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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 203

[Docket No. FR-5744-P-01]

RIN 2502-AJ20

### **Federal Housing Administration (FHA): Adjustable Rate Mortgage Notification Requirements and Look-Back Period for FHA-Insured Single Family Mortgages**

**AGENCY:** Office of the Assistant Secretary for Housing □ Federal Housing Commissioner.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes two revisions to FHA’s regulations governing its single family adjustable rate mortgage (ARM) program to align FHA interest rate adjustment and notification regulations with the requirements for notifying mortgagors of ARM adjustments, as required by the regulations implementing the Truth in Lending Act (TILA), as recently revised by the Consumer Financial Protection Bureau (CFPB). The first proposed amendment of this rule would require that an interest rate adjustment resulting in a corresponding change to the mortgagor’s monthly payment for an ARM be based on the most recent index value available 45 days before the date of the rate adjustment. The date that the newly adjusted interest rate goes into effect is often referred to as the “interest change date.” The number of days prior to the interest change date on which the index value is selected is called the “look-back period.” FHA’s current regulations provide for a 30-day look-back period. The second proposed amendment would require that the mortgagee of an FHA-insured ARM comply with the disclosure and notification requirements of the 2013 TILA Servicing Rule, including at least a 60-day but no more than 120-day advance notice of an adjustment to a mortgagor’s monthly

payment. FHA's current regulations provide for notification at least 25 days in advance of an adjustment to a mortgagor's monthly payment.

**DATES:** Comment Due Date: **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

**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 [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) website 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 appointment to review the public comments must be scheduled in advance 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 Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Patricia J. McClung, Acting 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; telephone number 202-708-3175 (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 Relay Service at 800-877-8339.

## **SUPPLEMENTARY INFORMATION**

### **I. Executive Summary**

#### A. Purpose of the Regulatory Action.

This proposed rule would align FHA's regulations governing its single family ARM program with the interest rate adjustment and disclosure and notification periods required for ARMs by TILA, as implemented by the CFPB in a final rule published in the Federal Register on February 14, 2013, at 78 FR 10902, and entitled "Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z)."<sup>1</sup> This February 2013 final rule, referred to in this preamble as the

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<sup>1</sup> The CFPB initially published the rule on its website: <http://www.consumerfinance.gov/regulations/2013-real-estate-settlement-procedures-act-regulation-x-and-truth-in-lending-act-regulation-z-mortgage-servicing-final-rules/>.

2013 TILA Servicing Rule, set the ARM adjustment notice requirement to a period of between 60 days (minimum) and 120 days (maximum) before the newly adjusted payment is due. Additionally, the 2013 TILA Servicing Rule established 45 days as the minimum ARM look-back period. In the preamble to the 2013 TILA Servicing Rule, the CFPB states that FHA's current 30-day look-back period does not provide sufficient time to notify the mortgagor of an interest rate and monthly payment adjustment. To allow HUD sufficient time to comply with the notification requirements of the 2013 TILA Servicing Rule, the CFPB delayed the effective date of the notification requirements in the 2013 TILA Servicing Rule to January 10, 2015, for ARMs insured by FHA with a 30-day look-back period. Therefore, FHA-insured ARMs originated on or after January 10, 2015, must comply with the new notification requirements of the 2013 TILA Servicing Rule.

**B. Summary of the Major Provisions of the Regulatory Action.**

To comply with the 2013 TILA Servicing Rule, FHA proposes two amendments to its regulations. First, FHA proposes to amend 24 CFR 203.49(d)(2) to require FHA-approved mortgagees, in setting a new interest rate, to use the current index figure that is the most recent index figure available 45 days (rather than the current 30 days) before the date of an interest rate adjustment. Revising the current 30-day look-back period to 45 days would enable FHA-approved mortgagees to meet the 60- to 120-day notification period prior to any adjustment to a mortgagor's monthly payment that may occur, as required by the 2013 TILA Servicing Rule.

