



# Federal Register

---

**Tuesday,  
January 12, 2010**

---

## **Part II**

# **Department of Housing and Urban Development**

---

**24 CFR Part 257**

**HOPE for Homeowners Program;  
Statutory Transfer of Program Authority  
to HUD and Conforming Amendments To  
Adopt Recently Enacted Statutory  
Changes; Final Rule**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**24 CFR Part 257**

[Docket No. FR-5340-I-02]

RIN 2502-A176

**HOPE for Homeowners Program;  
Statutory Transfer of Program  
Authority to HUD and Conforming  
Amendments To Adopt Recently  
Enacted Statutory Changes**

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Interim rule.

**SUMMARY:** This rule implements the changes made to the HOPE for Homeowners (H4H) program by the recently enacted Helping Families Save Their Homes Act of 2009. Prior to enactment of the Helping Families Save Their Homes Act of 2009, rulemaking authority was under the Board of Directors of the HOPE for Homeowners Program (Board), and the regulations for the program are codified in a chapter of the Code of Federal Regulations (CFR) reserved for the Board.

The H4H program is a temporary program that offers homeowners and existing mortgage loan holders (or servicers acting on their behalf) insurance on the refinancing of loans for distressed mortgagors to support long-term sustainable homeownership, including, among other things, allowing homeowners to avoid foreclosure. The statute also transfers program responsibility for the H4H program to the Secretary of HUD. Previously, the program was overseen by a Board consisting of HUD, the Department of the Treasury, the Federal Deposit Insurance Corporation, and the Federal Reserve Board. The Board will continue in an advisory capacity to the Secretary of HUD on the implementation of the program.

HUD also takes the opportunity afforded by this rule to address the two public comments received on the January 7, 2009, interim rule issued by the Board. Comments received in response to this rule will be taken into consideration in the development of a final rule, to follow this interim rule.

**DATES:** *Effective Date:* March 15, 2010. *Comment Due Date:* March 15, 2010.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500.

Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.*

Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Margaret Burns, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 9278, Washington, DC 20410-8000; telephone number 202-708-2121 (this is not a toll-free number). Persons with hearing or

speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. The HOPE for Homeowners Program*

The HOPE for Homeowners Act of 2008 (Title IV of Division A of the Housing and Economic Recovery Act of 2008) (HERA) (Pub. L. 110-289, 122 Stat. 2654, approved July 30, 2008) amended Title II of the National Housing Act (NHA) to add a new section 257. Section 257 (12 U.S.C. 1701z-23) establishes the H4H program, a temporary program within HUD's Federal Housing Administration (FHA) that offers homeowners and mortgage loan holders (or servicers acting on their behalf) insurance on the refinancing of loans for distressed mortgagors to support long-term sustainable homeownership and avoid foreclosure. Section 257 authorizes FHA to insure such refinanced eligible mortgages commencing no earlier than October 1, 2008, and the authority to insure new mortgages expires September 30, 2011.

The fundamental principle behind the H4H program is that providing new equity and reducing monthly payments for distressed homeowners may be an effective way to help homeowners avoid foreclosure. Under the H4H program, refinanced mortgages are offered by FHA-approved mortgagees to eligible borrowers who are at risk of losing their homes to foreclosure. The refinanced mortgage insured by FHA can have a principal loan balance below the current appraised value of the home, creating new equity in the mortgaged property. Participating mortgagors share their new equity and future appreciation of the value of the property subject to the refinanced mortgage with FHA. All holders of outstanding mortgage liens on a property must agree to accept the proceeds of the H4H program mortgage as payment in full of all indebtedness under the existing mortgage(s). Participation in the H4H program is voluntary. No mortgagees, servicers, or investors are compelled to participate.

Under section 257, as originally established by HERA, the H4H program was administered by a Board of Directors (Board) comprised of the Secretary of HUD, the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System (Federal Reserve Board), and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation (or their designees). On October 6, 2008, at 73 FR 58418, the

Board published regulations in the **Federal Register** that established the core requirements for implementation of the H4H program. These regulations are codified in part 4001 of title 24 of the CFR.

#### *B. The Board's January 7, 2009, Interim Rule*

Section 124 of the Emergency Economic Stabilization Act of 2008 (Pub. L. 110-343, 122 Stat. 3765, approved October 3, 2008) (EESA) amended section 257 of the NHA to provide additional flexibility and options to lenders participating in the H4H program. Among other things, section 124 of EESA authorizes upfront payments to a holder of an existing subordinate mortgage in lieu of providing the subordinate lien holder with a portion of HUD's 50 percent interest in the future appreciation of the value of the property. On January 7, 2009, at 74 FR 617, the Board published an interim rule to implement the changes made by EESA, and provided the public with a 60-day period to comment on the regulatory amendments. The public comment period closed on March 9, 2009.

#### *C. The Helping Families Save Their Homes Act of 2009*

On May 20, 2009, the President signed into law the Helping Families Save Their Homes Act of 2009 (Division A of Pub. L. 111-22, 123 Stat. 1632) (Helping Families Act). Section 202 of the Helping Families Act makes several amendments to section 257 of the NHA to enhance operation of the H4H program and to provide additional flexibility to participants. In addition, the Helping Families Act transfers responsibility, including rulemaking authority, for the H4H program from the Board to the Secretary of HUD. The Board will continue in an advisory capacity to the Secretary of HUD on the implementation of the H4H program.

## **II. This Interim Rule**

This interim rule implements the changes made to the H4H program by the Helping Families Act. The statutory revisions to the H4H program made by the Helping Families Act, in several instances, have superseded the regulatory amendments made by the January 7, 2009, interim rule. Nonetheless, HUD takes the opportunity afforded by today's publication to also address the two public comments received on the January 7, 2009, interim rule issued by the Board.

This section of the preamble discusses the regulatory amendments made in response to the Helping Families Act.

Section IV of the preamble discusses the issues and suggestions submitted by the two public commenters on the January 7, 2009, interim rule and HUD's responses to these comments.

#### *Key Changes Made to the H4H Program by the Helping Families Act*

1. *Transfer of H4H program responsibility to HUD.* As noted, the Helping Families Act transfers responsibility for the H4H program from the Board to HUD. This interim rule implements this statutory mandate by transferring the H4H program regulations to a new part 257 of HUD's regulations in title 24 of the CFR. With the exception of the regulatory amendments discussed below in this preamble, the substance of new part 257 is nearly identical to that of 24 CFR part 4001, which will be removed from the CFR in a future rulemaking. Where appropriate, the interim rule revises the H4H program regulations to replace references to the Board with references to HUD. Because the Board continues to serve in an advisory capacity to the Secretary of HUD on the administration of the H4H program, the interim rule does not remove 24 CFR part 4000, which establishes the Board's procedures governing access to records under the Freedom of Information Act (5 U.S.C. 552). The procedures contained in part 4000 remain applicable to the Board's ongoing advisory responsibilities.

