

This interim rule will be published in the Federal Register. The published interim rule will establish the effective date of the rule. The published interim rule will also establish the deadline for submission of public comments. No comments should be submitted, nor will they be accepted, prior to the publication of the interim rule in the Federal Register.

**Billing Code 4210-67
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

24 CFR Chapter XV

**[Docket No. FR-5470-I-01]
RIN: 2502-AI97**

Emergency Homeowners' Loan Program

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

ACTION: Interim rule.

SUMMARY: This interim rule reinstates, with certain modifications, regulations that HUD formerly published to serve as the framework by which emergency relief may be provided to homeowners experiencing temporary involuntary loss of employment or underemployment resulting in a substantial reduction in income due to adverse economic conditions, and who consequently are financially unable to make full mortgage payments. These regulations were promulgated following enactment of the Emergency Homeowners' Relief Act of 1975. This 1975 statute provided standby authority to the Secretary to insure or make loans to homeowners to defray mortgage expenses, so as to prevent widespread mortgage foreclosures and distress sales of homes resulting from a homeowner's substantial reduction income. Although the 1975 regulations were quickly put in place, they were not utilized, and HUD eventually removed the regulations from the Code of Federal Regulations (CFR) in 1995.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, recently enacted into law, reauthorized the 1975 statute, with certain amendments, and made \$1 billion available for

this 1975 program during Fiscal Year (FY) 2011. Accordingly, HUD is reinstating the regulations for the program, under the title of “Emergency Homeowners’ Loan Program,” with such modifications as necessary to mirror the statutory changes to the Emergency Homeowners’ Relief Act of 1975 made by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

DATES: Effective Date: **[Insert date that is 30 days after date of publication in the FEDERAL REGISTER.]**

Comment Due Date. **[Insert date that is 60 days after the 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, 451 7th Street, SW, Room 10276, Department of Housing and Urban Development, 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. 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 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 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 Federal Information Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Ruth Roman, Director, Program Support Division, Office of Single Family Housing, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; telephone number 202-708-0317 (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

On July 2, 1975, the Emergency Housing Act of 1975 (Pub. L. 94-50, approved July 2, 1975) (12 U.S.C. 2701 et seq.) was signed into law. Title I of this statute is the Emergency

Homeowners' Relief Act (1975 Act). The 1975 Act conferred on HUD standby authority to insure or make loans to, or make emergency mortgage relief payments on behalf of, homeowners to defray their mortgage expenses (collectively emergency assistance), so as to prevent widespread mortgage foreclosures and distress sales of homes due to a substantial reduction of income resulting from the temporary involuntary loss of employment or underemployment due to adverse economic conditions. Following enactment of the Emergency Homeowners' Relief Act, HUD promulgated final regulations on December 30, 1975 (See 40 FR 59866) and codified these regulations in 24 CFR part 2700. In the preamble to the December 30, 1975, final rule, HUD stated as follows: "If it becomes necessary to implement the program, HUD would provide emergency relief under the standby program by coinsuring loans made by private lenders or by making direct loans to homeowners to assist them in making their mortgage payments." (See 40 FR 59866.) This emergency assistance program, quickly put in place by HUD in 1975, was not utilized and, in 1995, as part of HUD's effort to remove outdated, obsolete, or unutilized regulations, HUD removed the regulations in 24 CFR part 2700 from the CFR. (See 60 FR 47263.)

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203) (the Dodd-Frank Act), signed into law on July 21, 2010, makes available \$1,000,000,000 for HUD to establish the Emergency Homeowners' Relief Fund for this reauthorized 1975 program, commencing in FY 2011, for the purpose of providing emergency mortgage assistance in accordance with the 1975 Act, as amended. HUD will administer the authority provided by the Dodd-Frank Act as the Emergency Homeowners' Loan Program (EHLA). In addition to making funding available, section 1496 of the Dodd-Frank Act also amends several provisions of the 1975 Act. The amendments to the 1975 Act include the following:

- Certification by the homeowner and the holder of the homeowner's delinquent mortgage that circumstances make it probable that there will be a foreclosure and the homeowner is in need of emergency mortgage relief;
- Establishment of a ceiling of \$50,000 as the aggregate amount of emergency assistance that can be provided to any homeowner;
- Inclusion of "medical conditions" as the cause of the homeowner's involuntary unemployment or underemployment;
- Prohibition on the charging of interest on interest that is deferred on an emergency mortgage relief loan or advance of credit provided under the EHLF;
- Prohibition on the charging of interest on any emergency loan or advance of credit insured under the EHLF program at a rate that exceeds the rate of interest that is generally charged for single-family housing mortgages insured by the Federal Housing Administration; and
- Prohibition on imposition of any penalty on a homeowner who receives emergency assistance under the EHLF and repays the emergency assistance loan in full before the loan becomes due and payable.

In addition to these amendments, the 1975 Act, as amended by the Dodd-Frank Act, authorizes HUD to allow funds under the EHLF to be administered by a state that has an existing program that is determined by the Secretary to provide substantially similar assistance to homeowners.¹ Unchanged in the 1975 Act is the authority provided to the Secretary to make such delegations and accept such certifications, with respect to the processing of emergency mortgage relief payments, as the Secretary determines appropriate to facilitate the prompt and

¹ On November 12, 2010 (75 FR 69454), HUD published a notice that solicited applications from states that have existing programs that are substantially similar to HUD's, and announced the allocation of assistance by state.

efficient implementation of this type of emergency assistance authorized under the program.

Underscoring the need to make this funding immediately available to eligible homeowners are two dates: the effective date of October 1, 2010, the first date by which funding may be allocated; and the date of September 30, 2011, the last date on which HUD can enter into binding agreements with individual mortgagors approved for participation in the program. Note that a binding agreement occurs only when a borrower has been approved for participation in this program and funds have been allocated to that borrower, all of which must occur on or before September 30, 2011.

II. This Interim Rule

Given the statutory deadline of September 30, 2011, described above for HUD to enter into binding agreements with individual mortgagors approved for EHLP participation, HUD is reinstating the 1975 program regulations, substantially as promulgated in 1975, which largely adopted the complete statutory framework for emergency assistance provided for the program, with modifications to mirror the statutory changes of the Dodd-Frank Act, reflect the housing and mortgage markets of today, and make such other changes that HUD determined necessary to meet the statutory objectives of the Dodd-Frank Act.

