

requirements and procedures to which FHA mortgagees must adhere if they opt to use the Scorecard. Specifically, this regulation establishes the conditions for use of the Scorecard.

The TOTAL Mortgage Scorecard is only a tool to assist the mortgagee in managing its workflow and expediting the endorsement process and is not a substitute for the mortgagee's reasonable consideration of risk and credit worthiness. The Department believes that the TOTAL Mortgage Scorecard is a valuable tool, but that value depends upon proper use of the Scorecard in accordance with HUD requirements and procedures. To help assure the TOTAL Mortgage Scorecard is not misused, the rule would require mortgagees to provide full manual underwriting for mortgage applicants when the scorecard returns a "refer" risk score. The Scorecard results must not be used as the basis for rejecting any mortgage applicant.

In addition, the rule would provide that both mortgagees and vendors must:

- use the scorecard to process FHA and other loan products specified by the FHA Commissioner only, and for no other purpose;
- implement quality control procedures for scorecard usage and provide, at FHA's request, reports and loan samples that enable FHA to evaluate program operation;
- not use the TOTAL Mortgage Scorecard to direct mortgagors into other non-FHA product offerings (this requirement does not relieve a mortgagee from its obligations under § 203.10 concerning informed consumer choice for prospective FHA mortgagors);
- not disassemble, decompile, reverse engineer, derive or otherwise reproduce any part of the source code or algorithm in the TOTAL Mortgage Scorecard;
- not provide feedback messages that conflict with the Equal Credit Opportunity Act; and
- comply with any additional HUD/FHA requirements or procedures, that are applicable to the TOTAL Mortgage Scorecard and may be issued through handbooks, mortgagee letters, TOTAL User Guides, or TOTAL Developers Guide following appropriate advance notification, where applicable.

Automated underwriting system vendors and mortgagees found to violate these conditions may have their access to the Scorecard terminated with appropriate notice. HUD will provide a vendor or mortgagee with a 30-day notice of a violation and loss of privilege. The notice will state the

nature of the violation, the effective date of the loss of privilege, and the duration of the loss of privilege. A party receiving such a notice may appeal to the Deputy Assistant Secretary for Single Family Housing (DAS-SFH), or the Deputy Assistant Secretary's designee, before the effective date by providing evidence to refute the violation. The loss of privilege is stayed until the DAS-SFH notifies the party that the loss of privilege has been affirmed, rescinded, or modified. As an additional measure to ensure compliance with these requirements, access to the TOTAL Mortgage Scorecard by a FHA mortgagee will be conditioned upon the mortgagee's certification to comply with the requirements as provided in this rule.

III. Justification for Interim Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions for that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is determined "impracticable, unnecessary, or contrary to the public interest."

HUD finds that good cause exists to publish this interim rule for effect without first soliciting public comment in that prior public procedure would be contrary to the public interest. Currently, loan originators underwrite FHA loans manually or through Fannie Mae and Freddie Mac's proprietary automated systems that employ scorecards that were built using data on FHA borrowers but with algorithms known only to the developers and not to FHA. Over the last four years, HUD has developed its own FHA TOTAL Scorecard and through validation determined that it provides an improved credit evaluation system for FHA loans that has been statistically proven to accurately predict the likelihood of mortgagor default while providing a uniform system protective of borrowers. Indeed, the TOTAL Scorecard, among other attributes, better predicts delinquencies that may occur under FHA loans than any other underwriting means currently available.

The release of the TOTAL Scorecard and its implementation without delay through the issuance of this rule will allow FHA to benefit immediately from this more refined, uniform instrument that will better measure the credit worthiness of potential borrowers and

better protect the Government from financial losses. This is especially true in an environment of relatively low interest rates, increased demand for FHA insurance products, and historically high FHA delinquency rates. Additionally, because the scorecard is government property and HUD is prepared to accept data on TOTAL Scorecard performance, immediate deployment will allow HUD to efficiently track the performance of FHA loans and FHA lenders and quickly fix and refine the scorecard further.

For borrowers, immediate deployment of the TOTAL Scorecard will result in the institution of a single system nationwide that will offer uniform processing.

The interim rule enables, but does not require, FHA mortgage lenders to use this new automated means of assessing the credit worthiness of FHA mortgagors. Although use of the TOTAL Scorecard is not required, the Department believes that this rule makes use of the TOTAL Scorecard possible for a greater number of mortgagees, and for the benefit of a greater number of mortgagors, at an earlier point in time and in a more efficient manner than would execution of individual approvals to use the TOTAL Scorecard issued in accordance with outstanding mortgagee letter instructions. For FHA mortgagees that opt to use the TOTAL Scorecard, use of the TOTAL Scorecard is subject to several conditions to protect borrowers including that borrowers who are classified "refer" will be processed through manual underwriting. For the TOTAL Scorecard to provide the intended benefits of accurate assessment, FHA mortgagees must abide by the terms and conditions for use. Also, FHA mortgagees may not disassemble, decompile, reverse engineer, derive or otherwise reproduce any part of the source code or algorithm in the TOTAL Scorecard. Such tampering may render the TOTAL Scorecard inaccurate and unusable.

IV. Findings and Certifications

Paperwork Reduction Act

The proposed new information collection requirements contained in § 203.255(b)(5) have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.