2. *Inheritance exception to present ownership interest requirement (§ 257.104).* Section 257(e)(11) of the NHA requires that the residence covered by the H4H program mortgage be the only residence in which the mortgagor has a present ownership interest. The Helping Families Act amended this provision to allow the Secretary of HUD to establish an exception for a mortgagor who has inherited property. The interim rule implements this statutory flexibility by providing for such an exception.

3. *Eligible mortgagors (§ 257.106).* Prior to amendment by the Helping Families Act, section 257 of NHA based the calculation of a borrower's debt-to-income (DTI) ratio on a March 1, 2008 date. Specifically, the borrower's DTI could be calculated as of March 1, 2008, or as of a later date, due to mortgage resets occurring after that date, but under the mortgage terms in effect on March 1, 2008. The Helping Families Act streamlines this calculation by removing all references to March 1, 2008, and instead requiring that DTI be calculated based on the borrower's existing mortgages at the time of application for the H4H program mortgage. The interim rule implements

the simplified DTI calculation provisions in new § 257.106(a).

In accordance with the Helping Families Act, the interim rule prohibits mortgagors with a net worth that exceeds \$1 million from participation in the H4H program (§ 257.106(d)). For purposes of the statutory ban on millionaires, the interim rule defines net worth as the total dollar amount of all the liabilities subtracted from the total dollar amount of all the assets (other than retirement accounts) of the mortgagor.

4. *Underwriting requirements (§ 257.110).* The interim rule provides additional flexibility regarding the loan-to-value (LTV) thresholds and the allowable total monthly payments under the H4H program mortgage. HUD believes this flexibility will facilitate participation in the H4H program.

The H4H program regulations, prior to amendment by the Helping Families Act, defined that the initial principal balance of the H4H program mortgage as a percentage of the current appraised value of the property may not exceed 96.5 percent. The interim rule will no longer codify a regulatory cap on LTV. HUD has determined that any such cap is more appropriately established through Mortgagee Letter, given the temporary nature of the program and the urgency of the situations the program is intended to address. Removal of the codified LTV cap will allow HUD to more rapidly modify the H4H program in response to evolving housing market conditions. For these reasons, HUD's position is that removal from the codified regulations is the right approach; however, HUD specifically invites comment on removal of the LTV cap from the codified regulations.

The rule continues to provide that the mortgagor's total monthly mortgage payment under a H4H program mortgage with an LTV greater than 90 percent, excluding the upfront premium, may not exceed 31 percent of the mortgagor's monthly gross income. Moreover, as required under the current regulations, the sum of the total monthly mortgage payment under such a H4H program mortgage and all monthly recurring expenses of the mortgagor may not exceed 43 percent of the mortgagor's monthly gross income. (See § 257.110(a)(2).)

5. *Mortgagor representations (§§ 257.112 and 257.116).* The Helping Families Act revises the existing required mortgagor representations. Specifically, the mortgagor is now required to provide a certification to the Secretary of HUD that the mortgagor has not: (1) Intentionally defaulted on an existing mortgage or other substantial

debt during the 5-year period ending upon insurance of the H4H program mortgage, (2) knowingly, willfully, and with actual knowledge furnished material information known to be false for purposes of obtaining the H4H program mortgage; or (3) been convicted under federal or state law for fraud during the 10-year period ending upon the insurance of the H4H program mortgage. The interim rule implements this requirement at § 257.116(b)(1). For purposes of the required certification, the interim rule defines substantial debt to mean any individual liability of the mortgagor that exceeds \$100,000.

The Helping Families Act also requires that the mortgagee make a good-faith effort to determine that the mortgagor has not been convicted under federal or state law for fraud during the 10-year period ending upon insurance of the H4H program mortgage. The interim rule implements this provision at § 257.112(b) by requiring that the mortgagor provide the mortgagee with a certification that the mortgagor has not been convicted of fraud during the previous 10-year period and requiring that the mortgagee take such other action as HUD may specify in administrative guidance. For purposes of reducing required paperwork and facilitating H4H program oversight, the interim rule allows this certification to be combined with the mortgagor certification to the Secretary of HUD, discussed above and required under § 257.116(b)(1).

6. *Appreciation sharing and upfront payments (§ 257.120)*. This interim rule makes the following changes to the appreciation sharing and upfront payment provisions in order to implement the Helping Families Act, as well as to provide additional flexibility and thereby facilitate increased participation in the H4H program.

First, the interim rule removes the consideration of capital improvement expenditures from the calculation of appreciation in value. Further, the interim rule no longer requires that a subordinate mortgage must have been originated on or before January 1, 2008, in order for the person or entity holding the subordinate mortgage to be eligible for a portion of FHA's interest in the appreciation in the value of the property.

The interim rule implements the limitation on the amount of appreciation to which FHA is entitled. The Helping Families Act amends section 257 of the NHA to limit the FHA appreciation interest to 50 percent of the appraised value of the property at the time the H4H program mortgage was originated. Accordingly, § 257.120(b) of

the interim rule provides that, upon sale or disposition of the property, FHA may be entitled to receive the lesser of up to 50 percent of the appreciation in value, or an amount equal to the appraised value of the property at the time when the existing senior mortgage was originated.

The interim rule removes the current Appendix to the H4H program regulations and will no longer codify the specific amounts of the upfront payment and the risk-adjusted future appreciation payment. Regulatory codification of the specific amounts has the potential to delay needed adjustments. Accordingly, HUD has determined that these amounts are more appropriately set forth through a Mortgage Letter, which will allow the Department to more expeditiously update the amounts in response to the availability of new economic data and feedback from H4H program participants.

As noted above, section 124 of EESA authorizes upfront payments to a holder of an existing subordinate mortgage in lieu of providing the subordinate lien holder a portion of HUD's 50 percent interest in the future appreciation of the value of the property. HUD has implemented this authority through rulemaking. This interim rule clarifies the regulatory language to provide that the offer of an upfront payment is at HUD's discretion. HUD notes that, at least initially, FHA will be exercising the authority to offer upfront payments in lieu of any shared appreciation.

7. *Payment of allowable fees and closing costs no longer codified in regulation*. New part 257 will no longer codify the sources that may be used to pay allowable closing costs incurred in connection with the refinancing and insurance of a mortgage under the H4H program. Similar to removal of the LTV cap in codified regulation, removal of allowable closing costs allows HUD to more quickly respond to changing conditions, such as new costs that may appear, and make a determination of whether they should be considered allowable costs. This is the type of item that is better addressed in more specific guidance, such as through a mortgagee letter. Although HUD's position is that removal from the codified regulations is the best approach, HUD specifically solicits comments on the exclusion in the codified regulations of sources that may be used to pay allowable closing costs.

8. *Revised upfront and annual mortgage insurance premiums (§ 257.203)*. The interim rule implements the flexibility provided by the Helping Families Act regarding

upfront and annual mortgage insurance premiums for H4H program mortgages. Prior to amendment by the Helping Families Act, section 257 of the NHA specified an upfront premium of 3 percent of the amount of the original insured principal obligation of the H4H program mortgage, and an annual premium of 1.5 percent of the remaining insured principal balance. The Helping Families Act amended section 257 to provide for an upfront premium of "not more than" 3 percent, and an annual premium of "not more than" 1.5 percent. The interim rule reflects these statutory changes at § 257.203(a)(1) and (a)(2).

