of this section must be made weekly, as of the close of the last business day of the week, and the deposit so computed must be made no later than one hour after the opening of banking business on the second following business day.

(B)(*1*) A broker or dealer with average total credits that are equal to or greater than $250 million must make the computations necessary to determine the amount required to be deposited in the Customer Reserve Bank Account and PAB Reserve Bank Account, as specified in paragraph (e)(1) of this section, daily as of the close of the previous business day, and the deposit so computed must be made no later than one hour after the opening of banking business on the second following business day. A broker or dealer must comply with this paragraph (e)(3)(i)(B)(*1*) no later than six months after having average total credits equal to or greater than $250 million and until such time as it has average total credits of less than $250 million and 60 days after having provided the 60-day notice required by paragraph (e)(3)(i)(B)(*2*) of this section. For purposes of this paragraph (e)(3), *average total credits* means the arithmetic mean of the sum of Total Credits in the Customer Reserve Bank Account computation and the PAB Reserve Bank Account computation reported in the 12 most recently filed month-end Forms X–17A–5.

(*2*) A broker or dealer computing the Customer Reserve Bank Account computation and the PAB Reserve Bank Account computation daily under paragraph (e)(3)(i)(B)(*1*) of this section whose average total credits falls below $250 million may elect to compute the Customer Reserve Bank Account and the PAB Reserve Bank Account computation weekly under paragraph (e)(3)(i)(A) of this section. Such broker or dealer must notify its designated examining authority, in writing, of this election at least 60 calendar days before computing the Customer Reserve Bank Account and the PAB Reserve Bank Account computation weekly under paragraph (e)(3)(i)(A) of this section.

(C) A broker or dealer which has aggregate indebtedness not exceeding 800 percent of net capital (as defined in § 240.15c3–1) and which carries aggregate customer funds (as defined in paragraph (a)(10) of this section), as computed at the last required computation pursuant to this section, not exceeding $1,000,000, may in the alternative make the Customer Reserve Bank Account computation monthly, as of the close of the last business day of the month, and, in such event, must deposit not less than 105 percent of the amount so computed no later than one hour after the opening of banking business on the second following business day.

* * * * *

(iv) Computations in addition to the computations required in this paragraph (e)(3), other than computations made under paragraph (e)(3)(i)(B)(*1*) of this section, may be made as of the close of any business day, and the deposits so computed must be made no later than one hour after the opening of banking business on the second following business day.

* * * * *

By the Commission.

Dated: July 12, 2023.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–15200 Filed 7–17–23; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 202

[Docket No. FR–6291–P–01]

RIN 2502–AJ60

Revision of Investing Lenders and Investing Mortgagees Requirements and Expansion of Government-Sponsored Enterprises Definition

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development, HUD.

ACTION: Proposed rule.

SUMMARY: HUD proposes to revise the requirements for investing lenders and investing mortgagees to gain or maintain status as a Federal Housing Administration (FHA) approved lender or mortgagee. This proposed revision would make FHA's approval requirements consistent with investing mortgagees' and investing lenders' risk, reduce barriers to FHA approval for new investing mortgagees and investing lenders, and increase access to capital for all FHA-approved mortgagees and lenders. HUD also proposes to make clarifying edits to ensure that certification language is applicable to investing lenders and investing mortgagees. In addition, HUD proposes to define the Government-Sponsored Enterprises (GSEs) separately from other governmental-type entities to ensure that FHA requirements specific to loan origination do not improperly apply to the GSEs. Finally, HUD proposes to eliminate obsolete language related to lender and mortgagee net worth requirements.

DATES: *Comment Due Date:* September 18, 2023.

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

1. *Electronic Submission of Comments.* Comments may be submitted 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 comments immediately available to the public. Comments submitted electronically through *www.regulations.gov* can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that website to submit comments electronically.

2. *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.

Note: To receive consideration as a public comment, comments must be submitted through one of the two methods specified above.

Public Inspection of Public Comments. HUD will make all properly submitted comments and communications available for public inspection and copying during regular business hours at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Volky Garcia, Division Director, Department of Housing and Urban Development, 451 7th Street SW,

Washington, DC 20410, telephone 202–402–8229 (this is not a toll-free number), email *Volky.a.garcia@hud.gov.* HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. Background

Current HUD regulations at 24 CFR part 202, subpart A, establish minimum standards and requirements for approval by the Secretary of lenders and mortgagees to participate in FHA's Title I and Title II programs. Subpart B identifies the classes of lender and mortgagee eligible to participate in FHA's Title I and Title II programs and outlines additional class-specific requirements for participation in FHA's Title I and Title II programs.

