

made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

#### *Regulatory Flexibility Act*

The Secretary has reviewed this proposed rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows.

This proposed rule would make several amendments to HUD's regulations for the FHA Credit Watch Termination Initiative. First, consistent with the goals of the Administration regarding the increased use of technology in government, the proposed rule would allow for a fully computerized Credit Watch notification process through use of the FHA Neighborhood Watch Early Warning System. This proposed change would provide for a streamlined and more effective method of monitoring mortgagee performance and for notifying poor performing mortgagees that are in danger of having their Agreements terminated by HUD. The change would not impose an undue burden on small entities, since it merely codifies existing HUD policy previously announced through a Mortgagee Letter. Further, the majority of mortgagees (small and large) participating in the FHA mortgage insurance programs currently have access to the FHA Internet Connection that is used to provide such notification.

The proposed rule would also remove the regulatory cap on the Credit Watch default and claim rates, and providing that a mortgagee will be considered to be on Credit Watch Status if it has a default and claim rate on insured mortgages that exceeds 150 percent of the normal rate and its Agreement has not been terminated. This revision would not impose a significant economic impact on small entities, since the entities that would be affected by this change are poor performing mortgagees that are already subject to termination of their Agreements.

The proposed rule also would prohibit a mortgagee that has received a notice of proposed termination of its Agreement from establishing a new branch for the origination of FHA-insured mortgages in the lending area covered by the proposed termination. The mortgagees to which this change

would be applicable are those that already have been notified by HUD that their default and claim rates exceed an acceptable standard in specified geographic areas and they are at risk of having their FHA mortgage origination approvals terminated. The appropriate logical response to a notice of proposed termination is not to have this same mortgagee open a new branch in the same lending area before risks have been mitigated and problems corrected. The intent of this rulemaking is to close a loophole used by mortgagees to evade HUD's existing procedure for reviewing losses to the insurance funds.

The proposed rule would also establish that the default and claim thresholds underlying the Credit Watch Termination Initiative apply to both underwriting and originating mortgagees. This amendment will ensure that the performance of all mortgagees involved in FHA-insured mortgage transactions is evaluated. To the extent that the proposed change would have an economic impact on small underwriting mortgagees who are presently not covered by Credit Watch Termination, it will be as a result of actions taken by the mortgagees themselves—that is, failure to undertake the sound business practices necessary to maintain default and claim rates at an acceptable level.

The proposed rule would also provide that, for purposes of the Credit Watch Termination evaluation, the date of mortgage origination would be considered to be the date the loan transaction commences amortization, rather than the date of endorsement for FHA mortgage insurance as provided in the current regulation. This proposed change would not impose any economic burden on small mortgagees. Rather, the change would improve the accuracy of Credit Watch Termination evaluations by conforming HUD's definition of the mortgage origination date to the beginning amortization date used to report defaults. Finally, the proposed rule would codify existing definition of the term "underserved area" for purposes of Credit Watch Termination determinations. This proposed amendment would merely codify existing policy and would, therefore, not impose any new economic burden on mortgagees.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

#### *Environmental Impact*

This proposed rule would not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c), this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*).

#### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

#### *Unfunded Mandates Reform Act*

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

#### *Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance Program number applicable to 24 CFR part 202 is 14.20.

#### **List of Subjects in 24 CFR Part 202**

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

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 202 as follows:

#### **PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES**

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