9. *Streamlined property preservation exception to subordinate lien restrictions (§ 257.303)*. The interim rule streamlines eligibility for the property preservation exception to the restriction on subordinate liens. Section 257 prohibits the mortgagor from granting a new second lien on the property during the first 5 years of the H4H program mortgage, except as the Secretary of HUD determines necessary to ensure the maintenance of property standards. The current H4H program regulations establish seven factors that must be met in order to qualify for the property preservation exception. This interim rule simplifies the determination of whether a subordinate lien qualifies for the exception by removing the seventh factor, regarding the sum of the unpaid principal balance and accrued and unpaid interest on the H4H program mortgage and the original principal balance of the new mortgage debt. Further, the interim rule clarifies that the restriction on subordinate liens does not apply to FHA loss mitigation actions (e.g., mortgage modifications and partial claims).

### III. Discussion of the Public Comments on the January 7, 2009, Interim Rule

Two public comments were submitted on the January 7, 2009, interim rule; one by a national organization representing mortgage bankers, and the other representing state and federal credit unions. Both commenters were generally supportive of the regulatory amendments promulgated in the interim rule, but also offered suggestions they believed would further enhance the H4H program. As noted earlier in this preamble, the statutory amendments made by the Helping Families Act have, in several instances, superseded provisions in the January 7, 2009, regulatory changes. Nevertheless, HUD appreciates the support expressed by the commenters and the suggestions for program improvements that were offered. The issues and suggestions submitted by the two public

commenters and HUD's responses to these comments are as follows.

*Comment: The process for becoming an FHA-approved lender is too burdensome.* One of the commenters stated that the process for qualifying as an FHA-approved lender is very burdensome. The commenter expressed interest in working with FHA to discuss how the process may be streamlined.

*Response:* The January 7, 2009, interim rule did not address the FHA lender approval process or solicit comment on this process, and therefore the comment is outside the scope of the January 7, 2009, interim final rule, which pertains solely to the H4H program regulations. Nevertheless, HUD appreciates the feedback on the FHA-approved lender process. HUD is frequently reviewing its processes for the purpose of determining that the processes achieve their goal without being unduly burdensome.

*Comment: The upfront and future appreciation payments percentages are too low.* One of the commenters stated that the amounts of the risk-adjusted upfront payment and the risk-adjusted future appreciation payment provided for by the January 7, 2009, interim rule will discourage participation in the H4H program, and position FHA to only receive loans where foreclosure is imminent. The commenter stated that both payments should be significantly higher to encourage subordinate lien holder participation.

*Response:* As noted above in this preamble, new 24 CFR part 257 no longer codifies the specific amounts of the upfront payment and the risk-adjusted future appreciation payment. As discussed, HUD has determined that these amounts are more appropriately set forth through Mortgagee Letter, which will allow the Department to more expeditiously adjust the specific amounts to reflect changes in market conditions and facilitate the participation of subordinate lien holders in the H4H program.

*Comment: Additional flexibility is necessary regarding allowable LTV and DTI ratios.* One of the commenters suggested that the allowable LTV ratio of 96.5 percent not be limited to those mortgagors whose new total monthly payment under the H4H program does not exceed 31 percent of the mortgagor's monthly gross income. Further, the commenter suggested that servicers should be allowed to consider compensating factors as a basis for exceeding the current maximum DTI. The commenter stated that these changes would make the H4H program more accessible to mortgagors in high-cost areas, such as California, where

borrowers are accustomed to spending a higher percentage of their gross income on housing.

*Response:* As noted above, this interim rule revises the provisions regarding allowable LTV ratios to provide additional flexibility and address concerns, such as those expressed by the commenter regarding high-cost areas. Specifically, the interim rule no longer codifies a cap on LTV, since HUD has determined that any such cap is more appropriately established through Mortgagee Letter. Establishment of LTV limits through Mortgagee Letter will allow HUD to more rapidly modify the H4H program in response to evolving housing market conditions. The rule continues to provide that the mortgagor's total monthly mortgage payment under a H4H program mortgage with an LTV greater than 90 percent, excluding the upfront premium, may not exceed 31 percent of the mortgagor's monthly gross income. Moreover, as required under the current regulations, the sum of the total monthly mortgage payment under such a H4H program mortgage and all monthly recurring expenses of the mortgagor may not exceed 43 percent of the mortgagor's monthly gross income. (See § 257.110(a)(2).)

*Comment: Fully vetted legal documents should be provided for shared appreciation and shared equity mortgage documents.* One of the commenters suggested that a servicer should not be liable for ensuring that the legal documents for the shared equity and appreciation mortgages are valid and enforceable in all states. The commenter suggested that appropriately vetted legal documents necessary for executing both types of subordinate loans should be provided by FHA. The commenter stated that the burden of performing the necessary legal review, and the associated costs and risks of litigation should the mortgages be found deficient, have deterred servicers from participating in the H4H program.

*Response:* Lenders should modify the documents as may be necessary for compliance with state law. However, well-established document preparation services have modified, or are in the process of offering, state-compliant model security instruments for the H4H program. FHA-approved lenders have long used these services.

*Comment: Endorsement time frame is not consistent with standard endorsement procedures.* One of the commenters objected to the requirement that the lender include in the file evidence that the borrower has made the first payment within 120 days of closing. Under the H4H program

regulations, if the borrower has not made such payment, the loan will not be eligible for payment of a claim under the H4H program. The commenter stated that this requirement is inconsistent with the standard endorsement rule for FHA loans that allows loans that are endorsed late to receive insurance benefits if such loans are current or brought current. The commenter wrote that while section 257 of the NHA provides that insurance benefits will not be paid if there is a "first payment default," FHA has the authority to interpret the term to mean "a borrower who does not make the first payment or subsequent payments on the loan." The commenter wrote that adopting the interpretation suggested by the commenter, in combination with the retention of the current FHA endorsement policy, will limit the exposure of servicers to those cases where the borrower fails to make the first and subsequent payments on a late endorsement.

*Response:* The H4H program regulations provide endorsement procedures that protect lenders from exposure and promote confidence in the insurance being provided. The change suggested by the commenter would actually increase a lender's exposure should the borrower not make the first payment since HUD is prohibited from paying a claim under such circumstances. To ensure that the lenders comply with the first payment default provision established in the law, this interim rule continues to require the lender to include in the file evidence that the borrower has made the first payment within 120 days of loan closing.

#### IV. Justification for Interim Rulemaking

HUD generally publishes regulatory changes for public comment before issuing them for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest." For the following reasons, the Department finds that a delay in the effectiveness of this interim rule, in order to solicit prior public comment, would be contrary to the public interest and statutory direction.

