgage debt- and total household debt-to-income ratios to help create a sustainable new mortgage for the borrower.

#### *C. Extending Program Mortgage Terms From 30 to 40 Years*

The rule amends the Program regulations at § 4001.110(c) to extend the maximum term of a Program mortgage from 30 to 40 years. Section 257(e)(5)(B) of the NHA requires a mortgage refinanced under the Program to have a term "not less than" 30 years, meaning that a longer term is possible. A conforming change is made to § 4001.102, which cross-references the applicability of HUD's regulations governing eligibility for single family mortgage insurance at 24 CFR part 203, subpart A. Specifically, the rule amends § 4001.102 to specify that the provisions of 24 CFR 203.17(d) limiting the term of a HUD-insured mortgage to 30 years are not applicable to the Program.

For mortgagors with very high mortgage and household debt loads, extending the amortization period may reduce their monthly payments sufficiently to enable them to qualify for the Program. Whether a particular borrower would obtain a lower monthly payment through a 40 year mortgage will depend on, among other things, the applicable interest rate. In order for a Program mortgage to qualify for inclusion in a pool of Program mortgages to back securities guaranteed by the Government National Mortgage Association (Ginnie Mae), the mortgage should be for a term of either 30 or 40 years to maintain consistency in the mortgages within a securitization pool. If the lender intends to hold the Program mortgage or securitize the mortgage other than through the Ginnie Mae program, then this operational limitation would not apply, and the lender is free to set the term of the mortgage at 30 years, 40 years, or some intermediate number of years.

#### *D. Mortgagor Eligibility, Total Monthly Mortgage Payment, and Shared Appreciation and Shared Equity Requirements*

Under the explicit authority granted by section 257(e)(1)(B) of the NHA, this rule amends the Program regulations at 24 CFR 4001.106 (Eligible mortgagors) to provide additional flexibility for homeowners with adjustable rate mortgages to meet the requirement that

the mortgagor must have had on March 1, 2008, "or thereafter is likely to have, due to the terms of the mortgage being reset," a total monthly mortgage payment of more than 31 percent of the mortgagor's monthly gross income. As under the current Program regulations, any mortgagor will meet this requirement if the mortgagor had, as of March 1, 2008, a total monthly mortgage payment of more than 31 percent of the mortgagor's monthly gross income. In addition, this rule amends the existing Program regulations to permit a mortgagor that had an adjustable rate senior or subordinate mortgage on March 1, 2008, that by its terms resets after March 1, 2008, to alternatively qualify for the Program if the mortgagor has, *as of the date the mortgagor first applies for the Program mortgage*, a total monthly mortgage payment under mortgages existing on March 1, 2008, of more than 31 percent of the mortgagor's monthly gross income at the time of application for the Program mortgage. This rule amends 24 CFR 4001.106 to reflect this new, alternative qualification option for borrowers who had a qualifying adjustable-rate mortgage on March 1, 2008.

As under the current Program regulations, a borrower's "total monthly mortgage payment" is based on the borrower's fully indexed and fully amortizing principal and interest payment under the terms of the mortgage, as well as amounts required to be paid for real estate taxes, hazard and mortgage insurance, and certain other fees and charges. (See 24 CFR 4001.07 (Definition of total monthly mortgage payment).) This rule also amends § 4001.106(a) to correct a technical error by replacing "monthly total mortgage payment" with the defined term "total monthly mortgage payment."

This interim final rule also makes certain modifications to the provisions regarding the calculation of shared appreciation at § 4001.120 (Appreciation sharing). The regulation at § 4001.120(a)(1) currently provides that the amount of appreciation in the value of a property securing a Program mortgage will be calculated, subject to certain adjustments, based on the "gross proceeds from the sale or disposition of the property." A non-sale disposition of a property, however, may not involve the transfer of any proceeds. In addition, a sale transaction between the borrower and a related party (including a person acting on behalf of the mortgagor or a related party) may not accurately reflect the appreciation in the value of the underlying property. In light of the foregoing, the rule amends § 4001.120 to

provide that, for purposes of the appreciation sharing provisions of the rule, the appreciation in the value of a property will, subject to certain adjustments, be based on (1) the gross proceeds of a sales transaction, unless the transaction is with or on behalf of a related party, and (2) the current appraised value of the property in the case of a non-sale disposition of the property or the sale of the property to a related party or a person acting on behalf of a related party. The definitions section of the rule (12 CFR 4001.07) also has been amended to include a definition of a "related party" of a person. This definition includes the immediate family of the person, as well as entities owned or controlled by the person or the person's immediate family.