In 2010, HUD amended 24 CFR part 202, subpart A, to include investing lenders and investing mortgagees as a class of lender and mortgagee subject to HUD's net worth requirements currently found at § 202.5(n). At the time the investing lender and investing mortgagee net worth requirement change was made in 2010, HUD also incorporated new financial reporting, audit, and quality control plan requirements for investing lenders and investing mortgagees into various HUD handbooks; however, no corresponding updates were made to 24 CFR part 202, subpart B, to reflect these investing lender and investing mortgagee requirements. Additionally, in 2010, FHA increased the minimum net worth requirements applicable to certain classes of lenders and mortgagees in 24 CFR part 202. These new net worth requirements were phased in over a period of three years, beginning on May 20, 2010, and becoming fully phased in by May 20, 2013. The net worth requirements during that three-year transition period are now obsolete, but the phased-in net worth requirements language remains in HUD's regulations.

Current HUD regulations in § 202.10 also identify the class of lenders and mortgagees that qualify as governmental institutions, Government-Sponsored Enterprises, public housing agencies, and State housing agencies. Currently, the various GSEs [1] are included in the same definition as Federal, State, or municipal governmental agencies and Federal Reserve Banks at § 202.10(a). For several years, certain GSEs have contended that they do not have the infrastructure that other lenders and mortgagees listed in § 202.10 have in place to ensure compliance with FHA requirements related to loan and mortgage origination because they cannot originate loans or mortgages. FHA has reviewed the mission and structure of the GSEs and determined that they should not be subject to FHA requirements specific to loan and mortgage origination because the GSEs do not originate loans or mortgages.

II. This Proposed Rule

Through this proposed rule, HUD proposes to make multiple changes to 24 CFR part 202. HUD's proposed changes are described more fully in each of the below sections.

A. Requirements for Investing Lenders and Investing Mortgagees

HUD proposes to state that investing lenders and investing mortgagees must comply with applicable audit and financial statement requirements by adding language to § 202.9 that incorporates audit report, financial statement, and other financial information requirements, similar to the requirements for supervised and nonsupervised lenders and mortgagees found in §§ 202.6(b)(4) and 202.7(b)(3), respectively. These proposed audit and financial statement requirements would also include adding investing lenders and investing mortgagees as types of lenders and mortgagees that must comply with HUD's uniform financial reporting standards, as described in § 5.801(a)(5).

HUD is also proposing to make explicit that investing lenders and investing mortgagees must comply with FHA's annual certification requirements at § 202.5(m). Currently, FHA's annual certification regulation contains language primarily directed at lenders and mortgagees that originate insured mortgages or Title I loans. HUD proposes to update the annual certification requirement language in § 202.5(m) to reference any lender or mortgagee, including investing lenders and investing mortgagees, that originates, purchases, holds, sells, or services insured mortgages or Title I loans.

HUD is also proposing to clarify at § 202.5(h) that investing lenders and investing mortgagees without servicing authority do not have to implement a written quality control plan.

B. Government-Sponsored Enterprises

HUD proposes to separately define the GSEs from other Federal, State, or municipal governmental agencies and Federal Reserve Banks as described in § 202.10(a). This proposed change is appropriate because, unlike the other governmental-type institutions listed in § 202.10(a), the GSEs do not originate loans or mortgages. By separately defining the GSEs, it would be clear that the GSEs do not perform loan or mortgage origination activities and therefore are not subject to FHA requirements specific to loan or mortgage origination.

Specifically, HUD proposes to individually define the term GSE by creating a separate paragraph (b) in § 202.10. The GSEs would be identified as the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation (commonly known as Freddie Mac), and the Federal National Mortgage Association (commonly known as Fannie Mae). The proposed GSE definition would make clear that GSE lenders or mortgagees may purchase, service, or sell, but not originate, loans and mortgages. The proposed GSE definition would also make explicit that the GSE lenders or mortgagees must meet the general approval requirements in § 202.5, but that GSE lenders or mortgagees are not required to meet the net worth requirement provided in § 202.5.

C. Obsolete Language

The phased-in net worth requirements for 2010 and 2011 currently found at § 202.5(n)(2) expired in 2013. HUD proposes to delete paragraph (n)(2) because the language is now obsolete.

D. Technical Amendments and Administrative Edits

As part of HUD's review of 24 CFR part 202 and in proposing the changes described above, HUD identified several technical or non-substantive edits to 24 CFR part 202 that would improve the clarity and readability of the part. HUD proposes the following edits to 24 CFR part 202 to improve its clarity and readability:

1. In § 202.5(n)(1), HUD is proposing to update the paragraph to change the word ''section'' to ''this section (n).'' This change would make it more clear to which text the paragraph is referring. Additionally, HUD proposes to update paragraph (n)(1) to change the word ''entities'' to ''institutions.'' This change would make the text of the paragraph more consistent because the term ''institutions'' is used in an earlier sentence in the paragraph.

[1] The GSEs are the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation (commonly known as Freddie Mac), and the Federal National Mortgage Association (commonly known as Fannie Mae).

2. In § 202.5(n)(3)(i)–(ii),[2] HUD is proposing minor grammatical changes intended to improve the readability of the paragraphs and does not make any changes to the substantive meaning of the text. Additionally, HUD proposes to update paragraph (n)(3)(ii) to remove the phrases ''minimum'' and ''is required'' from the paragraph. These changes are proposed because the quoted terms are duplicative in meaning of other phrases in the paragraph.

3. In § 202.9(b)(3), HUD is proposing to add the phrase ''investing lender or investing mortgagee'' to the text to make explicit that the paragraph applies to both investing lenders and investing mortgagees.

4. In § 202.10(c),[3] HUD is proposing to update the citations of §§ 200.40 and 200.69 listed in the paragraph to 2 CFR 200.1. This change is appropriate because the identified section numbers from 2 CFR part 200 have been updated. This change will direct the reader to the appropriate citation.

III. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Pursuant to 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) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The order also 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 further 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, this proposed rule, if finalized, would be limited to defining GSEs under a separate definition within 24 CFR 202.10; clarifying the audit, financial statement, and certification requirements of investing lenders and investing mortgagees; and eliminating obsolete language within 24 CFR part 202 regarding lenders and mortgagees net worth requirements. OMB has reviewed this proposed rule and determined that it is not significant under Executive Orders 12866 and 13563.

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. The changes proposed in this rule are limited to defining GSEs under a separate definition within § 202.10; clarifying the audit, financial statement, and certification requirements of investing lenders and investing mortgagees; and eliminating obsolete language within 24 CFR part 202 regarding lenders and mortgagees net worth requirements. HUD anticipates that this proposed rule, if finalized, will have no economic impact.

Accordingly, the undersigned certifies that the proposed 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 impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Executive Order 13132, Federalism

Executive Order 13132 (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 does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and on the private sector. This 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.

List of Subjects

24 CFR Part 5

Administrative practice and procedure; Aged; Claims; Crime; Government contracts; Grant programs-housing and community development; Individuals with disabilities; Intergovernmental relations; Loan programs-housing and community development; Low and moderate income housing; Mortgage Insurance; Penalties; Pets; Public housing; Rent subsidies; Reporting and recordkeeping requirements; Social security; Unemployment compensation; Wages.

24 CFR Part 202

Administrative practice and procedure; Home improvement; Manufactured homes; Mortgage insurance; Reporting and recordkeeping requirements.

For the reasons stated above, HUD proposes to amend 24 CFR parts 5 and 202 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for part 5 continues to read as follows:

[2] Consistent with the proposed change described in section C. Obsolete Language of this proposed rule, these paragraphs would be redesignated as (n)(2)(i) and (n)(2)(ii), respectively.

[3] Consistent with the proposed change described in section B. Government-Sponsored Enterprises of this proposed rule, this paragraph would be redesignated as (d).

Authority: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109–115, 119 Stat. 2396; Sec. 607, Pub. L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e *et seq.*); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O 13831, 83 FR 20715, 3 CFR, 2018 Comp., p. 806; 42 U.S.C. 2000bb *et seq.*

■ 2. Revise § 5.801(a)(5) to read as follows:

§ 5.801 Uniform financial reporting standards.

(a) * * *

(5) HUD-approved Title I and Title II supervised, nonsupervised, and investing lenders and investing mortgagees.

* * * * *

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

■ 3. The authority citation for part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

■ 4. In § 202.5:

■ a. Revise paragraph (h);

■ b. Revise the second sentence of the introductory text of paragraph (m);

■ c. Revise paragraphs (n)(1) and (2); and

■ d. Remove paragraph (n)(3).

The revisions read as follows:

§ 202.5 General approval standards

* * * * *

(h) *Quality control plan.* Lenders or mortgagees, unless approved under § 202.9 without servicing authority, shall implement a written quality control plan, acceptable to the Secretary, that assures compliance with the regulations and other issuances of the Secretary regarding loan or mortgage origination and servicing.

* * * * *

(m) * * * Upon application for approval and with each annual recertification, each lender and mortgagee must submit a certification that it has not been refused a license and has not been sanctioned by any state or states in which it will originate, purchase, hold, sell, or service insured mortgages or Title I loans. * * *

* * * * *

(n) * * *

(1) *Applicability.* The requirements of paragraph (n) apply to approved supervised and nonsupervised lenders and mortgagees under § 202.6 and § 202.7, and approved investing lenders and investing mortgagees under § 202.9. For ease of reference, these institutions are referred to as ''approved lenders or mortgagees'' for purposes of paragraph (n). These requirements also apply to applicants for FHA approval under §§ 202.6, 202.7, and 202.9. For ease of reference, these institutions are referred to as ''applicants'' for purposes of paragraph (n).

(2) *Requirements.*

(i) *Single family net worth requirements.* Irrespective of size, each applicant and each approved lender or mortgagee for participation solely under the FHA single family programs shall have a net worth of not less than $1 million, plus an additional net worth of one percent of the total volume, in excess of $25 million, of FHA single family insured mortgages originated, underwritten, purchased, or serviced during the prior fiscal year, up to a maximum required net worth of $2.5 million. No less than 20 percent of the applicant's or approved lender's or mortgagee's required net worth must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.

(ii) *Multifamily net worth requirements.* Irrespective of size, each applicant for approval and each approved lender or mortgagee for participation solely under the FHA multifamily programs shall have a net worth of not less than $1 million. For those multifamily approved lenders or mortgagees that also engage in mortgage servicing, an additional net worth of one percent of the total volume, in excess of $25 million, of FHA multifamily mortgages originated, purchased, or serviced during the prior fiscal year, up to a maximum required net worth of $2.5 million. For multifamily approved lenders or mortgagees that do not perform mortgage servicing, an additional net worth of one half of one percent of the total volume, in excess of $25 million, of FHA multifamily mortgages originated during the prior fiscal year, up to a maximum required net worth of $2.5 million. No less than 20 percent of the applicant's or approved lender's or mortgagee's required net worth must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.

(iii) *Dual participation net worth requirements.* Irrespective of size, each applicant for approval and each approved lender or mortgagee that is a participant in both FHA single family and multifamily programs must meet the net worth requirements as set forth in paragraph (n)(2)(i) of this section.

■ 6. In § 202.9:

■ a. Revise the section heading;

■ b. In paragraph (a), the introductory text to paragraph (b), paragraph (b)(1), and paragraph (b)(2) remove the words ''investing lender or mortgagee'' and add, in their place, the words ''investing lender or investing mortgagee''; and

■ c. Revise paragraph (b)(3) and add paragraph (b)(4).

The revisions and additions read as follows:

§ 202.9 Investing lenders and investing mortgagees.

* * * * *

(b) * * *

(3) *Fidelity bond.* An investing lender or investing mortgagee shall maintain fidelity bond coverage and errors and omissions insurance acceptable to the Secretary and in an amount required by the Secretary, or alternative insurance coverage approved by the Secretary, that assures the faithful performance of the responsibilities of the mortgagee.

(4) *Audit Report.* A lender or mortgagee must comply with the financial reporting requirements in 24 CFR part 5, subpart H. Audit reports shall be based on audits performed by a certified public accountant, or by an independent public accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. Audit reports shall include:

(i) A financial statement in a form acceptable to the Secretary, including a balance sheet and a statement of operations and retained earnings, a statement of cash flows, an analysis of the lender's or mortgagee's net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds; and

(ii) Such other financial information as the Secretary may require to determine the accuracy and validity of the audit report.

* * * * *

■ 7. In § 202.10:

■ a. Revise paragraph (a);

■ b. Redesignate paragraph (b) as (c); and

■ c. Add new paragraphs (b) and (d).

The revisions and additions read as follows:

§ 202.10 Governmental institutions, Government-Sponsored Enterprises, public housing agencies and State housing agencies.

(a) *Federal, State, and municipal governmental agencies and Federal Reserve Banks.* A Federal, State, or municipal government agency or a Federal Reserve Bank may be an approved lender or mortgagee. A mortgagee approved under this paragraph may submit applications for Title II mortgage insurance. A lender or mortgagee approved under this paragraph may originate, purchase, service, or sell Title I loans and insured

mortgages, respectively. A mortgagee or lender approved under this paragraph is not required to meet a net worth requirement. A lender or mortgagee shall maintain fidelity bond coverage and errors and omissions insurance acceptable to the Secretary and in an amount required by the Secretary, or alternative insurance coverage approved by the Secretary, that assures the faithful performance of the responsibilities of the mortgagee. There are no additional requirements beyond the general approval requirements in § 202.5 or as provided under paragraph (c) of this section.