As noted above in this preamble, H4H is a temporary program. Section 257(r) of the NHA provides that the Secretary of HUD may not enter into any new commitment to insure an H4H program

mortgage after September 30, 2011. Further, the H4H program was enacted to help the federal government address the national housing crisis. As noted by Congress, the goal of the H4H program is, in part, “to help stabilize and provide confidence in mortgage markets by bringing transparency to the value of assets based on mortgage assets” (section 257(b)(3)). The changes made by the Helping Families Act were designed to provide additional needed flexibility and address programmatic deficiencies identified by lenders, HUD, and Congress. The pressing need to address the housing crisis and the temporary nature of the H4H program demonstrate it was the intent of Congress that the benefits of the H4H program be made promptly available to the public. A delay of the effectiveness of this rule for the prior solicitation of public comment would be contrary to the public interest, by postponing the benefits that Congress sought to be made immediately available to homeowners and lenders.

The majority of the regulatory amendments made by this interim rule closely track the statutory language of the Helping Families Act. The amendments are largely conforming in nature, updating the current H4H program regulations to reflect the language of the Helping Families Act. A delay in the effectiveness of these regulatory amendments is unnecessary because the Department does not have the discretion to revise statutory language in response to comments submitted by the public. Although not directly on point as to whether good cause exists for the omission of prior public comment, the Department also notes that, in the case of other regulatory changes, the interim rule revises existing program requirements to provide lenders and homeowners with additional flexibility and facilitate their participation in the H4H program. The interim rule does not impose new regulatory burdens on lenders and homeowners.

Although HUD has determined that good cause exists to publish this rule for effect without prior solicitation of public comment, the Department recognizes the value and importance of public input in the rulemaking process. Accordingly, HUD is issuing these regulatory amendments on an interim basis and providing for a 60-day public comment period. All comments will be considered in the development of the final rule.

## V. Findings and Certifications

### *Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled, “Regulatory Planning and Review”). This rule was determined to be economically significant under Executive Order 12866. The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

The Economic Analysis prepared for this rule is also available for public inspection and on HUD’s Web site at <http://www.hud.gov>. A summary of the findings contained in the Economic Analysis follows.

The economic impacts of this rule stem largely from the changes to the H4H program to increase participation. Readjusting the parameters of the H4H program will not substantially change the benefits of preventing a foreclosure. The modifications will, however, significantly increase the number of refinancings by imposing less onerous constraints on lenders and borrowers. HUD estimates that, with 10,000 participants annually, the H4H program will generate \$273 million in net benefits to society. H4H program participation could be as high as 137,500 over the life of the program, with commensurately higher benefits.

While the benefits per refinancing are substantial, the aggregate impact depends upon participation. The success of the H4H program will largely depend upon alternative opportunities for borrowers to refinance or modify their loans and the ability and willingness of servicers and investors to embrace the program. HUD estimates that a little more than 750,000 nonprime borrowers experiencing foreclosure could potentially be helped through a revised H4H program, but that only 18 percent, or 137,500 households, will actually refinance through a revised H4H program due to various factors affecting the ineligibility of many of the potentially eligible homeowners. This

number of 137,500 (or approximately 90,000 annually) should be viewed as a maximum.

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This interim rule does not impose new regulatory burdens on homeowners and lenders participating in the H4H program. The regulatory amendments made by this interim rule closely adhere to the statutory language of the Helping Families Act. Accordingly, the majority of the amendments are largely conforming in nature, updating the current H4H program regulations to reflect the language of the Helping Families Act, and do not reflect the exercise of agency discretion to establish policy. Moreover, all of the regulatory changes—those mandated by the Helping Families Act and those where HUD is exercising policy discretion—revise existing program requirements to provide lenders and homeowners with additional flexibility and facilitate their participation in the H4H program, and not to establish new regulatory burdens. Accordingly, HUD has determined that this interim rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD’s determination that this rule does not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments from all entities, including small entities, regarding less burdensome alternatives to this rule that will meet HUD’s objectives as described in this preamble.

### *Paperwork Reduction Act*

The information collection requirements contained in this rule have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number 2502-0579. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled “Federalism”) prohibits, to the extent practicable and permitted by law, an

agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does 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) (UMRA) 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 interim rule will not impose any federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

#### *Environmental Review*

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

#### **List of Subjects**

##### *24 CFR Part 257*

Administrative procedures, Practice and procedure, Mortgage insurance, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends chapter I of title 24 of the Code of Federal Regulations by adding part 257 to read as follows:

## **PART 257—HOPE FOR HOMEOWNERS PROGRAM**

### **Subpart A—HOPE for Homeowners Program—General Requirements**

- 257.1 Purpose of program.
- 257.3 Scope of part.
- 257.5 Approval of mortgagees.
- 257.7 Definitions.

### **Subpart B—Eligibility Requirements and Underwriting Procedures**

- 257.102 Cross-reference.
- 257.104 Eligible mortgages.
- 257.106 Eligible mortgagors.
- 257.108 Eligible properties.
- 257.110 Underwriting.
- 257.112 Mortgage verifications.
- 257.114 Appraisal.
- 257.116 Representations and prohibitions.
- 257.118 Exit fee.
- 257.120 Appreciation sharing or up-front payment.
- 257.122 Forgiveness or waiver of prepayment penalties and default fees.

### **Subpart C—Rights and Obligations Under the Contract of Insurance**

- 257.201 Cross-reference.
- 257.203 Calculation of up-front and annual mortgage insurance premiums for H4H program mortgagees.

### **Subpart D—Servicing Responsibilities**

- 257.301 Cross-reference.
- 257.303 Prohibition on subordinate liens during first 5 years.

### **Subpart E—Enforcement**

- 257.401 Notice of false information from mortgagor-procedure.
- 257.403 Prohibitions on interested parties in insured mortgage transaction.
- 257.405 Mortgagees.

**Authority:** 12 U.S.C. 1701z–22; 42 U.S.C. 3535(d).

### **Subpart A—HOPE for Homeowners Program—General Requirements**

#### **§ 257.1 Purpose of program.**

The HOPE for Homeowners (H4H) program is a temporary program authorized by section 257 of the National Housing Act, established within the Federal Housing Administration (FHA) of the Department of Housing and Urban Development (HUD) that offers to homeowners and existing loan holders (or servicers acting on their behalf), FHA insurance on refinanced loans for distressed borrowers to support long-term sustainable homeownership by, among other things, allowing homeowners to avoid foreclosure. The H4H program is administered by HUD through FHA. As used in this subpart, the terms HUD and FHA are interchangeable.

#### **§ 257.3 Scope of part.**

(a) *Core requirements.* This subpart establishes the core requirements for the H4H program.

(b) *Basic program parameters.* (1) FHA is authorized to insure eligible refinanced mortgages under the H4H program commencing no earlier than October 1, 2008. The authority to insure additional mortgages under the H4H program expires September 30, 2011.

(2) Under the H4H program, an eligible mortgagor may obtain a refinancing of his or her existing mortgage(s) with a new mortgage loan insured by FHA, subject to conditions and restrictions specified in section 257 of the National Housing Act and requirements established by HUD.