In addition to revising the 1975 regulations to reflect the statutory changes made by the Dodd-Frank Act, this rule amends the 1975 regulations to include certain provisions of the 1975 Act that were not included in the regulations promulgated in 1975. HUD is conforming the 1975 regulations to reflect these statutory provisions, such as direct payments to mortgagees, so that the regulations reflect the full emergency assistance authority provided to HUD by the 1975 Act. Finally, HUD is using this rule to reflect terminology that is used in the mortgage market of today and to make other changes to achieve the statutory direction to make funding immediately

available for emergency mortgage assistance. The following highlights the additional changes made to the 1975 regulations:

- The rule clarifies that the principal residence of the homeowner for which the homeowner seeks relief to prevent foreclosure may be a condominium, a cooperative, or a manufactured home.
- The rule includes the list of eligible institutions for which HUD is authorized to provide insurance for emergency mortgage relief loans and advances of credit as provided in section 105 of the Emergency Homeowners' Relief Act. The list of these institutions was not revised by the Dodd-Frank Act but was omitted from the 1975 regulations.
- The rule provides that an eligible homeowner must have a total annual income (as defined in these regulations, and hereafter referred to as "income") that is equal to, or less than, 120 percent the area median income (AMI), as determined by HUD and adjusted for household size. HUD defines AMI in § 2700.5 of the rule.
- The rule provides that an eligible homeowner must have incurred a substantial reduction of income, as a result of involuntary loss of employment or underemployment, that is at least 15 percent lower than the income the homeowner had prior to loss of employment or underemployment.
- The rule requires, consistent with the statute, that the aggregate amount of assistance to an eligible homeowner cannot exceed \$50,000.
- The rule provides that eligible homeowners may receive assistance for up to 12 months, and in accordance with criteria established by HUD, and that such assistance may be extended once for up to 12 additional months, or may receive assistance in an amount up to the statutory ceiling of \$50,000, whichever occurs first. However, please note that the

Federal Register document, which reactivates the program for FY 2011, provides for eligible homeowners to receive assistance for up to 24 months, or up to the statutory ceiling amount of \$50,000. Given the duration of high unemployment, HUD has determined that so long as eligibility requirements are maintained, HUD will provide the maximum period of 24 months of homeowner assistance at the outset.

- The rule provides, as did the 1975 regulations, that emergency assistance may be provided only if the homeowner has a back-end ratio or debt-to-income (DTI) below 55 percent (principal, interest, taxes, insurance, revolving and fixed installment debt divided by total monthly income). For this calculation, the homeowner's income will be measured at the pre-Event level. Homeowners with second mortgage debt or equity lines of credit may qualify for emergency assistance if the homeowner's DTI is within the program's 55 percent limit.
- The rule includes monitoring requirements to ensure that the homeowner remains eligible for the emergency assistance after such assistance has commenced, and also specifies the conditions under which emergency assistance to the homeowner will be terminated.
- The rule adds a declining balance, nonrecourse, zero interest, subordinate secured loan, with a term of up to 7 years, as a type of repayment mechanism for emergency mortgage relief payments.
- The rule codifies the provision of the 1975 Act that authorizes the Secretary to delegate and accept certifications with respect to the processing of emergency mortgage relief payments as may be appropriate to facilitate the prompt and efficient implementation of this type of emergency assistance.
- The 1975 regulations made reference to the Soldier's and Sailor's Civil Relief Act of

1940, and the rule updates the reference to this statute to reflect its successor statute, which is the Servicemembers Civil Relief Act of 2003.

III. Notice of Program Activation and Fund Availability

Elsewhere in today's Federal Register, HUD is publishing a notice consistent with § 2700.10, which formally announces that EHLP has been activated, and describes the emergency assistance being made available in this FY 2011 reactivation of the program. While the regulations allow for the Secretary to choose among several tools to provide emergency homeowners' relief, only those tools that are provided in the notice are being used to provide emergency homeowner relief in FY 2011. HUD's position is that, given funding for EHLP is available for one fiscal year, the requirements for the emergency assistance to be provided must be firmly established at the outset of the commencement of the program; that is, with the issuance of the Federal Register notice. HUD believes the program, as reactivated for FY 2011, through the Federal Register notice, provides the relief contemplated by the Dodd-Frank Act.

IV. Findings and Certifications

Justification for Interim Rule.

Consistent with its regulations on rulemaking at 24 CFR part 10, HUD ordinarily publishes its rules for advance public comment. Advance notice and public procedure are omitted, however, if HUD determines that, in a particular case or class of cases, notice and public procedure are "impracticable, unnecessary, or contrary to the public interest." (See 24 CFR 10.1.) In this case, HUD finds that to wait for public comment before making emergency assistance available under the Emergency Homeowners' Relief Act would be contrary to the public interest, and inconsistent with the statutory objective, which is for the program to be a source of authority by which the Secretary of HUD can immediately act.

Funds became available for this program on October 1, 2010, and, as noted earlier in this preamble, HUD must enter into binding agreements with approved homeowners no later than by September 30, 2011. Given this statutory deadline, HUD believes homeowners who HUD could help under this program may be victims of foreclosure if the program is not commenced as quickly as possible. Accordingly, HUD finds that it is important that interested lenders and homeowners know that the program requirements are set for this first year and will not be changed.

While HUD is issuing this rule for effect, HUD is also soliciting public comment. Although HUD is soliciting public comment on the 1975 regulations, reinstated with modifications, and the reactivated program overall, HUD is not anticipating making significant changes to the requirements governing the type of emergency assistance provided under EHLF for FY 2011. As noted earlier, HUD's position is that, given funding for EHLF is available for one fiscal year, the requirements for the emergency assistance to be provided must be firmly established at the outset of the commencement of the program; that is, with the issuance of the companion Federal Register notice. HUD believes the program, as reactivated for FY 2011, through the Federal Register notice, provides the relief contemplated by the Dodd-Frank Act. However, if a commenter, participating lender, eligible borrower, or potential eligible borrower identifies an aspect of the program for which a change would help facilitate assistance to eligible homeowners or provide further protections against waste, fraud, and abuse, HUD will make the necessary change. Further, if funding is provided for EHLF beyond FY 2011, HUD will consider the comments received in its reevaluation of the program, following this first year of reactivation, and make such changes based on public comment and the experience of administering EHLF emergency assistance in FY 2011.

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 an economically significant regulatory act under Executive Order 12866.