The second proposed revision would update 24 CFR 203.49(h) to cross-reference the disclosure and notification requirements for interest rate and payment adjustments for ARMs, including the timing, content, and format of such disclosures, contained in the 2013 TILA Servicing Rule at 12 CFR 1026.20(c) and (d). The disclosure requirements of § 1026.20(d)

govern the initial rate adjustment of an ARM, while those of § 1026.20(c) govern subsequent rate adjustments.

Currently, FHA-approved mortgagees must only notify the mortgagor at least 25 days before any adjustment to a mortgagor's monthly payment may occur and inform the borrower of the new mortgage interest rate, the amount of the new monthly payment, the current index interest rate value, and how the payment adjustment was calculated (see 24 CFR 203.49(h)). In cross-referencing paragraph (c) of 12 CFR 1026.20, HUD would require the mortgagee of an FHA-insured ARM to provide the mortgagor with specific and prescribed disclosures in connection with any adjustment of the interest rate, as required by the loan contract, that results in a corresponding adjustment to the mortgagor's monthly payment. These required disclosures must be provided to the mortgagor at least 60 days, but not more than 120 days, before the first payment at the adjusted level is due. In cross-referencing paragraph (d) of 12 CFR 1026.20, the mortgagee would be required, the first time the interest rate adjusts the monthly payment of an FHA-insured ARM, to provide the appropriate disclosures to the mortgagor at least 210, but not more than 240, days before the first payment at the adjusted level is due.

### C. Costs and Benefits.

Since an overwhelming majority of ARMs originated in the conventional mortgage market currently have a 45-day look-back period<sup>2</sup> and were required to comply with the 2013 TILA Servicing Rule notification requirements on January 10, 2014, well before the effective date of this proposed rule, there should be little, if any, burden to apply the same 2013 TILA Servicing Rule requirements on FHA-insured ARMs. Therefore, the anticipated costs of this proposed rule are very minimal.

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<sup>2</sup> Approximately 88 percent of the ARMs guaranteed by Fannie Mae and Freddie Mac have 45-day look-back periods. See footnote 163 of the CFPB's February 14, 2013, final rule at 78 FR 10902, at 10984.

In determining the impact of the adjusted look-back period on a single ARM insured by FHA, the effect upon the mortgagor's monthly mortgage payment is the difference between the interest rate generated by an index available 45 days before the interest change date from that generated by the same index 30 days before the interest change date. This difference may be due to a trend in rates or the "noise" (minor fluctuations around that trend) or both. However, given any date in the future, it is impossible to know whether the rate will be higher or lower 15 days prior. Even over a period in which a trend is expected, the limited timeframe of 15 days and the noise around that change means the significance of the change to the look-back period is unknowable. Thus, while the 15-day change may affect specific outcomes, this change is not expected to have any generalizable impact on the economy with a clear direction and scale. For mortgagees that would have sent later notice to mortgagors, the proposed changes may potentially increase prepayment risk, the risk that a mortgagor will pay-off a loan before the end of its term by ensuring that borrowers have more time to prepare for a change. Conversely for the mortgagee, the change should also reduce default risk, the risk that the mortgagor will fail to pay in part or in full. For the mortgagor, the primary benefit of the change is an earlier reminder of the adjustment and, consequently, more time to pursue other outcomes prior to the interest change date.

Finally, since this proposed change conforms to the 2013 TILA Servicing rule, which was effective for an overwhelming majority of the ARM market on January 10, 2014, HUD does not anticipate that the revised disclosure requirements will impose significant costs on FHA-approved mortgagees, since they were required to make these notification adjustments by January 10, 2014. Additionally, since a majority of ARMs already have look-back periods of 45

days, the revised 45-day look-back period proposed by FHA is consistent with current industry norms.