(c) *Other applicable requirements.* Except as may be otherwise provided by HUD, the provisions and requirements in the FHA regulations at 24 CFR part 203, which generally are applicable to all FHA-insured single-family mortgage insurance programs, also apply with respect to the insurance of a refinanced eligible mortgage under the H4H program.

#### **§ 257.5 Approval of mortgagees.**

(a) *Eligibility.* In order for a mortgage to be eligible for insurance under this part, the mortgagee originating the mortgage loan and seeking mortgage insurance under this part shall have been approved by HUD pursuant to 24 CFR part 202.

(b) *Mortgagee whose loan is to be refinanced.* A mortgagee holding or servicing an eligible mortgage to be refinanced and insured under section 257 of the National Housing Act is not required to be an approved mortgagee as required in paragraph (a) of this section, unless the mortgagee seeks to be the originator of the refinanced mortgage to be insured by FHA.

#### **§ 257.7 Definitions.**

As used in this part and in the H4H program, the following definitions apply.

*Act* means the National Housing Act (12 U.S.C. 1701 *et seq.*).

*Allowable closing costs* mean charges, fees, and discounts that the mortgagee may collect from the mortgagor as provided at 24 CFR 203.27(a).

*Board* means the Advisory Board for the HOPE for Homeowners program, which is comprised of the Secretary of HUD, the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System (Federal Reserve Board), and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation or the designees of each such individual.

*Contract of insurance* means the agreement by which FHA provides mortgage insurance to a mortgagee.

*Default and delinquency fees* means late charges contained in a mortgage/ security instrument for the late or nonreceipt of payments from mortgagors after the date upon which payment is due, including charges imposed by the mortgagee for the return of payments on the mortgage due to insufficient funds.

*Direct financial benefit* means the same as “initial equity” determined under § 257.118(a).

*Disposition* means any transaction that results in whole or partial transfer of title of a property other than—

- (1) A sale of the property; or
- (2) Any transaction or transfer specified at 12 U.S.C. 1701j–3(d)(1) through (8).

*Eligible Mortgage* means a mortgage as defined at § 257.104.

*Existing senior mortgage* means an eligible mortgage that has superior priority and is being refinanced by a mortgage insured under section 257 of the Act.

*Existing subordinate mortgage* means a mortgage that is subordinate in priority to an eligible mortgage that is being refinanced by a mortgage insured under section 257 of the Act.

*FHA* means the Federal Housing Administration.

*HOPE for Homeowners program (or H4H program)* means the program established under section 257 of the Act.

*HUD* means the Department of Housing and Urban Development.

*Intentionally defaulted* for purposes of section 257(e)(1)(A) of the Act means the mortgagor:

- (1) Knowingly failed to make payment on the mortgage or debt;
- (2) Had available funds at the time payment on the mortgage or debt was due that could pay the mortgage or debt without undue hardship; and
- (3) The debt was not subject to a bona fide dispute.

*Mortgage* has the same meaning as provided at 24 CFR 203.17(a)(1).

*Mortgagee* has the same meaning as provided at 24 CFR 203.251(f).

*Mortgagor* has the same meaning as provided at 24 CFR 203.251(e).

*Net worth* means the total dollar amount of all liabilities subtracted from the total dollar amount of all assets (other than retirement accounts) of the mortgagor.

*Prepayment penalties* mean such amounts as defined at 12 CFR 226.32(d)(6) of the Federal Reserve Board’s Regulation Z (Truth in Lending).

*Primary residence* means the dwelling where the mortgagor maintains his or

her permanent place of abode and typically spends the majority of the calendar year. A mortgagor can have only one primary residence.

*Program mortgage* means the mortgage into which the existing senior mortgage is refinanced.

*Related party* of a person means any of the following or another person acting on behalf of the person or any of the following—

- (1) The person’s father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, the spouse of any of the foregoing, and the person’s spouse;
- (2) Any entity of which 25 percent or more of any class of voting securities is owned, controlled, or held in the aggregate by the person or the persons referred to in paragraph (1) of this definition; and
- (3) Any entity of which the person or any person referred to in paragraph (1) of this definition serves as a trustee, general partner, limited partner, managing member, or director.

*Secretary* means the Secretary of Housing and Urban Development.

*Substantial debt* means any individual liability of the mortgagor that exceeds \$100,000.

*Total monthly mortgage payment* means the sum of:

- (1) Principal and interest, as determined on a fully indexed and fully amortized basis; and
- (2) *Escrowed amounts.* (i) The monthly required amount collected by or on behalf of the mortgagee for real estate taxes, premiums for required hazard and mortgage insurance, homeowners’ association dues, ground rent, special assessments, water and sewer charges, and other similar charges required by the note or security instrument; or
- (ii) For mortgages not subject to escrow deposits, 1/12 of the estimated annual costs for items listed in paragraph (2)(i) of this definition.

## Subpart B—Eligibility Requirements and Underwriting Procedures

### § 257.102 Cross-reference.

(a) All of the provisions of 24 CFR part 203, subpart A, concerning eligibility requirements of mortgages covering one-to-four family dwellings under section 203 of the National Housing Act (12 U.S.C. 1709) apply to mortgages on one-to-four family dwellings to be insured under section 257 of the National Housing Act (12

U.S.C. 1701z–22), *except the following provisions*: 203.7 Commitment process; 203.10 Informed consumer choice for prospective FHA mortgagors; 203.12 Mortgage insurance on proposed or new subdivisions; 203.14 Builder’s warranty; 203.16 Certificate and contract regarding use of dwelling for transient or hotel purposes; 203.17(d) Maturity; 203.18 Maximum mortgage amounts; 203.18a Solar-energy system; 203.18b Increased mortgage amount; 203.18c One-time or up-front MIP excluded from limitations on maximum mortgage amounts; 203.18d Minimum principal loan amount; 203.19 Mortgagor’s minimum investment; 203.20 Agreed interest rate; 203.29 Eligible mortgage in Alaska, Guam, Hawaii or the Virgin Islands; 203.32 Mortgage lien; 203.37a Sale of property; 203.42 Rental properties; 203.43 Eligibility of miscellaneous types of mortgages; 203.43a Eligibility of mortgages covering housing in certain neighborhoods; 203.43d Eligibility of mortgages in certain communities; 203.43e Eligibility of mortgages covering houses in federally impacted areas; 203.43g Eligibility of mortgages in certain communities; 203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act; 203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act; 203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation Indians; 203.44 Eligibility of advances; 203.45 Eligibility of graduated payment mortgages; 203.47 Eligibility of growing equity mortgages; 203.49 Eligibility of adjustable rate mortgages; 203.50 Eligibility of rehabilitation loans; 203.51 Applicability; and 203.200–203.209 Insured Ten-Year Protection Plans (Plan).

(b) For the purposes of this subpart, all references at 24 CFR part 203, subpart A, to section 203 of the Act shall be construed to refer to section 257 of the Act. Any references at 24 CFR part 203, subpart A, to the “Mutual Mortgage Insurance Fund” shall be deemed to be to the Home Ownership Preservation Entity Fund.

(c) If there is any conflict in the application of any requirement of 24 CFR part 203, subpart A, to this part, the provisions of this part shall control.

### § 257.104 Eligible mortgages.

A mortgage eligible to be refinanced under section 257 of the Act must:

- (a) Have been originated on or before January 1, 2008.
- (b) Be secured by a property that is:

(1) Owned and occupied by the mortgagor as his or her primary residence; and

(2) The only residence in which the mortgagor has any present ownership interest, except for property acquired by the mortgagor through inheritance.

(c) Meet such other requirements as HUD may adopt.

#### § 257.106 Eligible mortgagors.

A mortgagor shall be eligible to refinance his or her existing mortgages under section 257 of the Act only if:

(a)(1) The mortgagor has, as of the date of application for the H4H program mortgage, a total monthly mortgage payment of more than 31 percent of the mortgagor's monthly gross income; or

(2) If the mortgagor's existing senior mortgage or existing subordinate mortgage, if any, is an adjustable-rate mortgage that by its terms resets after the date of application for the H4H program mortgage, the mortgagor will be likely to have a total monthly mortgage payment (based on mortgages outstanding on the date of application for the H4H program mortgage) of more than 31 percent of the mortgagor's monthly gross income calculated as of the date the mortgagor applies for the H4H program mortgage;

(b) The mortgagor does not have an ownership interest in any other residential property, except for a property that the mortgagor has inherited;

(c) The mortgagor has not been convicted of fraud under federal or state law during the 10-year period ending upon insurance of the H4H program mortgage;

(d) The mortgagor does not have a net worth, as of the date the mortgagor first applies for the H4H program mortgage, which exceeds \$1 million.

(e) The mortgagor meets such other requirements as HUD may adopt.

#### § 257.108 Eligible properties.

(a) A mortgage may be insured under the H4H program only if the property that is to be the security for the mortgage is a one-to-four unit residence.

(b) The following property types are eligible to secure a mortgage insured under the H4H program:

(1) Detached and semi-detached dwellings;

(2) A condominium unit;

(3) A cooperative unit; or

(4) A manufactured home that is permanently affixed to realty and is treated as realty under applicable state law, except state taxation law.

#### § 257.110 Underwriting.

A mortgage may be insured under the H4H program only if the following conditions are met:

(a) *Loan-to-value and income thresholds.* The loan-to-value (LTV), payment-to-income, and debt-to-income ratios of the H4H program mortgage do not exceed the thresholds set forth in either paragraph (a)(1) or (a)(2) of this section.

(1) *Program mortgage with LTV ratio of 90 percent or less.* (i) The initial principal balance of the H4H program mortgage (excluding the amount of the up-front premium) as a percentage of the current appraised value of the property does not exceed 90 percent;

(ii) The total monthly mortgage payment of the mortgagor under the H4H program mortgage does not exceed 38 percent of the mortgagor's monthly gross income; and

(iii) The sum of the total monthly mortgage payment under the H4H program mortgage and all monthly recurring expenses of the mortgagor do not exceed 43 percent of the mortgagor's monthly gross income.

(2) *Program mortgage with LTV of greater than 90 percent.* (i) The initial principal balance of the H4H program mortgage (excluding the amount of the up-front premium) as a percentage of the current appraised value of the property exceeds 90 percent (up to any limit established by HUD through Mortgagee Letter);

(ii) The total monthly mortgage payment of the mortgagor under the H4H program mortgage does not exceed 31 percent of the mortgagor's monthly gross income; and

(iii) The sum of the total monthly mortgage payment under the H4H program mortgage and all monthly recurring expenses of the mortgagor do not exceed 43 percent of the mortgagor's monthly gross income.

(b) *Past credit performance.* The mortgagor must have made at least six full payments on the existing senior mortgage being refinanced under the H4H program.

(c) The H4H program mortgage shall have a maturity of not less than 30 years and not more than 40 years from the date of origination.

(d) *Nonoccupant co-borrowers.* A mortgage loan may be insured by the FHA under the H4H program, even if one of the mortgagors on the loan (*i.e.*, a co-signer) does not reside at the residence securing the loan, provided that the nonresident mortgagor relinquishes all interests in the property that is to be security for the mortgage before an application is submitted for FHA insurance under the H4H program.

(e) *Limit on origination fees.*

Mortgagees may charge and collect from mortgagors allowable closing costs.

#### § 257.112 Mortgagee verifications.

(a) *Income verification.* The mortgagee shall use FHA's procedures to verify the mortgagor's income.

(b) *Mortgage fraud verification.* The mortgagor shall provide a certification to the mortgagee that the mortgagor has not been convicted under federal or state law for fraud during the 10-year period ending upon the insurance of the H4H program mortgage. This certification may be combined with the certification to FHA required under § 257.116(b)(1)(ii). The mortgagee shall take such action as HUD may specify in administrative guidance to ensure that the mortgagor is in compliance with the certification.

#### § 257.114 Appraisal.

(a) The property shall be appraised by an appraiser on the FHA Appraiser Roster.

(b) An appraisal of a property to be security for an H4H program mortgage shall be conducted in accordance with Uniform Standards of Professional Appraisal Practice (USPAP), and dated no more than 180 days from the date on which the mortgage transaction is closed, except as otherwise provided by HUD.

(c) The mortgagee must inform the appraiser that copies of the appraisal may be shared with holders and servicers of existing subordinate mortgages.

#### § 257.116 Representations and prohibitions.

(a) *Underwriting and appraisal standards.* In order for the H4H program mortgage to be eligible for insurance under the H4H program, the underwriter and the mortgagee must provide certifications, in a format approved by FHA, that the mortgage is in compliance with the underwriting and the appraisal standards set forth in this part, and that it meets all requirements applicable to the H4H program. FHA may require additional certifications by the mortgagee to ensure compliance with such additional standards as FHA deems necessary, given the specific mortgage transaction presented.

(b) *Mortgagor's liability for repayment.* (1) The mortgagor shall provide a certification to FHA that the mortgagor has not:

(i) Intentionally defaulted on the mortgagor's existing mortgage(s), or any other substantial debt during the 5-year period ending upon insurance of the H4H program mortgage; or

(ii) Knowingly or willfully and with actual knowledge furnished material information known to be false for the purpose of obtaining the H4H program mortgage; and

(iii) Been convicted under federal or state law for fraud during the 10-year period ending upon the insurance of the H4H program mortgage. This certification may be combined with the certification to the mortgagee required under § 257.112(b).

(2) The mortgagor shall provide any other certifications that FHA may otherwise require.

(3) A mortgagor obligated under an H4H program mortgage shall agree in writing, on a form prescribed by HUD, to be liable to pay to HUD any Direct Financial Benefit achieved from the reduction of indebtedness on the existing senior and subordinate mortgages that are being refinanced under the H4H program if he or she makes a false statement or other misrepresentation in the certifications and documentation required for H4H program eligibility, including but not limited to the certifications required under paragraphs (b)(1) and (b)(2) of this section.