#### *E. Eligibility of Two-to-Four Unit Properties*

The rule amends § 4001.07 (Definitions) and § 4001.108 (Eligible properties) to expand the types of residential properties that are eligible to serve as security for a Program mortgage to include a 2-to-4 unit residence. After further review of section 257 of the NHA, the Board determined that the term "residence" as used in section 257 may include a 2-to-4 unit residence, which is consistent with how such term is applied under section 203(b) of the NHA.<sup>1</sup> The Board also concluded that expansion of the Program to include a 2-to-4 unit residence would allow more borrowers to participate in the Program, especially in certain geographic areas, such as the Northeast, where 2-to-4 unit residences are more prevalent. Notwithstanding whether the property has 1, 2, 3, or 4 unit(s), the residence must be the borrower's primary residence, as this term is defined in § 4001.07, and the borrower cannot have an interest in any residential property other than the subject 1-to-4 unit residence.

#### *F. Clarification of Initial Equity*

Under section 257 of the NHA and the current regulations, a borrower must share with HUD the amount of "equity" created as a direct result of the origination of a Program mortgage. The amount of such "initial" equity that a borrower must share with HUD, under the existing regulations, is based (subject to certain adjustments) on the difference between the property's current appraised value at the time of

origination of the Program mortgage and the principal amount of the new Program mortgage. Consequently, under the existing regulations, if a borrower has some existing equity in the home at the time the borrower enters the Program, this equity would have to be shared with HUD. In order to prevent such an unintended result, this rule modifies the calculation of equity sharing in § 4001.118. Under the modified calculation of initial equity to be shared with HUD, lenders should deduct the original principal balance on the Program mortgage from the lesser of: (1) The appraised value of the property at the time of origination; or (2) the outstanding amount due under all existing senior mortgages, existing subordinate mortgages, and non-mortgage liens on the property.

#### *G. Endorsement Timeframe*

Currently under § 4001.116(d), a mortgagee must submit a complete case binder within 120 days from the date of closing for a mortgage to be eligible for insurance. The timeframe for lenders to obtain endorsement for Program loans has been expanded so that it is consistent with other FHA programs. To ensure that lenders comply with the first payment default provision established in the law, the Board will continue to require the lender to include in the file evidence that the borrower has made the first payment within 120 days of loan closing. If the borrower has not made such payment, the loan would not be eligible for payment of a claim under the Program.

### **III. Findings and Certifications**

#### *Administrative Procedure Act*

Section 553(a) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) Section 553(a) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA) provides that advance notice and public comment procedures do not apply to a matter relating to agency management or personnel or to public property, loans, grants, benefits or contracts (see 5 U.S.C. 553(a)). Because this rule amends regulations for a new mortgage insurance program under the supervision of the Board, it is exempt from notice and comment rulemaking as provided in 5 U.S.C. 553(a). Nevertheless, the Board has determined to request public comment on these interim final rule amendments, which are effective upon publication in the **Federal Register**. The Board will consider any public comments received in fulfilling its responsibilities under section 257 of the NHA and will respond to comments when the Board

takes final action on this interim final rule.

#### *Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Order). The first Program regulations promulgated by the Board were determined to be economically significant and an economic analysis accompanied issuance of the first Program regulations. It has been determined that the amendments made by this rule do not by themselves meet the threshold of economic significance set forth in the executive order. As noted in the preamble description of the economic analysis prepared for the October 6, 2008 final rule, the major unknown for purposes of an economic analysis is Program participation. Participation to date has been lower than expected under the original analysis for the October 6, 2008 final rule. Though changes under this rule would likely expand participation, the increment is not expected to reach the threshold for economic significance. Although the analysis of the amendments made by this rule does not anticipate increased participation that would result in crossing the threshold for economic significance, these changes are expected to increase the cost to the Federal government of insuring Program mortgages, as the amendments made by this rule are expected to transfer additional risk to the Federal government.

The docket file for this rule is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

#### *Federalism*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism

<sup>1</sup> Section 257(v) of the NHA states that the provisions and requirements of section 203(b) of the NHA should apply with respect to the Program, except as otherwise provided in section 257 of the NHA or by the Board.

implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempts state law within the meaning of the Executive Order.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule will not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

**List of Subjects in 24 CFR Part 4001**

Administrative procedures, Practice and procedure, Mortgage insurance, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board of Directors of the HOPE for Homeowners Program amends the regulations in part 4001 in Title 24 of the Code of Federal Regulations to read as follows:

**Chapter XXIV—Board of Directors of the HOPE for Homeowners Program**

**PART 4001—HOPE FOR HOMEOWNERS PROGRAM**

■ 1. The authority of 24 CFR part 4001 continues to read as follows:

*Authority:* 12 U.S.C. 1701z–22.