## **II. Background**

Section 251 of the National Housing Act (12 U.S.C. 1715z-16) authorizes FHA to insure mortgagees against default by the mortgagors that obtain home purchase loans or refinancing loans with interest rates that will change over time, such as ARMs. The interest rates on these loans are initially lower than that of a fixed rate mortgage, but may increase or decrease over the life of the loan. An ARM provides a home mortgage option for a mortgagor who may be planning to own his or her home for only a few years, expects an increase in future earnings, or finds the prevailing interest rate for a fixed-rate mortgage to be too high. The regulations governing FHA's ARM program presently are codified in 24 CFR 203.49.

The types of ARMs that FHA insures are those for which the interest rate may be adjusted annually by the FHA-approved mortgagee, beginning after 1, 3, 5, 7, or 10 years from the date of the mortgagor's first debt service payment.<sup>3</sup> FHA's ARM program provides that changes in the interest rate charged on an ARM must correspond either to changes in the 1-year London Interbank Offered Rate (LIBOR) or to changes in the weekly average yield on U.S. Treasury securities, adjusted to a constant maturity of 1 year (see 24 CFR 203.49(b)). The regulations further provide that except as may be otherwise specified in the regulations, each change in the mortgage interest rate must correspond to the upward and downward change in the index.

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<sup>3</sup> FHA sometimes uses the terms "standard 1-year ARM" and "hybrid ARM" to describe the different periods of time that the initial interest rate of a mortgage is held constant before adjusting to the appropriate market index. A standard 1-year ARM product offers an initial interest rate held constant for 1 year. A hybrid ARM offers an initial interest rate that is constant for either the first 3, 5, 7, or 10 years of the mortgage, depending on its terms. For purposes of this proposed rule, the term "ARM" refers to both a standard 1-year ARM and hybrid ARM products. For an explanation of FHA-insured ARM products see: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/sfh/ins/203armt](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/ins/203armt).

FHA's current regulations establish a maximum amount that interest rates may increase or decrease. For 1- and 3-year ARMs, no single adjustment to the interest rate may result in a change in either direction of more than 1 percentage point from the interest rate in effect for the period immediately preceding that adjustment. Additionally, index changes in excess of 1 percentage point may not be carried over for inclusion in an adjustment for a subsequent year. Adjustments in the effective rate of interest over the entire term of these ARMs may not result in a change, in either direction, of more than 5 percentage points from the initial contract interest rate. For 5-, 7-, and 10-year ARMs, no single adjustment to the interest rate may result in a change, in either direction, of more than 2 percentage points from the interest rate in effect for the period immediately preceding that adjustment. Similar to the 1- and 3-year ARMs, index changes in excess of 2 percentage points may not be carried over for inclusion in an adjustment in a subsequent year. For these ARMs, adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change, in either direction, of more than 6 percentage points from the initial contract rate.

FHA's existing ARM program provides that interest rate changes may be implemented only through adjustments to the mortgagor's monthly payments. FHA's regulations provide that FHA-approved mortgagees must disclose to the mortgagor the terms of the ARM at the time of loan application. The regulations further provide that FHA-approved mortgagees must notify the mortgagor at least 25 days before any adjustment to a mortgagor's monthly payment may occur, informing the borrower of the new mortgage interest rate, the amount of the new monthly payment, the current index interest rate value, and how the payment adjustment was calculated (see 24 CFR 203.49(h)).

To set a new interest rate, the FHA-approved mortgagee will determine if there is a change between the initial (i.e., base) index figure and the current index figure or will add a specific margin to the current index figure. The regulations provide that the initial index figure shall be the most recent figure available before the date of the mortgage loan origination, and the current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment. Thus, HUD's existing regulations establish a 30-day look-back period for determining the current index figure (see 24 CFR 203.49(d)(2)).