(c) *Mortgagee in violation of program requirements.* (1) If the mortgagee holds an H4H program mortgage that it originated and/or underwrote, and FHA finds that the mortgagee violated the representations and warranties required under paragraph (a) of this section, FHA is prohibited from paying FHA insurance benefits to that mortgagee.

(2) If the mortgagee no longer holds the H4H program mortgage that it originated and/or underwrote, FHA will pay an insurance claim to the mortgagee presently holding the H4H program mortgage (if all other requirements of the contract for mortgage insurance are met and the present holder did not participate in the violation of H4H program requirements) and shall seek indemnification from the mortgagee that originated the H4H program mortgage.

(d) *FHA insurance.* A mortgage is eligible for insurance if the mortgagee submits a complete case binder within such time period as HUD prescribes. The binder shall include evidence acceptable to HUD that the mortgage is current.

(e) *Mortgagor failure to make first mortgage payment.* FHA shall not pay a mortgage insurance claim to any mortgagee if the first total monthly mortgage payment is not made within 120 days from the date of closing of the mortgage. The mortgagee shall not, directly or indirectly, make all or a part of the first total monthly mortgage payment on behalf of the mortgagor. The

mortgagee is prohibited from escrowing funds at closing for all or part of the first total monthly mortgage payment.

**§ 257.118 Exit fee.**

(a) *Initial Equity.* For purposes of section 257(k)(1) of the Act, the initial equity created as a direct result of the origination of an H4H program mortgage on a property, as calculated by the H4H program mortgage lender, shall equal:

(1) The lesser of—

(i) The appraised value of the property that was used at the time of origination of the H4H program mortgage to underwrite the mortgage and to determine compliance with the maximum LTV ratio at origination established by section 257(e)(2)(B) of the Act; or

(ii) The outstanding amount due under all existing senior mortgages, existing subordinate mortgages, and nonmortgage liens on the property; less

(2) The original principal amount of the H4H program mortgage on the property.

(b) *FHA's interest.* Upon the sale or disposition of a property secured by the H4H program mortgage or H4H program mortgage refinancing, FHA is entitled to receive the portion of the initial equity (as defined by paragraph (a) of this section) set forth in section 257(k)(1) of the Act, subject to such standards and policies as HUD may establish.

*§ 257.120 Appreciation sharing or up-front payment.*

(a) *Calculation of appreciation.* For purposes of section 257(k)(2) of the Act, the amount of the appreciation in value of a property securing an H4H program mortgage that occurs between the date the mortgage was insured under section 257 of the Act and the date of any subsequent sale or disposition of the property shall be equal to the following, as such amounts of appreciation may be established to the satisfaction of FHA:

(1) In the case of—

(i) A sale of the property to one or more persons, none of whom is a related party of the mortgagor, the gross proceeds from the sale of the property; or

(ii) A disposition of the property or the sale of the property to a related party of the mortgagor, the current appraised value of the property at the time of the disposition or sale; less

(2) The amount of closing costs, as adopted by HUD, incurred by the mortgagor(s) in connection with such sale or disposition, if any; less

(3) The appraised value of the property that was used at the time of origination of the H4H program mortgage to underwrite that mortgage and determine compliance with the

maximum LTV ratio at origination established by section 257(e)(2)(B) of the Act.

(b) *HUD's interest in appreciation.* Upon sale or disposition of a property securing an H4H program mortgage, FHA may be entitled to receive the lesser of:

(1) An amount up to 50 percent of the appreciation in value of the property calculated in accordance with paragraph (a) of this section; or

(2) An amount equal to the appraised value of the property that was used at the time the existing senior mortgage was originated.

(c) *Eligibility of subordinate mortgage holders to receive portion of appreciation in value.* The persons or entities that hold, on the date of origination of an H4H program mortgage, an existing subordinate mortgage on the property may be eligible to receive a portion of FHA's interest in the appreciation in value of the property, as determined in accordance with the provisions of this section and such additional standards and policies that HUD may establish, if:

(1) The amount of the unpaid principal and interest on such existing subordinate mortgage, as of the first day of the month in which the mortgagor made application for the H4H program mortgage, is at least \$2,500; and

(2) Each person holding such existing subordinate mortgage agrees, in connection with the origination of the H4H program mortgage, to fully release:

(i) The mortgagor(s) from any indebtedness under the existing subordinate mortgage; and

(ii) The holder's mortgage lien on the property.

(d) *Shared appreciation interest of subordinate mortgage holders.*

(1) *In general.* The eligible holder(s) of an existing subordinate mortgage on a property securing an H4H program mortgage may be eligible to receive, subject to paragraph (c)(3) of this section, an interest in FHA's interest in the appreciation in the value of such property, up to the amount set forth in administrative instructions issued by HUD.

(2) *Form.* The interest of an eligible holder of an existing subordinate mortgage under paragraph (d) of this section is evidenced in a shared appreciation certificate or other documentation to be issued by, or on behalf of, HUD.

(3) *Multiple subordinate liens.* If there is more than one eligible existing subordinate mortgage on a property securing an H4H program mortgage, the interests of such eligible existing subordinate mortgages under paragraph

(d)(1) of this section shall have priority among each other in the same order of priority that existed among the existing subordinate mortgages on the date of origination of the H4H program mortgage.

(4) *Distribution of appreciation interest to subordinate mortgage holders.* Upon the sale or disposition of a property securing an H4H program mortgage other than sale or disposition related to a default, any proceeds due to H4H as a result of the appreciation in value of the property (as calculated in accordance with paragraph (a) of this section) shall be distributed:

(i) First to the holders of any shared appreciation certificate or other documentation issued by HUD with respect to the property, if any, in accordance with paragraphs (d)(1), (d)(2), and (d)(3) of this section; and

(ii) The remaining amounts, if any, will be retained by FHA.

(e) *FHA election to offer up-front payment in lieu of a share of appreciation.* In lieu of any shared appreciation payment under paragraph (c) of this section, FHA may elect to offer the eligible holder(s) of an existing subordinate mortgage on a property securing an H4H program mortgage, a payment in an aggregate amount as provided by HUD through Mortgagee Letter. Eligible subordinate lien holders would receive the up-front payment contemporaneously with the origination of the H4H program mortgage.

#### **§ 257.122 Forgiveness or waiver of prepayment penalties and default fees.**

The holder or servicer of the existing senior and subordinate mortgages shall either forgive or waive all prepayment penalties and delinquency and default fees.