The program that is reactivated under the regulations established by this rule is intended to assist a segment of delinquent homeowners who face a high probability of foreclosure and have become delinquent due to a temporary loss of income. It is expected that the assisted households can recover financially within 24 months. The benefits of this program include the avoidance of costs associated with foreclosure by lenders, homeowners facing foreclosure, neighbors of the foreclosed property, and local governments. Overall, the benefits are estimated to be between \$1.7 billion and \$3.4 billion, offset by the costs of administration, namely selecting participants (\$87.3 million) and servicing the EHLP loans (\$7.4 million to \$11.3 million), and up to \$23.96 million of incremental costs of foreclosure to lenders caused by borrowers assisted by EHLP who subsequently default anyway. In addition, participants in this program receive a transfer ranging from \$28.32 million to \$43.3 million, which is equal to the government’s cost of borrowing the funds.

Participation in the EHLP program requires households to be at least 3 months’ delinquent. Assuming that participating homeowners are on average 5 months delinquent, this would add \$8,778 to the total loan amount, for an overall total of \$26,148. With a program limit of approximately \$901 million available for loans to homeowners, after subtracting administrative costs, this would assist a maximum of 34,474 homeowners. This assessment calculates the benefits, costs, and transfers assuming that a range of 22,546 and 34,474

homeowners receive EHLP loans.

The full Regulatory Impact Analysis can be found at <http://www.hud.gov/offices/adm/hudclips/ia/> and is also contained in the docket file for this rule, which is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th 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 202-402-3055 (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.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required pursuant to 5 U.S.C. 553(b) for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either, on the one hand, imposes substantial direct compliance costs on state and local governments and is not required by statute, or, on the other hand, the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule will not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

This 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 rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Congressional Review Act

This rule constitutes a “major rule” as defined in the Congressional Review Act (5 U.S.C. Chapter 8). The Congressional Review Act provides for major rules to have a 60-day delayed effective date. However, section 808 of the Congressional Review Act provides that the 60-day delayed effective date can be waived for good cause, and the agency issuing the major rule is to incorporate the good cause finding and provide a brief statement of reasons that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. The reasons provided in the section of the preamble pertaining to Justification for

Interim Rule serve as the justification for abbreviating the delayed effective date from 60 days to 30 days. As provided in that section, this rule provides for emergency relief to unemployed and underemployed homeowners, but further provides that such emergency relief is available only through September 30, 2011. For these reasons, HUD believes it is contrary to the public interest to delay the availability of emergency relief for a period of 60 days. HUD also notes that, although this rule is issued for effect, HUD is soliciting public comment.

List of Subjects in 24 CFR Part 2700

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

Accordingly, for the reasons stated in the preamble, HUD is establishing a new chapter XV in title 24 of the Code of Federal Regulations, consisting of part 2700 to read as follows:

TITLE 24 — Housing and Urban Development

Chapter XV — Emergency Mortgage Insurance and Loan Programs

PART 2700 – EMERGENCY HOMEOWNERS’ LOAN PROGRAM

Subpart A — General

- 2700.1 Purpose.
- 2700.5 Definitions.
- 2700.10 Determination of emergency.

Subpart B — Eligibility

- 2700.101 Eligible properties.
- 2700.105 Eligible institutions.

2700.110 Eligible homeowners.

Subpart C – Emergency Assistance

2700.201 Types and terms of emergency assistance.

2700.205 Emergency assistance amount.

2700.210 Finance charges.

Subpart D – Mortgage Insurance

2700.301 Loan applications.

2700.305 Conditions of insurance.

2700.310 Fees.

2700.315 Insurance premium.

2700.320 Servicing.

2700.325 Termination of mortgage insurance.

2700.330 Default.

2700.335 Claims.

2700.340 Payment of insurance benefits.

2700.345 Administrative reports and examinations.

2700.350 Sale, assignment, and pledge of insured loan.

Subpart E – Direct Loans

2700.401 Participation by lending institutions.

2700.405 Application for loans.

2700.410 Transmittal of Funds.

2700.415 Fees.

2700.420 Servicing.

- 2700.425 Default.
- 2700.430 Collection.
- 2700.435 Payment to HUD.
- 2700.440 Administrative report and examinations.

Authority: 12 U.S.C. 2707; 42 U.S.C. 3535(d)

Subpart A-General

§ 2700.1 Purpose.

This part establishes the Emergency Homeowners' Loan Program, a standby program authorized by the Emergency Homeowners Relief Act of 1975, as amended, to prevent widespread mortgage foreclosures and distress sales of homes resulting from a homeowner's substantial reduction in income due to temporary involuntary loss of employment or underemployment resulting from adverse economic conditions or medical condition. Under this program, HUD is authorized to provide relief in the forms of emergency mortgage relief loans, advances of credit, or emergency mortgage relief payments to struggling unemployed or underemployed homeowners to help them avoid foreclosure, provided the homeowner meets certain specific conditions. HUD may provide such relief through approved institutions, including lending institutions, or intermediaries designated by HUD. HUD is also authorized to allow assistance under this program to be administered by a state that has an existing program that is determined by HUD to provide substantially similar assistance to homeowners.

§ 2700.5 Definitions.

For purposes of this part, the following terms are defined as follows:

Act means the Emergency Homeowners' Relief Act, title I of the Emergency Housing Act of 1975 (12 U.S.C. 2701), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, approved July 21, 2010).

Area Median Income (AMI) means the median family income for the metropolitan statistical area (MSA) or statewide nonmetropolitan area, as most recently determined and published by HUD, where the property meeting the eligibility requirements in § 2700.1 is located.

Delinquent mortgage means a first-lien mortgage secured by property meeting the eligibility requirements in § 2700.101, where the homeowner and holder of the delinquent mortgage have certified that circumstances, including delinquent payments of at least 3 months, make it probable there will be a foreclosure and that the homeowner is in need of emergency mortgage relief.

Emergency assistance includes, but is not limited to, an emergency mortgage relief loan, advance of credit, or emergency mortgage relief payment provided to an eligible homeowner, as authorized by the Act, and in accordance with the requirements of this part.

Event refers to the involuntary unemployment or underemployment status of the homeowner due to adverse economic conditions or medical condition. See definition of *involuntary unemployment or underemployment due to adverse economic conditions or adverse medical condition*.

Finance charge means the cost of credit as determined in 12 CFR 226.4, a section in *Regulation Z* of the Federal Reserve System's regulations on Truth in Lending.

Homeowner means an individual with a mortgage on the individual's principal residence, in which the individual resides, and who meets the requirements of § 2700.10 and who is in need

of emergency assistance pursuant to this part.