At the time FHA adopted the at-least-25-day advance notification period and the 30-day look-back period, these time periods were consistent with the regulations implementing TILA, as promulgated by the Federal Reserve Board (FRB), which had, until July 21, 2011, responsibility for oversight of compliance with TILA (15 U.S.C. 1601 *et seq.*). The predecessor FRB regulations, codified at 12 CFR part 1026, required notice of rate adjustments between 25 days and 120 days prior to the due date of the new payment. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, approved July 21, 2010), transferred this responsibility to the CFPB, and the CFPB revised Regulation Z and changed the periods for advance notice of rate adjustments.

As discussed above, the 2013 TILA Servicing Rule, which became effective January 10, 2014, revised the time frame for providing the ARM adjustment notice from the current requirement to between 60 and 120 days before the newly adjusted monthly payment is due (see 12 CFR 1026.20(c)). The preamble to the 2013 TILA Servicing Rule explains the reasons for, and identifies research supporting, this change.<sup>4</sup> The revised period is designed to provide borrowers with additional time to adjust their finances or to pursue meaningful alternatives such as refinancing, home sale, loan modification, forbearance, or deed-in-lieu of foreclosure. The

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<sup>4</sup> See 78 FR 10902, at 10924.

preamble to the 2013 TILA Servicing Rule cites research indicating that the Nation's largest mortgage lenders take an average of more than 70 days to complete a refinance. The preamble to the 2013 TILA Servicing Rule also explains that the revised look-back period of 45 days is consistent with the business practices of ARM servicers. The preamble states that most ARM servicers determine the index value from which the new interest rate and payment will be calculated at least 45 days before the date of the interest rate adjustment. Because interest on consumer mortgage credit generally is paid one month in arrears, this means that ARM servicers know the index value approximately 75 days before the due date of the first new payment.

The preamble to the 2013 TILA Servicing Rule notes that some ARMs, including those insured by FHA and guaranteed by the Department of Veterans Affairs (VA), currently have look-back periods that are less than 45 days. Accordingly, the CFPB recognizes that servicers of these ARMs will not be able to comply with the revised notification requirements of 12 CFR 1026.20(c) (see 78 FR 10984). Also, as stated above, FHA's current regulations require at least 25 days' notice before the date the mortgagor's monthly payment would adjust based on the new interest rate. This present notification requirement is inconsistent with the 2013 TILA Servicing Rule requirements that require at least 60 days advance notice of an adjustment to a mortgagor's monthly payment. Since mortgagees originating loans insured by FHA and VA also must comport with the requirements and regulations established by those agencies at the time of origination, the 2013 TILA Servicing Rule "grandfathers" ARMs with look-back periods of less than 45 days and originated prior to one year after the effective date of the final rule; i.e., such ARMs originated prior to January 10, 2015 (see 78 FR 10982). This accommodation allows time for HUD to amend its regulation to allow for compliance with the 2013 TILA Servicing Rule.

### **III. This Proposed Rule**

In response to the CFPB's amendments to the interest rate adjustment notification in 12 CFR 1026(c), this rule proposes two changes:

First, FHA proposes to change 24 CFR 203.49(d)(2) to require FHA-approved mortgagees, in setting a new interest rate, to use the current index figure that is the most recent index figure available 45 days (rather than 30 days) before the date of an interest rate adjustment. This change applies to all single family forward FHA-insured ARMs.

Second, FHA proposes to change § 203.49(h), which addresses the disclosure and notification requirements of an interest rate adjustment by the mortgagee to the mortgagor. This proposed rule would require the mortgagee to provide the disclosures and to comply with the timing and notification requirements of the 2013 TILA Servicing Rule at 12 CFR part 1026.