■ 2. In § 4001.07, insert the definition of “Related party” to follow the definition of “Program mortgage” to read as follows:

**§ 4001.07 Definitions.**

\* \* \* \* \*

*Related party* of a person means any of the following or another person acting on behalf of the person or any of the following—

- (1) The person’s father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, the spouse of any of the foregoing, and the person’s spouse;

(2) Any entity of which 25 percent or more of any class of voting securities is

owned, controlled or held in the aggregate by the person or the persons referred to in paragraph (1); and

(3) Any entity of which the person or any person referred to in paragraph (1) serves as a trustee, general partner, limited partner, managing member, or director.

\* \* \* \* \*

■ 3. In § 4001.102(a), add the phrase “203.17(d) Maturity;” immediately following the phrase “203.16 Certificate and contract regarding use of dwelling for transient or hotel purposes;”.

■ 4. Revise § 4001.106 to read as follows:

**§ 4001.106 Eligible mortgagors.**

A mortgagor shall be eligible to refinance his or her existing mortgages under section 257 of the Act only if:

(a)(1) The mortgagor had, on March 1, 2008, a total monthly mortgage payment (based on mortgages outstanding on March 1, 2008) of more than 31 percent of the mortgagor’s monthly gross income; or

(2) If the mortgagor’s existing senior mortgage or existing subordinate mortgage, if any, is an adjustable-rate mortgage that by its terms resets after March 1, 2008, the mortgagor has a total monthly mortgage payment (based on mortgages outstanding on March 1, 2008) of more than 31 percent of the mortgagor’s monthly gross income calculated as of the date the mortgagor first applies for the Program mortgage;

(b) The mortgagor does not have an ownership interest in any other residential property;

(c) The mortgagor has not been convicted of fraud under federal or state law in the past 10 years;

(d) The mortgagor certifies that the mortgagor has not intentionally defaulted on any mortgage or debt and has not knowingly, or willfully and with actual knowledge, furnished material information known to be false for purposes of obtaining any Program mortgage; and

(e) The mortgagor meets such other requirements as the Board may adopt.

■ 5. Revise § 4001.108(a) to read as follows:

**§ 4001.108 Eligible properties.**

(a) A mortgage may be insured under the Program only if the property that is to be the security for the mortgage is a 1-to-4 unit residence.

\* \* \* \* \*

■ 6. In § 4001.110, revise paragraphs (a) and (c) to read as follows:

**§ 4001.110 Underwriting.**

\* \* \* \* \*

(a) *Loan-to-value and income thresholds.* The loan-to-value (LTV), payment-to-income, and debt-to-income ratios of the Program mortgage do not exceed the thresholds set forth in either paragraph (a)(1) or (a)(2) of this section.

(1) *Program mortgage with LTV ratio of 90 percent or less.* (i) The initial principal balance of the Program mortgage as a percentage of the current appraised value of the property does not exceed 90 percent;

(ii) The total monthly mortgage payment of the mortgagor under the Program mortgage does not exceed 38 percent of the mortgagor’s monthly gross income; and

(iii) The sum of the total monthly mortgage payment under the Program mortgage and all monthly recurring expenses of the mortgagor does not exceed 50 percent of the mortgagor’s monthly gross income.

(2) *Program mortgage with up to 96.5 percent LTV.* (i) The initial principal balance of the Program mortgage as a percentage of the current appraised value of the property does not exceed 96.5 percent;

(ii) The total monthly mortgage payment of the mortgagor under the Program mortgage does not exceed 31 percent of the mortgagor’s monthly gross income; and

(iii) The sum of the total monthly mortgage payment under the Program mortgage and all monthly recurring expenses of the mortgagor does not exceed 43 percent of the mortgagor’s monthly gross income.

\* \* \* \* \*

(c) The Program mortgage shall have a maturity of not less than 30 years and not more than 40 years from the date of origination.

\* \* \* \* \*

■ 7. In § 4001.116, revise paragraphs (d) and (e) to read as follows:

**§ 4001.116 Representations and prohibitions.**

\* \* \* \* \*

(d) *FHA insurance.* A mortgage is eligible for insurance if the mortgagee submits a complete case binder within such time period as the Board prescribes. The binder shall include evidence acceptable to the Board that the mortgage is current.