HUD means the Department of Housing and Urban Development.

Income means the cumulative annual adjusted gross income of the homeowner, co-makers, and co-signers on the note secured by the delinquent mortgage and the other mortgagors on the delinquent mortgage.

Involuntary unemployment or underemployment due to adverse economic conditions or adverse medical condition means the status of a homeowner who was working, either as a wage or salaried worker or through self-employment, is currently involuntarily unemployed or underemployed due to adverse economic conditions or medical condition, and is unable to meet the homeowner's monthly mortgage payments.

Lender means a lending institution that provides an emergency mortgage relief loan or advance of credit insured under this part.

Monthly income means one-twelfth of the *income*, as *income* is defined in this section.

Monthly mortgage payment means the monthly amount of principal, interest, taxes, ground rents, hazard insurance, and mortgage insurance premiums due to be paid under a homeowner's delinquent mortgage.

Mortgage means any mortgage, deed of trust, executor land sales contract, conditional sales contract, or other form of security and the obligation secured by a one- to four-family dwelling that is either real estate or a manufactured home. *Mortgage* includes a mortgage on a condominium unit and a security interest in stock in a housing cooperative.

Mortgagee means a lending institution that is the holder of the delinquent mortgage. The *mortgagee* may be the same entity as the *Lender*.

Secretary means the Secretary of Housing and Urban Development.

Servicer means any entity which services an emergency loan made by HUD under this part.

Servicing institution means any entity that services the delinquent mortgage. The servicing institution may also be the same entity as the Lender or Servicer.

Term of monthly payments means a period of monthly payments provided under this part not to exceed 24 months. Eligible homeowners may receive assistance for up to 12 months, and in accordance with criteria established by HUD, and such assistance may be extended once for up to 12 additional months, but in no case may monthly payments under this part exceed 24 months. The eligible homeowner may also receive assistance in an amount up to the statutory ceiling of \$50,000, whichever occurs first.

§ 2700.10 Determination of emergency.

(a) The Secretary is authorized to provide emergency assistance under the Emergency Homeowners' Loan Program when:

(1) Funds have been explicitly appropriated or made available for this program and the statute making funding available directs the Secretary to commence making emergency assistance available to homeowners; or

(2) The Secretary has announced that this program has been activated and provides the reasons for activation of this program in a document published in the Federal Register.

(b) If the Emergency Homeowners' Loan Program is activated pursuant to paragraph (a) of this section, HUD shall publish a document in the Federal Register announcing the activation of the program and inviting one or more categories of eligible institutions, as defined in § 2700.105, to participate in the Emergency Homeowners' Loan Program, to provide such

emergency assistance as HUD may designate from among the eligible types of emergency relief provided in § 2700.201, and provide such other information regarding participation in the program, as necessary and appropriate.

Subpart B-Eligibility

§ 2700.101 Eligible properties.

(a) In order to qualify for an emergency assistance under this part, the property of the homeowner seeking assistance must:

(1) Be a single-family residence in a one-to-four unit building, or a condominium or a housing cooperative or a manufactured home;

(2) Be the principal residence of the homeowner, which means it is the residence where the homeowner resides;

(3) Be subject to a delinquent mortgage, as defined in § 2700.5, but not, unless otherwise specified by HUD, subject to liens having a total outstanding principal balance, as specified by HUD;

(4) Have flood insurance, pursuant to the National Flood Insurance Program, in an amount equal to at least the initial principal amount of the emergency loan, if the property is located in an area that has been identified by HUD at least one year before the origination of the emergency loan as an area having special flood hazards; and

(5) Meet such other requirements as may be prescribed by HUD for reasons including, but not limited to, the particular economic circumstances in which emergency assistance is being made available, or the type of emergency assistance being made available.

(b) A property that meets the requirements of paragraph (a) of this section is referred to

as the mortgaged property.

§ 2700.105 Eligible institutions.

(a) Eligible lending institutions. (1) In order to participate in the Emergency Homeowners' Loan Program as a lender or servicer, a lending institution must be approved as a mortgagee by the Federal Housing Administration in accordance with the applicable requirements in 24 CFR part 203, and meet such other requirements as may be prescribed by HUD as necessary or appropriate for participation in the Emergency Homeowners' Loan Program.

(2) Approval of a lending institution pursuant to paragraph (a)(1) of this section may be withdrawn at any time by notice from HUD for the following reasons:

(i) The transfer of an insured emergency mortgage relief loan or advance of credit to a nonapproved entity;

(ii) The failure of a lending institution to submit the required annual audit report of its financial condition within 75 days of the close of its fiscal year, or within such other period as may be specified by HUD; or

(iii) The failure of a lending institution to comply with the regulations of this part, or such additional program policies or requirements as specified by HUD. Withdrawal of a lending institution's approval shall not affect the insurance on the emergency mortgage relief loans or advances of credit accepted for insurance.

(3) All approved lending institutions are responsible for servicing of emergency mortgage relief loans and advances of credit in accordance with acceptable mortgage practices of prudent lending institutions and pursuant to 24 CFR part 203.

(b) Eligible participating organizations. HUD may delegate authority with respect to the processing of emergency mortgage relief payments as may be appropriate to facilitate the prompt and efficient implementation of assistance under the Emergency Homeowners' Loan Program.

(c) States with comparable programs. HUD is authorized to allow funding for the Emergency Homeowners' Loan Program to be administered by a state that has an existing program that is determined by HUD to provide substantially similar assistance to homeowners. After such determination is made, any state that HUD authorizes to administer funding under this program shall not be required to modify its own program to comply with the provisions of this part.

§ 2700.110 Eligible homeowners.

In order to qualify for an emergency assistance under this part, the homeowner must:

(a) Have a total pre-Event income that is equal to, or less than, 120 percent of the area median income (AMI).

(b) Have incurred a substantial reduction of income as evidenced by current monthly income that is at least 15 percent lower than the pre-Event income, as a result of involuntary unemployment or underemployment due to adverse economic or medical conditions, or such other reduction in income as may be specified by HUD.

(c) Have a delinquent mortgage, as defined in § 2700.5;

(d) Be financially unable at the time of application for emergency relief under this part to make full monthly mortgage payments;

(e) Have a reasonable likelihood to resume full monthly mortgage payments, and repay the emergency assistance pursuant to the terms and conditions under which the emergency

assistance was made available to the homeowner. The standard for meeting this requirement is debt-to-income (DTI) ratio. The homeowner must have a back-end ratio of below 55 percent (principal, interest, taxes, insurance, revolving and fixed installment debt divided by total monthly income), or such other DTI as may be specified by HUD. For this DTI calculation, income will be measured at the pre-Event level.

(f) Have not received other emergency assistance pursuant to this part;

(g) Have been notified that the mortgagee intends to foreclose;

(h) Produce a certification from the mortgagee in which the homeowner also certifies that circumstances make it probable that the mortgagee will foreclose on the homeowner's delinquent mortgage; and

(i) Meet such other requirements as may be prescribed by HUD for reasons including, but not limited to, the particular economic circumstances in which emergency assistance is being made available, or the type of emergency assistance being made available.

Subpart C-Emergency Assistance

§ 2700.201 Types and terms of emergency assistance.

(a) Types of emergency assistance. Emergency assistance may be provided to an eligible homeowner in the form of emergency mortgage relief loans and advances of credit, or in the form of emergency mortgage relief payments. In accordance with § 2700.205, the aggregate amount of assistance provided for any eligible homeowner shall not exceed \$50,000 or extend beyond the term of monthly payments, as defined in § 2700.5.

(1) Emergency mortgage loans and advances. HUD is authorized, upon such terms and conditions as specified by HUD, to insure financial institutions, which HUD finds to be qualified by experience and facilities and approves as eligible for insurance, against losses that they may

sustain as a result of providing emergency mortgage relief loans or advances of credit made under this part.

(2) Emergency mortgage relief payments. (i) HUD is authorized to make emergency relief payments under such terms and conditions as HUD may prescribe. Emergency mortgage relief payments may be provided:

(A) As payment of 100 percent of an eligible homeowner's delinquent mortgage arrearages, which may include mortgage principal, interest, insurance, taxes, hazard insurance, ground rent, homeowners' assessment fees or condominium fees, and foreclosure-related legal fees and late payments, in accordance with such terms and conditions as prescribed by HUD; and

(B) As monthly payments due on such delinquent mortgage, for up to a period not to exceed the term of monthly payments, as provided in § 2700.5.

(ii) Such emergency mortgage relief payments may be repayable in the form of a declining balance, non-recourse, zero-interest, subordinate loan secured by the same property securing the delinquent mortgage, for a term of up to 7 years.

(3) Direct payments to mortgagees. HUD is authorized to make direct emergency mortgage relief payments to a mortgagee that elects not to participate in the Emergency Homeowners' Loan program as an approved mortgagee on behalf of homeowners:

(i) Whose mortgages are held by such mortgagee; and

(ii) Who meet the requirements of § 2700.110.

(b) Terms and conditions of assistance. Emergency mortgage relief loans and advances of credit made and insured under this part, and emergency mortgage relief payments made under this part, shall be repayable by the homeowner upon such terms and conditions prescribed by HUD, except that:

(1) The rate of interest on any emergency mortgage relief loan or advance of credit insured shall be fixed for the life of the emergency mortgage relief loan or advance of credit and shall not exceed the rate of interest that is generally charged for mortgages on single-family housing insured by the Federal Housing Administration under title II of the National Housing Act at the time such emergency mortgage relief loan or advance of credit is made;

(2) No interest shall be charged on interest that is deferred on an emergency mortgage relief loan or advance of credit made under this part. In establishing rates, terms, and conditions for emergency mortgage relief loans or advances of credit, HUD shall take into account a homeowner's ability to repay such emergency mortgage relief loan or advance of credit;

(3) Any mortgage insurance premium charge or charges for any emergency mortgage relief loan or advance of credit made under this part shall not exceed an amount equivalent to one-half of one percent per annum of the principal obligation of such emergency mortgage relief loan or advance of credit outstanding at any one time;

(4) Unless otherwise specified by HUD for a given fiscal year, the homeowner's contribution to the monthly mortgage payment will be set at 31 percent of monthly income at the time of the application for assistance, but in no instance will such contribution to the monthly mortgage payment be less than \$25 per month;

(5) The homeowner may repay the emergency mortgage relief loan or advance of credit in full, without penalty, by lump sum or by installment payments at any time before the emergency mortgage relief loan or advance of credit becomes due and payable; and

(6) With respect to the emergency mortgage relief payments repayable in the form of a declining balance, non-recourse, zero-interest, subordinate loan as described § 2700.201(a)(2), no payment shall be due by the homeowner during the term of the loan so long as the

homeowner remains current in his or her monthly homeowner contribution payments on the delinquent mortgage. If the homeowner meets this requirement, the balance due shall decline by such percentage as may be designated by HUD, until the loan is fully satisfied.

(c) Termination of emergency assistance. Emergency assistance provided to a homeowner shall be terminated and the homeowner shall resume full responsibility for meeting the first mortgage payments if any of the following occur:

- (1) The maximum loan amount (\$50,000) has been provided to the homeowner;
- (2) The homeowner fails to report changes in employment status or income within 15 days of the change;
- (3) The homeowner's income increases to 85 percent or more of its pre-Event income level, or such other percentage as may be prescribed by HUD;
- (4) The homeowner sells the mortgaged property or refinances the mortgaged property for cash-out;
- (5) The homeowner defaults on the monthly homeowner's contribution payment on the delinquent mortgage;
- (6) The homeowner has exhausted the full term of monthly payments, as defined in § 2700.5; or
- (7) Such other event as may be specified by HUD.

(e) Deferral of commencement of repayment. HUD may authorize the deferral of the commencement of the repayment of an emergency mortgage relief loan or advance of credit or emergency mortgage relief payments made under this part until one year following the date of the last disbursement of the proceeds of the emergency mortgage relief loan or advance of credit or emergency mortgage relief payments, or for such longer period as HUD determines would

further the purpose of the Emergency Homeowners' Loan Program.

§ 2700.205 Emergency assistance amount.

(a) Emergency assistance to an eligible homeowner may be made available in an amount up to the amount of the principal, interest, taxes, ground rents, hazard insurance, and mortgage insurance premiums due under the homeowner's mortgage and such other costs as may be specified by HUD. The amount of emergency assistance provided to the homeowner shall be an amount that is determined by HUD to be reasonably necessary to supplement such amount as the homeowner is capable of contributing toward the homeowner's delinquent first mortgage payments, except that the aggregate amount of emergency relief provided to any homeowner shall not exceed \$ 50,000, including any fees allowed under §§ 2700.310(a) and 2700.415(a).

(b) Arrearage payments and monthly assistance payments may be made either with the proceeds of an insured emergency mortgage relief loan or advance of credit or with emergency mortgage relief payments for up to full term of the monthly payments, as defined in § 2700.5.

(c) Unless otherwise authorized by HUD, the lender or servicer shall not approve an emergency mortgage loan or advance of credit when the outstanding balance, including delinquent interest, of the delinquent mortgage when added to the other liens against the mortgaged property, plus the maximum emergency mortgage relief loan that may be advanced to the homeowner under this part, exceeds the value of the mortgaged property. (In determining the value of the property, the lender or servicer may rely upon previously obtained appraisals or other determinations of value of the property and need not obtain a current appraisal.)

§ 2700.210 Finance charges.

The maximum permissible finance charge, exclusive of fees and charges as provided in §§ 2700.310, and 2700.415, which may directly or indirectly be paid to or collected by the lender or the servicer in connection with an emergency mortgage relief loan or advance-of-credit transaction, shall not exceed simple interest on the outstanding principal balance at the annual interest rate for FHA-insured home mortgages at such time the emergency mortgage relief loan or advance of credit is originated. Additionally, no points or discounts of any kind may be assessed or collected in connection with an emergency mortgage relief loan or advance-of-credit transaction.

Subpart D-Mortgage Insurance

§ 2700.301 Loan applications.

(a) Lending institutions approved by HUD for participation in the Emergency Homeowners' Loan Program are authorized to accept, process, and approve applications for emergency mortgage relief loans or advances of credit under this part under such terms and conditions as HUD may prescribe.

(b) An approved lender may make an emergency mortgage relief loan or advances of credit on the terms specified in this part if the lender is satisfied that the application meets all of the relevant requirements of this part. The lender shall prepare a note, loan agreement, if any, and mortgage as required by HUD, which the lender shall record against the property securing the delinquent mortgage upon the execution of those documents.

(c) Except as may be otherwise specified by HUD, on the last working day of the month during which an emergency mortgage relief loan or advance of credit is closed, the lender shall submit to HUD an application for an insured emergency mortgage relief loan or advance of credit on such form as prescribed by HUD, signed by the mortgagor and holder of the mortgage

and that certifies that:

- (1) The lender, homeowner, and property meet the eligibility requirements of this part;
- (2) Circumstances (such as the volume of delinquent loans in the investor's portfolio likely to remain uncured) make it probable that there would be a foreclosure of the delinquent mortgage if the emergency mortgage relief were not provided to the homeowner;
- (3) The homeowner is in need of such emergency assistance and the mortgagee has indicated to the homeowner its intention to foreclose on the delinquent mortgage; and
- (4) The first disbursement of the principal amount of the emergency mortgage relief loan or advance of credit has been paid or credited to the homeowner's account with the servicing institution.

§ 2700.305 Conditions of insurance.

(a) When the requirements of this part have been met, the lender's mortgage insurance coverage under its mortgage insurance contract will apply to a particular loan as of the date of closing, if the lender has not exceeded the mortgage insurance authority allocation which HUD has given the lender.

(b) From the effective date of the emergency mortgage relief loan or advance of credit until the termination of the insurance with respect to that loan, the lender shall be bound by the provisions of this part as such provisions relate to the emergency mortgage relief loan or advance of credit.

§ 2700.310 Fees.

(a) The lender may collect from the homeowner during the year following the origination

of the emergency mortgage relief loan or advance of credit the following fees or charges in conjunction with providing the emergency mortgage relief loan or advance of credit:

(1) A charge to compensate the lender for expenses incurred in originating and closing the emergency relief loan, including preparation of a note, loan agreement, if any, and a mortgage in a form satisfactory for recordation, the total charge not to exceed such amount as specified by HUD ;

(2) Actual amounts charged by state or local governments or government officials for recording fees and recording taxes or other charges incident to making the emergency relief loan or advance of credit;

(3) An amount equal to the annual premium for flood insurance required by § 2700.101(a)(4) (the lender shall pay the homeowner's flood insurance premium for that year to the extent it collects such an amount); and

(4) An amount equal to the annual mortgage insurance premium required under § 2700.315.

(b) Subsequent to the year following the origination of the emergency mortgage relief loan or advance of credit and up to the termination of mortgage insurance under § 2700.325, the lender may collect from the homeowner the following fees and charges in connection with the emergency relief loan: an amount equal to the mortgage insurance premium required under § 2700.315.

§ 2700.315 Insurance premium.

(a) At such times as may be prescribed by HUD, the participating lender shall pay to HUD a mortgage insurance premium equal to one-half of one percent of the average outstanding

balance of the emergency mortgage relief loan or advance of credit, during the previous calendar year, of all emergency mortgage relief loans or advances of credit that the lender held or serviced during that period pursuant to this part.

(b) With respect to the payment provided for in paragraph (a) of this section, the lender shall submit a breakdown of the mortgage insurance premium in the form prescribed by HUD.

(c) If a mortgage securing an emergency mortgage relief loan or advance of credit is sold, assigned, or pledged pursuant to § 2700.350, any adjustments of the mortgage insurance premium already paid in connection with a mortgage securing an emergency mortgage relief loan or advance of credit shall be made by and between the lenders, except that any unpaid installments of the mortgage insurance premium shall be paid to HUD by the purchasing lender.

(d) There shall be no refund or abatement of any portion of the insurance premium except when the mortgage insurance premium relates to an emergency mortgage relief loan or advance of credit found to be ineligible. However, no refund shall be made unless a claim is denied by HUD or the ineligibility is reported by the lender promptly upon discovery and an application for refund is made. In no event shall charges be refunded when the application for refund is not made until after the emergency mortgage relief loan or advance of credit is paid in full.

§ 2700.320 Servicing.

Servicing functions for the emergency mortgage relief loan or advance of credit during the period that the emergency loan or advance is insured shall be performed by the lender or the servicing institution acting for the lender. The lender is responsible for proper servicing, even though the actual servicing is not performed by the lender.

§ 2700.325 Termination of mortgage insurance.

The mortgage insurance coverage and the insured lender's obligation to remit mortgage insurance premiums to HUD with respect to an emergency mortgage relief loan or advance of credit shall be terminated upon whichever of the following first occurs:

- (a) The emergency mortgage relief loan or advance of credit is paid in full;
- (b) The lender acquires the mortgaged property securing the emergency mortgage relief loan or advance of credit and notifies HUD that no claim for insurance benefits has been or will be made;
- (c) The homeowner and the lender jointly request termination; or
- (d) The lender files an insurance claim pursuant to § 2700.335.

