

Termination evaluation, the date of mortgage origination will be considered to be the date the loan transaction commences amortization, rather than the date of endorsement for FHA mortgage insurance. Unlike the date of endorsement, the beginning amortization date is not dependent on the filing of timely paperwork with HUD. Further, Credit Watch analysis is based on default and claim rates. The due date for mortgage payments is established pursuant to the closing date, and mortgage defaults are reported based on these payment due dates. Accordingly, HUD believes that focusing on the amortization date will provide for a more uniform starting date for Credit Watch evaluations and increase the effectiveness of the Credit Watch Termination Initiative.

F. Definition of Underserved Area

HUD's regulation provides that before notification of proposed termination is sent to a mortgagee, the Secretary will review the Census tract area concentrations of the default and claims. This provision of the existing regulations would not be modified by this proposed rule. If the Secretary determines that the excessive rate is the result of mortgage lending in underserved areas, the Secretary may determine not to terminate the origination approval agreement. HUD is aware, however, that predatory lending abuses may occur in underserved areas, and that the excessive rates may be the result of predatory lending. The Secretary will consider this factor, where appropriate, in making a determination.

HUD has announced in Mortgagee Letter 99-15 that, for purposes of the Credit Watch Termination Initiative, the term "underserved area" will have the same meaning as that provided in HUD's regulations for the Government Sponsored Enterprises at 24 CFR part 81. Specifically, § 81.2 of those regulations defines the term "underserved area", in part, to mean:

[A] Census tract, a federal or state American Indian reservation or tribal or individual trust land, or the balance of a census tract excluding the area within any federal or state American Indian reservation or tribal or individual trust land, having:

(i) A median income at or below 120 percent of the median income of the metropolitan area and a minority population of 30 percent or greater; or

(ii) A median income at or below 90 percent of median income of the metropolitan area.

This proposed rule would codify the interpretation of "underserved area" provided in the Mortgagee Letter. Specifically, the proposed rule would

amend § 202.3(c)(2) to specify that the term "underserved area" will have the same meaning as that provided in 24 CFR 81.2.

G. Informal Conference Prior to Termination

The regulations provide that prior to termination the mortgagee may request an informal conference with HUD. However, the regulations do not currently specify the timeframes for submission of such a request, nor for the holding of the informal conference. This proposed rule would specify that HUD must receive the written request for the informal conference no later than 30 calendar days after the date of the proposed termination notice. Unless HUD grants an extension, the informal conference must be held no later than 60 calendar days after the date of the proposed termination notice.

H. Reinstatement of Terminated Origination Approval Agreements

The proposed rule would also add a new § 202.3(e) describing the procedures a terminated mortgagee must follow to have its origination approval agreement reinstated. A mortgagee whose origination approval agreement has been terminated may apply for reinstatement if the origination approval agreement has been terminated for the affected branch or branches for at least six months and the mortgagee continues to be an approved mortgagee meeting the general standards of § 202.5 and the specific requirements of §§ 202.6, 202.7, 202.8 or 202.10, and 202.12.

The mortgagee's application for reinstatement must be accompanied by an independent analysis of the terminated office's operations and identifying the underlying cause of the mortgagee's unacceptable default and claim rate. The independent analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform audits under the government auditing standards issued by the General Accounting Office. The application must also contain a corrective action plan addressing each of the issues identified in the CPA analysis and include evidence demonstrating that the mortgagee has implemented the corrective action plan. The Secretary will grant the mortgagee's application for reinstatement if the mortgagee's application is complete and the Secretary determines that the underlying causes for the termination have been satisfactorily remedied.

III. Small Business Concerns Related to Credit Watch Termination Initiative

With respect to termination of the mortgagee's Agreement, or taking other appropriate enforcement action against a mortgagee, HUD is cognizant that section 222 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) (SBREFA) requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to "work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel." To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices that are provided to small business concerns at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], you will find the necessary comment forms at <http://www.sba.gov.ombudsman> or call 1-888-REG-FAIR (1-888-734-3247).

In accordance with its notice describing HUD's actions on the implementation of SBREFA, which was published on May 21, 1998 (63 FR 28214), HUD will work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

IV. Findings and Certifications

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 proposed rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes