

of lender syndicate tracked the language of the statute, two commenters urged that we provide some amplification in the definition to indicate what powers may be exercised under a trust arrangement without the concurrence of more than one beneficiary. The definition of lender syndicate states that it must be made up of four or more entities with a beneficial interest, held through an agent, under a trust arrangement, established pursuant to 46 U.S.C. 31322(f), "no one of which may exercise powers thereunder without the concurrence of at least one other unaffiliated beneficiary." The commenters suggested that the definition be amended to clarify that an agent can exercise routine administrative functions associated with the day-to-day administration of the loan without the consent of multiple beneficiaries, and that consent of more than one beneficiary should only be required to exercise substantive powers such as decisions on how to proceed in the event of default or bankruptcy, release of collateral or guarantors, and amendment or removal of loan covenants.

We agree with the commenter that the purpose of an agent is to handle routine administrative matters for the lender syndicate associated with the extension of credit. Therefore, we have amended the regulatory definition of lender syndicate to clarify that "other than the exercise by the agent of powers related to routine administrative matters, none of the entities in a lender syndicate may exercise powers related to the lender syndicate's extension of credit without the concurrence of at least one other unaffiliated beneficiary." In addition, we have stated in the definition that the routine administrative powers include those matters concerning the day-to-day management of the extension of credit such as monitoring compliance with loan covenants, collateral inspections and similar matters; however, more substantive powers such as amending loan and mortgage documents, releasing guarantors or collateral, or administering the loan in the event of a default are not considered routine.

The definition of lender syndicate does not define who may qualify as a beneficiary; however, entities that plan to form a lender syndicate are advised that if they are engaged in the fishing industry and have contractual relationships with the vessel owner, such as to purchase, process or market the vessel's catch, they may not use the formation of a lender syndicate as a means of avoiding MARAD review of the mortgage trustee transaction and the loan and mortgage covenants. Therefore,

if the beneficiaries of a lender syndicate have such contractual relationships with the vessel owner, we will review the mortgage trustee arrangement, including the loan and mortgage covenants, to determine whether it constitutes an impermissible transfer of control.

Paragraph (3) under the definition of "controlling interest" has been deleted because a State or Federally chartered financial institution no longer has to qualify as a U.S. citizen under the controlling interest standard in order to hold a preferred mortgage on a fishing industry vessel.

The definition of the term "mortgage trustee" has been amended by removing the requirement in paragraph (2) that a mortgage trustee qualify as a U.S. citizen and replacing that paragraph with language requiring the mortgage trustee to be eligible to hold a preferred mortgage pursuant to 46 CFR 356.19(a)(1)–(4). This change expands the definition of mortgage trustee to encompass the broader range of parties that are now eligible to serve as a mortgage trustee.

The term "preferred mortgage" is amended to track the definition of 46 U.S.C. 31322(a)(4), as amended. Part of the definition states that a preferred mortgage is one where the mortgagee is a mortgage trustee that qualifies under 46 U.S.C. 31322(f) and 46 CFR 356.27–31. One commenter suggested that this definition could cause uncertainty with respect to the use of mortgage trustees because a violation of the regulations by the mortgage trustee could endanger the preferred status of the mortgage. The commenter suggested that we amend the definition to eliminate reference to the statute and regulations and simply state that a preferred mortgage is one where the mortgagee is an approved mortgage trustee. We intend for the preferred status of the mortgage to be at risk if a mortgage trustee fails to be in compliance with the regulations; however, we have addressed the concerns of the commenter by clarifying in § 356.27 that a mortgage trustee will have an opportunity to cure a defect in its approved status and by including a provision for MARAD notification of beneficiaries where there is a problem with the mortgage trustee's approved status. The preferred status of the mortgage will not be at risk until 30 days after notification of the beneficiary that there is a problem with the mortgage trustee's approval.

The second sentence in the definition of "non-citizen" has been deleted because there is no longer any special citizenship status for a State or Federally chartered financial institution

that satisfies the controlling interest requirements of section 2(b) of the Shipping Act, 1916. Finally, the definition of "trust" is amended to conform the definition of a mortgage trust to the new requirements for mortgage trustees.

Section 356.5 Affidavit of U.S. Citizenship

Paragraph 356.5(d) provides the form of the affidavit of U.S. citizenship to be used by a corporation. The form is amended to add a new paragraph 6 which indicates that the vessel owner has submitted the documents required by 46 CFR 356.13 of MARAD's regulations. The existing paragraph 6 is renumbered as paragraph 7. The inclusion of this new paragraph in the affidavit of U.S. citizenship was deemed to be necessary to help ensure that vessel owners have reviewed the requirements and have submitted the required documentation.

Section 356.7 Methods of Establishing Ownership by United States Citizens

Paragraph 356.7(c)(1)(ii) has been amended by removing the language that applies the fair inference method to a State or Federally chartered financial institution that is acting as a preferred mortgagee. The amendments to the AFA deleted this standard for qualification as a preferred mortgagee, so it was not longer needed in the regulation.

Section 356.11 Impermissible Control by a Non-Citizen

The NPRM proposed an amendment to paragraph 356.11(a)(7) to clarify that we would not consider impermissible control to exist if the sale of a vessel is caused through the exercise of loan or mortgage covenants that are exercised either (i) by an entity that has not been approved as a U.S. citizen, but which is otherwise eligible to hold a preferred mortgage pursuant to 46 CFR 356.19(a)(2) through (5) or (ii) by an approved mortgage trustee that is exercising the loan or mortgage covenants for a non-citizen or an entity that does not qualify under § 356.19(a)(2) through (5), provided that the Citizenship Approval Officer has approved the use of such loan or mortgage covenants. Several commenters noted that this amendment implies that review of loan documents would be required in a mortgage trustee arrangement where the beneficiary is a commercial lender or lender syndicate, contrary to the intent of the statutory amendments to 46 U.S.C. 31322(f). We did not intend to require mortgage and loan documents related to loans from lender syndicates and commercial