§ 2700.330 Default.

(a) If the homeowner fails to make a scheduled payment or perform any other obligation required for the type of emergency assistance provided under this part, the homeowner shall be deemed to be in default.

- (b) For purposes of this subpart, the date of default shall be the earliest of:
 - (1) 30 days after the first day the homeowner is delinquent on the mortgage securing the emergency mortgage relief loan or advance of credit, if the delinquency remains uncorrected;
 - (2) The date the property securing the emergency mortgage relief loan or advance of credit is sold before full repayment of the emergency loan or advance of credit; and
 - (3) The date a lien superior to that securing the emergency mortgage relief loan or advance of credit is foreclosed.
- (c) If, after default and prior to the foreclosure of the mortgage securing the emergency

mortgage relief loan or advance of credit, the homeowner cures the default, the emergency loan or advance of credit shall be treated as if a default had not occurred, provided the homeowner pays the lender for any expenses the lender incurred in connection with the lender's attempt to collect on the emergency mortgage relief loan or advance of credit.

§ 2700.335 Claims.

(a) Claims for mortgage insurance for reimbursement for loss on an emergency mortgage relief loan or advance of credit shall be made in such form and provide such information as specified by HUD.

(b) Claims may be filed upon the homeowner's default on the emergency mortgage relief loan or advance of credit.

(c) When the homeowner defaults on the emergency mortgage relief loan or advance of credit, the lender may elect to:

(1) Proceed against the mortgage securing the emergency mortgage relief loan or advance of credit or attempt to collect on the note and then make a claim under its insurance contract if there is any net loss, or

(2) Make a claim under its mortgage insurance contract without proceeding against the security or the note.

(d) Except as may be otherwise specified by HUD, mortgage insurance claims shall be filed on the last working day of the month, no later than 90 days after the date of default, unless the lender proceeds against the mortgage securing the emergency relief loan or advance of credit, in which case the filing shall be no later than one year after the date of default, or such other time period as approved by HUD. If at the time of default or at any time subsequent to the default, a

person primarily or secondarily liable for the repayment of a loan is a person in “military service”, as such term is defined in the Servicemembers Civil Relief Act of 2003 (Public Law 108-189, approved December 19, 2003) (formerly known as Soldier's and Sailor's Civil Relief Act of 1940) (50 U.S.C. app. 501-594), the lender shall refrain from instituting foreclosure proceedings during the period in which the servicemember is in military service and 3 months thereafter and that period shall be excluded in computing the time within which a claim for insurance benefits under this subpart may be made.

(e) An insured lender will be reimbursed for its losses on emergency mortgage relief loans and advances of credit made in accordance with this part, in an amount equal to 90 percent of the sum of the following:

(1) The unpaid principal amount of the emergency mortgage relief loan or advance of credit less the amount recovered;

(2) The uncollected interest earned up to the date of claim;

(3) Uncollected court costs, including fees paid for issuing, serving, and filing summonses;

(4) Attorney's fees actually paid, not exceeding the lesser of:

(i) 25 percent of the amount collected by the attorney on the defaulted note, or

(ii) 15 percent of the balance due on the note; and

(5) Expenses actually incurred in recording assignments of mortgages to the United States of America, up to such amount as specified by HUD.

(f) The note and any mortgage held or judgment taken by the claimant must be assigned in its entirety and if any claim has been filed in bankruptcy, insolvency, or probate proceedings, such claim shall be likewise assigned to the United States of America. The assignment shall be

in the form approved by HUD.

§ 2700.340 Payment of insurance benefits.

Upon receipt of a claim for insurance benefits that meets the requirements of § 2700.335 and the other provisions of this part, HUD shall make a payment of insurance benefits in cash to the claimant in an amount equal to the amount specified in § 2700.335(e).

§ 2700.345 Administrative reports and examinations.

At any time, HUD may call upon an insured lender for such reports as are deemed to be necessary in connection with the regulations of this part and may inspect the books or accounts of the lender as they pertain to the emergency mortgage relief loans or advances of credit that are insured pursuant to this subpart.

§ 2700.350 Sale, assignment, and pledge of insured loan.

(a) No lender may sell or otherwise dispose of any insured emergency mortgage relief loan or advance of credit except pursuant to this section.

(b) An insured emergency mortgage relief loan or advance of credit may be sold to a lending institution eligible under § 2700.105. Upon such sale, both the seller and the buyer shall notify HUD within 30 days of the date of sale.

(c) When an insured emergency mortgage relief loan or advance of credit is sold to another lending institution eligible under § 2700.105, the buyer shall thereupon succeed to all the rights and become bound by all the obligations of the seller under the contract of insurance under this part, and the seller shall be released from its obligations under the contract of insurance.

(d) An assignment, pledge, or transfer of an insured emergency mortgage relief loan or advance of credit not constituting an actual transfer of legal title may be made by the lender to another eligible lending institution, subject to the following conditions:

(1) The assignor, pledgor, or transferor shall remain the lender for purposes of the contract of insurance under this part.

(2) HUD shall have no obligation to recognize or deal with any party other than that lender with respect to the rights, benefits, and obligations of the lender under the contract of insurance. Notice to or approval of HUD is not required in connection with assignments, pledges, or transfers pursuant to this subpart.

Subpart E-Direct Loans

§ 2700.401 Participation by lending institutions.

A lending institution eligible under § 2700.105 is authorized, except as may be otherwise prescribed by HUD, to accept, process, and approve applications for direct loans under this subpart in the form specified. That authority includes making determinations relating to the eligibility of the direct loan, homeowner, and property, pursuant to the provisions of this part. Direct loans, however, may be made pursuant to this part only when the investor cannot make an emergency loan under subpart D of this part for good cause, as determined by HUD.

§ 2700.405 Application for loans.

(a) The agreement to process an application for a direct loan shall constitute an acceptance of the lending institution of the responsibility to act as the servicer of HUD with respect to that particular application. The servicer shall make a loan on behalf of HUD on the

terms specified in subpart C of this part if the lending institution is satisfied that the application meets all of the requirements of this part.

(b) The servicer shall prepare a note, loan agreement, if any, and mortgage in the form specified in § 2700.201. The servicer shall record the mortgage upon the closing of the loan. The servicer shall make the first advance of the loan, as provided for in § 2700.201(e), using its own funds.