In proposing to revise the look-back period from 30 days to 45 days, and in order to comply with the 2013 TILA Servicing Rule, HUD is required to change its current 30-day look-back period to a period of no less than 45 days. HUD proposes to adopt the minimum period of 45 days, which is also the industry norm.<sup>5</sup> HUD agrees with the CFPB that a period of 45 days would allow a mortgagee to comply with the 60- to 120-day notice to the mortgagor as required in 12 CFR 1026.20(c). Mortgagees holding or servicing an ARM with a 45-day, or longer, look-back period should be able to comply with the requirement to provide earlier notice to the mortgagor. For example, for an ARM with a 45-day look-back period, the notice would be ready 45 days before the interest change date and, with an approximately 30-day billing cycle between the interest change date and the date that the first payment at the new level would be due, the mortgagee could provide the interest rate adjustment notice to the mortgagor approximately 75 days before the new payment was due. Under these circumstances, the mortgagee should be able

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<sup>5</sup> See 78 FR 10902, at 10926.

to comply with the requirement that notice be provided to the mortgagor at least 60 days before the payment at a new interest rate level is due.

While HUD may have adopted a look-back period longer than 45 days, HUD's decision was limited by the servicing timeline described above to provide necessary notification of the adjusted monthly payment within the required 60- to 120-day notification period, which was also required in the 2013 TILA Servicing Rule. Furthermore, if the look-back period was extended beyond 45 days it would create a greater lag time between the relevant index value and the correspondingly adjusted monthly payment. For example, with a 45-day look-back period, if the interest rate change date is September 1, the servicer "looks back" 45 days from the adjustment date, which would be July 18. With a look-back period longer than 45 days, the servicer would go back further than July 18 to set the new monthly payment, and the ARM would be less responsive to the current market.

In addition, Ginnie Mae may be unable to pool ARMs with varying look-back periods since different look-back periods have a different response rate to market fluctuation, as illustrated above. A less responsive or more slowly responsive ARM security is a different product from a more responsive security, from a potential investor's viewpoint. By adopting the uniform 45-day look-back period Ginnie Mae may continue to guarantee securities that are backed by pools of mortgages and issued by mortgage lenders.

Finally, it would be less burdensome on servicers for HUD to adopt the industry norm 45-day look-back period, instead of continuing to apply different look-back periods for different ARMs. With different look-back periods, there would presumably be different servicing timelines and notifications, which could lead to potential errors and reduced customer service.

The CFPB also notes that once the grandfather period expires 45-day look-back periods will further dominate the market.

The second proposed revision updates § 203.49(h) to cross-reference the disclosure and notification requirements for interest rate and payment adjustments for ARMs, including the timing, content, and format of such disclosures, contained in the 2013 TILA Servicing Rule at 12 CFR 1026.20(c) and (d). The disclosure requirements of § 1026.20(d) govern the initial rate adjustment of an ARM, while those of § 1026.20(c) govern subsequent rate adjustments.

Paragraph (c) of 12 CFR 1026.20 requires the mortgagee of an ARM to provide the mortgagor with disclosures in connection with any adjustment of the interest rate, as required by the loan contract, that results in a corresponding adjustment to the mortgagor's monthly payment. This required disclosure must be provided to the mortgagor at least 60 days, but not more than 120 days, before the first payment at the adjusted level is due.

The cross-references to the TILA requirements not only avoid the repetition of regulatory text, but help to ensure that HUD's codified regulations remain current should the CFPB revise Regulation Z. The alternative of repeating the CFPB regulatory text runs the risk that HUD's regulations may become outdated in the event the CFPB revises the regulatory disclosure and notification requirements, necessitating the need for HUD to undertake potentially time consuming notice and comment rulemaking to update its regulations. In addition to the timing requirements, FHA-approved ARM mortgagees would be required to comply with the requirements of 12 CFR 1026.20(c) governing the content and format of such disclosures. The 2013 TILA Servicing Rule requires specific disclosures, accompanying statements, and tables, including information such as the terms of the mortgagor's ARM, the effective date of the interest rate adjustment and when additional future interest rate adjustments are scheduled to

occur, a comparison of the current and new interest rate, and the specific index or formula used in making interest rate adjustments. (For the full list of requirements, see 12 CFR 1026.20(c)(2) and (c)(3).) All such disclosures required under 12 CFR 1026.20(c) must be in the format substantially similar to the sample formats prescribed in the 2013 TILA Servicing Rule, which includes sample formats for such disclosures.<sup>6</sup>

As noted, 12 CFR 1026.20(d) establishes separate disclosure requirements for the initial rate adjustment of an ARM with an initial interest rate that is constant for more than one year. The first time the interest rate adjusts the monthly payment of an FHA-insured ARM, the mortgagee would be required to provide the appropriate disclosures to the mortgagor at least 210, but not more than 240, days before the first payment at the adjusted level is due.<sup>7</sup> If the new interest rate (or the new payment calculated from the new interest rate) is not known as of the date of the disclosure, an estimate shall be disclosed and labeled as such for the mortgagor. This estimate shall be based on the calculation of the specific index or formula used in making the interest rate adjustment within 15 business days prior to the date of the disclosure.

The required content and format of the initial disclosures are contained in 12 CFR 1026.20(d)(2). These disclosures, accompanying explanatory statements, and tables include information such as an explanation of the terms of the mortgagor's ARM; a comparison of the current and new interest rates; the telephone number of the mortgagee for the mortgagor to call if they anticipate not being able to make their new payments; a list of alternatives to paying at the new rate that the mortgagor may be able to pursue and a brief explanation of each alternative, expressed in simple and clear terms; the website to access either the CFPB's or HUD's list of

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<sup>6</sup>The disclosures required by 12 CFR 1026.20(c) shall be provided in the form of a table and in the same order as, and with headings and format substantially similar to, forms H-4(D)(1) and (2) in appendix H of the 2013 TILA Servicing Rule (78 FR 11009-11010).

<sup>7</sup> The 2013 TILA Servicing Rule also provides, at 12 CFR 1026.20(d), that if the first payment at the adjusted level is due within the first 210 days after consummation, the initial disclosure shall be provided at consummation. This provision does not apply to FHA since, as more fully discussed below in this preamble, ARMs with terms of less than 12 months are not eligible for FHA insurance.

homeownership counselors and counseling organizations; and the toll-free telephone number to access the HUD list of homeownership counselors and counseling organizations. All such disclosures required under 12 CFR 1026.20(d) must be in the format substantially similar to that prescribed by the 2013 TILA Servicing Rule, which includes sample formats for such disclosures.<sup>8</sup>

The initial disclosure requirements of 12 CFR 1026.20(d) do not apply to ARMs with a term where the interest rate would adjust within a 1-year period (see 12 CFR 1026.20(d)(1)(ii)). FHA does not insure ARMs with a term of less than 12 months. The HUD regulation at 24 CFR 203.49(d) describes the frequency of rate changes for ARMs eligible for FHA insurance, providing that "...the first adjustment shall be no sooner or later than..." as provided in the regulation. The shortest term ARM eligible for FHA insurance is a 1-year ARM with the first rate adjustment occurring no earlier than 12 months. Accordingly, the exemption provided by the 2013 TILA Servicing Rule is not applicable to FHA-insured ARMs.

#### **IV. 30 Day Public Comment Period**

In accordance with HUD's regulations concerning rulemaking at 24 CFR part 10 (entitled, "Rulemaking Policy and Procedures"), it is HUD's policy that the public comment period for proposed rules should be 60 days. In the case of this proposed rule, however, HUD has determined there is good cause to reduce the public comment period to 30 days for the following reasons:

First, HUD is required by the 2013 TILA Servicing Rule to make regulatory changes to comply with the 2013 TILA Servicing Rule. The CFPB delayed the effective date of the notification period for FHA-insured ARMs to January 10, 2015, and this allows HUD to go

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<sup>8</sup> The disclosures required by 12 CFR 1026.20(d) shall be provided in the form of a table and in the same order as, and with headings and format substantially similar to, forms H-4(D)(3) and (4) in appendix H of the TILA Servicing Rule (78 FR 11011-11012).

through the rulemaking process to bring FHA's regulations in conformity with the 2013 TILA Servicing Rule.

