

hold a preferred mortgage depending on whether it is holding the mortgage directly as a mortgagee or through a mortgage trustee. We agree with the commenters and have amended paragraph (b) to clarify that a commercial lender must demonstrate that it is in the business of financing and that it has a loan portfolio in excess of \$100 million, not more than 50 percent of which is to borrowers in the commercial fishing industry. This requirement applies whether the commercial lender is holding the preferred mortgage directly or is using a mortgage trustee to hold the preferred mortgage for its benefit. If a commercial lender is holding a preferred mortgage directly, it must also file an affidavit of U.S. citizenship to demonstrate that it qualifies as a documentation citizen pursuant to 46 U.S.C. 12102(a).

We have also amended proposed paragraph 356.19(b) to address the required timing of submissions for a mortgagee. A mortgagee, including a mortgage trustee, that is holding a preferred mortgage on a fishing industry vessel prior to April 1, 2003, will be required to demonstrate that it meets the requirements of § 356.19(a) before the next renewal date after April 1, 2003, for the vessel's certificate of documentation. However, if a mortgagee wishes to confirm that it is in compliance with the requirements to hold a preferred mortgage before the certificate of documentation renewal date for the vessel, the mortgagee may request a letter ruling from the Citizenship Approval Officer pursuant to paragraph 356.19(e) at any time after the publication of this regulation. A mortgagee that wishes to enter into a new preferred mortgage after April 1, 2003, will be required to demonstrate that it meets the requirements of § 356.19(a) before it will be eligible to obtain a preferred mortgage on a fishing industry vessel.

Finally, several commenters noted that more guidance is needed regarding the form in which information must be submitted in order for a mortgagee to demonstrate that it is qualified to hold a preferred mortgage directly and for a lender syndicate or commercial lender to demonstrate that it qualifies as such an entity when it is using a mortgage trustee to hold a preferred mortgage for its benefit. We have set forth the requirements in the regulations that each entity must meet, and we have amended paragraph 356.19(b) to state that we will provide sample formats on MARAD's website that can be used for the various entities to submit the required information.

One commenter argued that the requirements of proposed § 356.19(b) are inconsistent with the Ship Mortgage Act because the regulation requires MARAD approval before a mortgage will qualify as a preferred mortgage. The commenter stated that the Ship Mortgage Act, 46 U.S.C. 31322(a)(4) does not require a mortgagee to demonstrate its eligibility to hold a preferred mortgage; therefore, the requirements of § 356.19(b) are inconsistent with the statute. Further, the commenter stated that the mortgagee has the most to lose by the loss of the preferred status of its mortgage. Consequently, the commenter believes that self regulation by mortgagees would be sufficient to ensure compliance with the statute.

We do not agree with the commenter. Requiring mortgagees to demonstrate that they meet the requirements of the statute is not inconsistent with statutory requirements. The certification that mortgagees would be required to submit under § 356.19 is not complicated and should not present a substantive or administrative burden that would hinder the ability of vessel owners to obtain financing or that would restrict the ability of a lender to obtain adequate security for its loans. Therefore, we are finalizing our proposed amendments to § 356.19 to require mortgagees to submit certain information to the Citizenship Approval Officer before they may obtain a new preferred mortgage or in order to maintain an existing preferred mortgage on a fishing industry vessel.

A new paragraph (c) has also been added to the regulations to require the certification from paragraph (b) to be submitted for each entity on an annual basis for as long as the entity holds a preferred mortgage on a fishing industry vessel. The annual certification must be filed at least 30 days prior to the annual anniversary date of the original approval. In order to address concerns of some commenters regarding the loss of the preferred status of a mortgage if the mortgagee fails to file the annual certification, we have amended paragraph (c) to require the Citizenship Approval Officer to notify a mortgagee if it fails to submit the required annual certification. The preferred status of the mortgage will be maintained for 30 days following the mailing date of the delinquency notice.

A new paragraph (d) was also proposed in the NPRM to make clear that an entity, other than a mortgage trustee, that is eligible to hold a preferred mortgage on a fishing industry vessel may exercise rights and covenants under loan or mortgage agreements and is not required to obtain

approval from MARAD. Several commenters noted that this paragraph was too narrow because it did not state that a mortgage trustee may exercise loan or mortgage covenants without obtaining prior MARAD approval when it is holding a preferred mortgage for the benefit of an entity that is otherwise qualified to hold a preferred mortgage or for the benefit of a commercial lender or lender syndicate. We agree with the commenter and have revised paragraph (d) to specifically set forth which entities may exercise rights under loan or mortgage covenants without obtaining MARAD approval.

Several commenters suggested that lenders should be allowed to request a letter ruling in the same way that vessel owners may request a letter ruling from the Citizenship Approval Officer under § 356.15. We agree with the commenter that letter rulings should be available to lenders and mortgage trustees and have added a new paragraph 356.19(e) that will allow entities to request a letter ruling from the Citizenship Approval Officer to determine whether a mortgage or mortgage trust arrangement will comply with the requirements of 46 CFR part 356. If a letter ruling is issued, the date of the letter ruling may be deemed to be the approval date of the transaction and to be the required date for the annual approval.

#### Section 356.21 General Approval of Non-Citizen Lender's Standard Loan or Mortgage Agreements

Section 356.21 allowed non-citizen lenders that were using a mortgage trustee to get MARAD approval of their standard loan or mortgage covenants. The amendments to the AFA expanded the class of lenders that may hold a preferred mortgage directly to allow various entities that do not qualify as U.S. citizens to hold a preferred mortgage directly. If the beneficiary under a mortgage trust arrangement is allowed to hold a preferred mortgage directly, or qualifies as a commercial lender or lender syndicate, no review of the loan or mortgage covenants is required, notwithstanding the fact that the beneficiary may not qualify as a U.S. citizen. Accordingly, the term "non-citizen lender" is replaced with the term "lender" throughout the section.

Several commenters noted that paragraph 356.21(a) could be interpreted to require review of standard loan or mortgage agreements involving a mortgage trustee and a beneficiary that is either a commercial lender or lender syndicate. We did not intend to imply that MARAD review of such loan or mortgage documents would be mandated; therefore, we have amended