(c) On the last working day of the month during which the loan is closed, the servicer shall submit to HUD a copy of the application signed by the agent and the homeowner certifying that: the agent, homeowner, and property qualify under subpart B of this part; circumstances (such as the volume of delinquent loans in the investor's portfolio likely to remain uncured) make it probable that there would be a foreclosure if emergency mortgage relief were not given; the homeowner is in need of such relief; the investor has indicated to the homeowner its intention to foreclose; and the first advance of the emergency loan has been paid or credited to the homeowner's account with the servicing institution.

§ 2700.410 Transmittal of funds.

(a) When the requirements of this part have been met, HUD will transmit to the servicer, pursuant to the monthly accounting prescribed in § 2700.420, the emergency loan proceeds, as long as the agent has not exceeded the lending authority allocation that HUD has given the servicer pursuant to § 2700.10(c).

(b) When the investor is the servicer, the transmittal of funds under this section shall be conditioned upon the investor's agreement, for a period up to one month after the last advance under the emergency mortgage relief loan, to refrain from instituting foreclosure proceedings

against the homeowner, as long as the amount delinquent at the time of the origination of the emergency mortgage relief loan, excluding interest thereon, does not increase, unless HUD's prior approval is obtained.

(c) From the processing of the application until the satisfaction of the debt or the final accounting pursuant to § 2700.435, the servicer shall be bound by the provisions of this part with respect to a particular direct loan.

§ 2700.415 Fees.

(a) The servicer may collect from the homeowner during the year following the origination of the emergency loan the following fees or charges in conjunction with providing the emergency loan:

(1) A charge to compensate the servicer for expenses incurred in originating and closing the emergency mortgage relief loan, including preparation of a note, loan agreement, if any, and a mortgage in a form satisfactory for recordation, the total charge not to exceed such amount as may be specified by HUD;

(2) Actual amounts charged by state or local governments or government officials for recording fees and recording taxes or other charges incident to making the emergency loan;

(3) An amount equal to the annual premium for flood insurance required by § 2700.101(c) (the servicer shall pay the homeowner's flood insurance premium for that year to the extent it collects such an amount); and

(4) An amount equal to the annual premium required under § 2700.420(d).

(b) Subsequent to the year following the origination of the emergency mortgage relief loan and up to the final accounting on the emergency mortgage relief loan under § 2700.435, the

servicer may collect from the homeowner the fees and charges as provided in this section.

§ 2700.420 Servicing.

(a) Servicing functions during the period that the emergency mortgage relief loan is outstanding shall be performed by the servicer.

(b) On the same day each month while the servicer is servicing emergency mortgage relief loans for HUD, the servicer shall submit a monthly accounting, in the form prescribed by HUD, for all of the emergency mortgage relief loans that it services. The accounting shall list the amount of funds that it advanced under emergency mortgage relief loans during the previous calendar month. In addition, the accounting shall list the amount paid to the servicer under the emergency mortgage relief loans serviced by the servicer during the previous calendar month.

(c) If, pursuant to the monthly accounting, the amount HUD owes the servicer exceeds the amount the servicer owes HUD, HUD shall remit the difference to the servicers, as long as HUD finds the accounting in order. If, pursuant to the monthly accounting, the amount the servicer owes HUD exceeds the amount HUD owes the servicer, the servicer shall remit the difference when the servicer submits the monthly accounting to HUD.

(d) At such times as may be prescribed by HUD, the servicer, in addition to making its monthly accounting, shall pay to HUD a premium equal to one-half of one percent of the average outstanding balance during the previous calendar year of all the emergency mortgage relief loans it serviced during that period. That payment shall be accompanied by a breakdown of the premium in the form prescribed by HUD.

§ 2700.425 Default.

(a) If the homeowner fails to make any payment or to perform any other obligation under the mortgage securing the emergency mortgage relief loan, the homeowner shall be deemed to be delinquent on such loan.

(b) For purposes of this subpart, the date of default shall be the earliest of:

(1) 30 days after the first day the homeowner is delinquent on the emergency mortgage relief loan, if the delinquency remains uncorrected:

(2) The date the mortgaged property is sold before full repayment of the emergency mortgage relief loan; and

(3) The date a lien superior to that securing the emergency mortgage relief loan is foreclosed.

(c) If, after default and prior to the foreclosure of the mortgage securing the emergency mortgage relief loan, the homeowner cures the default, the emergency mortgage relief loan shall be treated as if the default had not occurred, provided the homeowner pays the servicer for any expenses the servicer incurred in connection with the servicer's attempt to collect on the loan.

§ 2700.430 Collection.

(a) If a homeowner defaults on an emergency mortgage loan, the servicer shall elect:

(1) To wait while the Department of Justice proceeds against the mortgage securing the emergency mortgage relief loan or attempts to collect on the note, and then to make an accounting and payment to HUD, as provided in § 2700.435, or

(2) To make an accounting and payment, as provided § 2700.435, without waiting while the Department of Justice proceeds against the mortgage or note.

(b) If pursuant to paragraph (a) of this section, the servicer elects to make an accounting

without waiting while the Department of Justice proceeds against the mortgage or note, the servicer at the time of that accounting will have the option of purchasing the emergency loan and underlying mortgage for a price equal to 0.5 times the unpaid principal balance.

§ 2700.435 Payment to HUD.

(a) Before the expiration of the period of 90 days after the date of default, or such other time period as HUD approves, the servicer shall transmit to HUD on the last working day of the month the complete credit and collection file pertaining to the emergency mortgage relief loan.

(b) At the same time the servicer makes the transmittal as provided in paragraph (a) of this section, it shall share the loss on the emergency mortgage relief loan by making a payment to HUD in an amount equal to 10 percent of the sum of:

(1) The unpaid principal amount of the emergency mortgage relief loan, less the amount recovered; and

(2) The uncollected interest earned up to the date of the final accounting. Accompanying that payment shall be a final accounting of the emergency mortgage relief loan, in the form specified by HUD, and the note and mortgage executed in connection with the emergency mortgage relief loan.

(c) Notwithstanding the provisions of paragraph (b) of this section, in the event that the aggregate loss borne by HUD reaches such percent, as specified in the Federal Register document activating the Emergency Homeowners' Loan Program, of the aggregate amount advanced by the servicer on behalf of HUD under this subpart, the servicer shall bear the burden of any loss in excess of that such percent by making an appropriate payment to HUD within the time period specified in paragraph (a) of this section.