Second, the notification requirements established in the 2013 TILA Servicing Rule were published in the Federal Register on February 14, 2013, and became effective on January 10, 2014, except for adjustable rate mortgages with look-back periods currently less than 45 days, including FHA-insured and VA-guaranteed ARMs, which are grandfathered until January 10, 2015. Since the industry and interested parties were notified of these regulatory changes, including a statement in the preamble of the rule that directed HUD to revise its regulations to comply with that of the 2013 TILA Servicing Rule, industry and interested parties have been on notice of HUD's proposed changes well before the publication of this proposed rule.

Given that the proposed amendments to HUD's regulations mirror the requirements of the 2013 TILA Servicing Rule, and the January 10, 2015, deadline, HUD believes that good cause exists to reduce the public comment period to 30 days. All comments received during the 30-day public comment period will be considered in the development of the final rule.

## **V. Findings and Certifications**

### Regulatory Review – Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with

regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

As discussed above in this preamble, the proposed rule would align the look-back requirements for FHA-insured ARMs to the revised TILA notification requirements established in the 2013 TILA Servicing Rule. Consistent with the goals of Executive Order 13563, the proposed amendments would simplify and standardize the ARM look-back and notification requirements established by the CFPB and in effect for the conventional ARM market on January 10, 2014. As a result, this rule was determined to not be a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by OMB.

#### 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.

As discussed in this preamble, this proposed rule aligns the look-back requirements for FHA-insured ARMs to the revised TILA notification requirements established in the 2013 TILA Servicing Rule. HUD does not have the discretion not to align its ARM notification requirements with new TILA requirements established by the CFPB as implemented in its 2013 TILA Servicing Rule. The revised look-back period and disclosure requirements would apply to FHA-approved mortgagees originating ARMs in January 2015, whether or not HUD takes action. It is HUD's position that it is important for FHA regulations to be in compliance with

TILA, and therefore HUD has initiated this rulemaking. In this rule, HUD proposes to adopt the minimum look-back period, 45 days, which would allow FHA-approved mortgagees to meet the TILA minimum requirements governing notification to borrowers.

As also discussed in this preamble, the CFPB noted in its rulemaking, that the majority of ARMs in the conventional market have look-back periods of 45 days or longer. With the 2013 TILA Servicing Rule taking effect on January 10, 2014, any lenders originating in the conventional market ARMs that did not have a minimum look-back period of 45 days, have now adjusted to the new TILA requirements.

As with the proposed changes regarding the look-back period, the revisions to the disclosure requirements simply conform HUD requirements to the 2013 TILA Servicing Rule and the procedures currently followed in the conventional mortgage lending market.

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

#### Environmental Impact

The proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

### Executive Order 13132, Federalism

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

### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (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 proposed rule would not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Mortgage Insurance-Homes is 14.117.

### **List of Subjects in 24 CFR Part 203**

Hawaiian Natives, Home improvement, Indians-lands, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons discussed in this preamble, HUD proposes to amend 24 CFR part 203 as follows:

**PART 203 – SINGLE FAMILY MORTGAGE INSURANCE**

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715z-16, 1715u, and 1717z-21; 42 U.S.C. 3535(d).

2. Revise the third sentence of paragraph (d)(2) and paragraph (h) to read as follows:

**§203.49 Eligibility of adjustable rate mortgages.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \* The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment, except that for forward mortgages originated on or after **[effective date of final rule to be inserted at final rule stage]**, 30 days shall mean 45 days.

\* \* \* \* \*

(h) Disclosures. The mortgagee of an adjustable rate mortgage shall provide mortgagors with the disclosures in the timing, content, and format required by the regulations implementing the Truth in Lending Act (15 U.S.C. 1601 et seq.) at 12 CFR 1026.20(c) and (d).

\* \* \* \* \*

Dated: April 17, 2014.

**Carol J. Galante,**  
*Assistant Secretary for Housing—Federal  
Housing Commissioner.*

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