(b) *Government-Sponsored Enterprises.* The Government-Sponsored Enterprises are the Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, and Federal National Mortgage Association. A Government-Sponsored Enterprise may be an approved lender or mortgagee. A lender or mortgagee approved under this paragraph may purchase, service, or sell Title I loans and insured mortgages, respectively. A mortgagee or lender approved under this paragraph is not required to meet a net worth requirement. There are no additional requirements beyond the general approval requirements in § 202.5.

* * * * *

(d) *Audit requirements.* The insuring of loans and mortgages under the Act constitutes ''Federal financial assistance'' (as defined in 2 CFR 200.1) for purposes of audit requirements set out in 2 CFR part 200, subpart F. Non-Federal entities (as defined in 2 CFR 200.1) that receive insurance as lenders and mortgagees shall conduct audits in accordance with 2 CFR part 200, subpart F.

Julia R. Gordon,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2023–15033 Filed 7–17–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

42 CFR Part 136

RIN 0917–AA10

Catastrophic Health Emergency Fund

AGENCY: Indian Health Service, HHS.

ACTION: Proposed rule.

SUMMARY: The Indian Health Service (IHS or Service) administers the Catastrophic Health Emergency Fund (CHEF) pursuant to section 202 of the Indian Health Care Improvement Act (IHCIA). The purpose of the CHEF is to meet the extraordinary medical costs associated with the treatment of victims of disasters or catastrophic illnesses who are within the responsibility of the Service. This notice proposes regulations governing the administration of the CHEF.

DATES: Send comments on or before September 18, 2023.

ADDRESSES: You may submit comments by the following method:

Electronically: Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter the Regulation Identifier Number (RIN) (presented above in the document headings). For best results, do not copy and paste the number; instead, type the RIN into the Search box using hyphens. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by the IHS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All submissions are voluntary, and such voluntary submission of personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information constitutes permission for IHS to make the information publicly accessible. The IHS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this rule contact: Carl Mitchell, Director, Division of Regulatory and Policy Coordination (DRPC), Office of Management Services (OMS), Indian Health Service, 301–443–6384, *carl.mitchell@ihs.gov;* or CAPT John Rael, Director, Office of Resource Access and Partnerships (ORAP), Indian Health Service, 301–443–0969, *john.rael@ihs.gov.*

SUPPLEMENTARY INFORMATION: The CHEF was established by section 202 of the IHCIA, Public Law 94–437 (25 U.S.C. 1621a). The Patient Protection and Affordable Care Act, Public Law 111–148 as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (collectively, the Affordable Care Act or ''the ACA''), reauthorized the IHCIA and amended the CHEF, directing the Secretary to promulgate regulations governing the administration of the CHEF.

I. Background

The purpose of the CHEF is to meet the extraordinary medical costs associated with the treatment of victims of disasters or catastrophic illnesses who are within the responsibility of the Service. The IHS administers the CHEF to reimburse certain IHS and Tribal purchased/referred care (PRC) costs that exceed the cost threshold. Although the CHEF was first established in 1988, a similar fund was authorized by Public Law 99–591, a Joint Resolution continuing appropriations for fiscal year (FY) 1987. The IHS developed operating guidelines for the management of the CHEF in August of 1987, which were approved by the Office of Management and Budget (OMB). Those guidelines were developed with input from Tribal Organizations and the IHS personnel who work with the daily processing and management of Contract Health Services (CHS), now known as the Purchased/Referred Care (PRC) Program. Congress passed the Indian Health Care Improvement Reauthorization and Extension Act of 2009, S. 1790, 111th Cong. (2010) (IHCIREA), as section 10221(a) of the Patient Protection and Affordable Care Act, Public Law 111–148. Through IHCIREA, Congress permanently reauthorized and amended the IHCIA, Public Law 94–437. Section 202 of the IHCIA (25 U.S.C. 1621a) establishes the CHEF and directs the IHS to promulgate regulations for its administration. The operating guidelines and twenty-eight (28) years of experience (FYs 1987–2015) contributed to the design of the proposed rule published January 26, 2016, (81 FR 4239). Following additional consultation and additional years of experience, the IHS is issuing this new notice of proposed rulemaking (NPRM). This NPRM supersedes and replaces the proposed rule published January 26, 2016, (81 FR 4239); as such, the 2016 NPRM is hereby rescinded.

II. Provisions of This Proposed Regulation

This regulation proposes to (1) establish definitions governing the CHEF, including definitions of disasters and catastrophic illnesses; (2) establish that a Service Unit shall not be eligible for reimbursement for the cost of treatment from the CHEF until its cost of treating any victim of such catastrophic illness or disaster has reached a certain threshold cost; (3) establish a procedure for reimbursement