(e) *Mortgagor failure to make first mortgage payment.* FHA shall not pay a mortgage insurance claim to any mortgagee if the first total monthly mortgage payment is not made within 120 days from the date of closing of the mortgage. The mortgagee shall not, directly or indirectly, make all or a part of the first total monthly mortgage

payment on behalf of the mortgagor. The mortgagee is prohibited from escrowing funds at closing for all or part of the first total monthly mortgage payment.

■ 8. Revise § 4001.118(a)(1) to read as follows:

§ 4001.118 Equity sharing.

(a) Initial Equity. For purposes of section 257(k)(1) of the Act, the initial equity created as a direct result of the origination of a Program mortgage on a property, as calculated by the Program mortgage lender, shall equal:

- (1) The lesser of—
(i) The appraised value of the property that was used at the time of origination of the Program mortgage to underwrite the mortgage and to determine compliance with the maximum loan-to-value ratio at origination established by section 257(e)(2)(B) of the Act; or
(ii) The outstanding amount due under all existing senior mortgages,

existing subordinate mortgages, and non-mortgage liens on the property; less

\* \* \* \* \*

■ 9. In § 4001.120, revise the heading, revise paragraphs (a)(1) and (c)(2), and add paragraph (e) to read as follows:

§ 4001.120 Appreciation sharing or upfront payment.

- (a) \* \* \*
(1) In the case of—
(i) A sale of the property to one or more persons none of which is a related party of the mortgagor, the gross proceeds from the sale of the property; or
(ii) A disposition of the property or the sale of the property to a related party of the mortgagor, the current appraised value of the property at the time of the disposition or sale; less
\* \* \* \* \*
(c) \* \* \*
(2) The amount of the unpaid principal and interest on such existing subordinate mortgage, as of the first day

of the month in which the mortgagor made application for the Program mortgage, is at least \$2,500; and
\* \* \* \* \*

(e) Election to receive upfront payment in lieu of a share of appreciation. Upon meeting the requirements of paragraph (c) of this section, the eligible holder(s) of an existing subordinate mortgage on a property securing a Program mortgage may elect to receive, contemporaneously with the origination of the Program mortgage, a payment from FHA in an aggregate amount determined in accordance with the formula provided in Appendix A to this part in lieu of any right to receive a portion of FHA's 50 percent interest in the future appreciation in the appraised value of such property under paragraph (c) of this section.

■ 10. Appendix A to part 4001, including its heading, is revised to read as follows:

APPENDIX A TO PART 4001—CALCULATION OF UPFRONT PAYMENT OR FUTURE APPRECIATION PAYMENT

Table with 3 columns: Subordinate mortgage lien holder's cumulative combined loan-to-value ratio, Upfront payment option, Future appreciation option. Rows for >135% and ≤135%.

\* A payment to a subordinate mortgage lien holder will depend on actual appreciation of the property as determined in accordance with 24 CFR 4001.120. Payment will be made according to the subordinate lien holder's position of priority in relation to the property at the time the Program mortgage is originated.

# Payment will be based upon principal and interest as of the first day of the month in which the borrower made application for the Program mortgage, calculated at the pre-default contract rate of interest.

Dated at Washington, DC, this 31st day of December 2008.

By order of the Board of Directors of the HOPE for Homeowners Program

Brian D. Montgomery, Chairman of the Board.

[FR Doc. E9-57 Filed 1-6-09; 8:45 am]

BILLING CODE 4210-AA-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009-10 and CP2009-12; Order No. 162]

International Mail Contracts

AGENCY: Postal Regulatory Commission. ACTION: Final rule.

SUMMARY: The Commission is adding Inbound International Expedited Services 2 to the Competitive Product List. This action is consistent with changes in a recent law governing postal

operations and a recent Postal Service request. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective January 7, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at http://www.prc.gov.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202-789-6820 and stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION: Regulatory History, 73 FR 74212 (December 5, 2008).

The Postal Service seeks to add a new product identified as Inbound International Expedited Services 2 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

I. Background

On November 19, 2008, the Postal Service filed a request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 et seq. to add Inbound International Expedited Services 2 to the Competitive Product List. The Postal Service asserts that Inbound International Expedited Services 2 is a competitive product within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009-10.

The Postal Service contemporaneously filed notice, pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5, that the Governors have established prices and classifications not of general applicability for Inbound Express Mail International (EMS)

1 Request of the United States Postal Service Regarding Inbound Express Mail International (EMS) from Foreign Posts to Add Inbound International Expedited Services 2 to Competitive Product List; and Notice of Establishment of Rates and Classifications Not of General Applicability, November 19, 2008 (Request).