#### **Subpart C—Rights and Obligations Under the Contract of Insurance**

##### **§ 257.201 Cross-reference.**

(a) All of the provisions of 24 CFR part 203, subpart B, covering mortgages insured under section 203 of the Act shall apply to mortgages insured under section 257 of the Act, *except the following sections:* 203.256 Insurance of open-end advances; 203.259a Scope; 203.260 Amount of insurance premium; 203.261 Calculation of periodic MIP (periodic MIP); 203.270 Open-end insurance charges; 203.280 One-time of up-front MIP; 203.281 Calculation of one-time MIP; 203.283 Refund of one-time MIP; 203.284 Calculation of up-front and annual MIP on or after July 1, 1991; 203.285 Fifteen year mortgages: calculation of up-front and annual MIP on or after December 26, 1992; 203.415–

203.417 Certificate of Claim; 203.420–203.427 Mutual Mortgage Insurance Fund and Distributive Shares; 203.436 Claim procedures—graduated payment mortgages; 203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act; 203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act; 203.439a Mortgages on property in Allegheny Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act; and 203.440–203.495 Rehabilitation Loans.

(b) For the purposes of this subpart, all references at 24 CFR part 203, subpart B, to section 203 of the Act shall be construed to refer to section 257 of the Act. Any references at 24 CFR part 203, subpart B, to the “Mutual Mortgage Insurance Fund” shall be deemed to be to the Home Ownership Preservation Entity Fund.

(c) If there is any conflict in the application of any requirement of 24 CFR part 203, subpart B, to this part, the provisions of this part shall control.

##### **§ 257.203 Calculation of up-front and annual mortgage insurance premiums for H4H program mortgages.**

(a) *Applicable premiums.* Any mortgage presented for endorsement under section 257 on or after October 1, 2008, and prior to September 30, 2011, shall be subject to the following requirements:

(1) *Up-front premium.* FHA shall establish and collect a single premium payment not more than 3 percent of the amount of the original insured principal obligation of the H4H program mortgage.

(2) *Annual premium.* In addition to the premium under paragraph (a)(1) of this section, FHA shall establish and collect an annual premium payment in an amount not more than 1.5 percent of the amount of the remaining insured principal balance of the H4H program mortgage.

(b) *Proceeds for payment of the up-front premium.* The up-front premium shall be paid with proceeds from the H4H program mortgage through a reduction of the amount of indebtedness that existed on the eligible mortgage prior to its being refinanced.

#### **Subpart D—Servicing Responsibilities**

##### **§ 257.301 Cross-reference.**

(a) All of the provisions of 24 CFR part 203, subpart C, covering mortgages insured under section 203 of the Act shall apply to mortgages insured under section 257 of the Act, *except as follows:* 203.664 Processing defaulted mortgages

on property located on Indian land; 203.665 Processing defaulted mortgages on property located on Hawaiian home lands; 203.666 Processing defaulted mortgages on property in Allegheny Reservation of Seneca Nation of Indians; and 203–670–203.681 Occupied Conveyance.

(b) For the purposes of this subpart, all references in 24 CFR part 203, subpart C, to section 203 of the Act shall be construed to refer to section 257 of the Act. Any references in 24 CFR part 203, subpart C, to the “Mutual Mortgage Insurance Fund” shall be deemed to be to the Home Ownership Preservation Entity Fund.

(c) If there is any conflict in the application of any requirement of 24 CFR part 203, subpart C, to this part, the provisions of this part shall control.

##### **§ 257.303 Prohibition on subordinate liens during first 5 years.**

(a) *Prohibition on subordinate liens during first 5 years.* Except for FHA loss mitigation actions (e.g., mortgage modifications and partial claims) or as provided in paragraph (b) of this section, a mortgagor shall not, during the first 5 years of the term of the mortgagor’s H4H program mortgage, incur any debt, take any action, or fail to take any action that would have the direct result of causing a lien to be placed on the property securing the H4H program mortgage if such lien would be subordinate to the H4H program mortgage.

(b) *Property preservation exception.* Paragraph (a) of this section shall not prevent a mortgagor on the H4H program mortgage from incurring new mortgage debt secured by a lien on the property securing the H4H program mortgage that is subordinate to the H4H program mortgage if:

(1) The proceeds of the new mortgage debt are necessary to ensure the maintenance of property standards, including health and safety standards;

(2) Repair or remediation of the condition would preserve or increase the property’s value;

(3) The cost of the proposed repair or remediation is reasonable for the geographic market area;

(4) The results of the repair or remediation are not primarily cosmetic;

(5) The repair or remediation does not represent routine maintenance; and

(6) The new mortgage debt is closed-end credit, as defined in § 226.2 of the Federal Reserve Board’s Regulation Z (12 CFR 226.2).

### Subpart E—Enforcement Mortgagor False Information

#### § 257.401 Notice of false information from mortgagor-procedure.

(a) If FHA finds that the mortgagor has made a false certification or provided false information via any means, including but not limited to false documentation, FHA shall inform the mortgagor, in writing or any other acceptable format, of such fact.

(b) The notice shall be sent to the mortgagor's last known address by both certified and ordinary mail. The notice shall state with specificity the misrepresentation or false statement made by the mortgagor. The notice shall include a request for repayment of the Direct Financial Benefit that the mortgagor is deemed to have received, as determined by FHA, by the refinancing of the eligible mortgage and subordinate mortgages. This does not preclude HUD or the United States from bringing any other action that they may be authorized to bring.

(c) The mortgagor may request a hearing before a Hearing Officer. The hearing will be conducted in accordance with the provisions of 24 CFR part 26, subpart A, except as modified by this section. Requests for a hearing must be made within 45 days from the date of the false information notice.

#### § 257.403 Prohibitions on interested parties in insured mortgage transaction.

(a) A mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company or employee thereof, and any person with an interest in a real estate transaction involving an appraisal conducted as part of the process for insuring a mortgage under section 257 of the Act shall not improperly influence or attempt to improperly influence through any means, including but not limited to coercion, extortion, collusion, compensation, instruction, inducement, intimidation, nonpayment for services rendered, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with the origination, processing, and closing of the mortgage for insurance.

(b) HUD may, pursuant to its authority under section 536(a) of the Act, bring an action to impose a civil money penalty for a violation of paragraph (a) of this section.

(c) The authority to bring a civil money penalty under this section shall not preclude HUD from bringing any other action that HUD may be authorized to bring for a violation of paragraph (a) of this section.

#### § 257.405 Mortgagees.

(a) HUD will monitor mortgagees to ensure compliance with the requirements of the H4H program. The Mortgagee Review Board at HUD is authorized to impose sanctions and civil money penalties against mortgagees who violates program requirements under this part. The authority of the Mortgagee Review Board to impose sanctions and civil penalties shall not preclude HUD from bringing any other action that HUD may be authorized to bring.

(b) Nonpayment of mortgage insurance claims for reasons established in § 257.16 shall not preclude the Mortgagee Review Board or HUD from bringing any action against the mortgagee that the Mortgagee Review Board or HUD are authorized to bring.

(c) The mortgagee may request a hearing before a Hearing Officer. The hearing will be conducted in accordance with the provisions of 24 CFR part 26, subpart A, except as modified by this section. Requests for a hearing must be made within 45 days from the date of the false information notice.

Dated: November 11, 2009.

**David H. Stevens,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 2010-263 Filed 1-11-10; 8:45 am]

**BILLING CODE 4210-67-P**