

§ 266.10

24 CFR Ch. II (4-1-10 Edition)

or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instrument, if any, secured thereby. Any other financing permitting on property insured under this part must be expressly subordinate to the insured mortgage.

Level I participants means HFAs that elect to take 50 percent or more of the risk of loss in 10 percent increments on mortgages issued under this program.

Level II participants means HFAs that elect to take 10 or 25 percent of the risk of loss on mortgages issued under this program, dependent on the loan-to-replacement cost or loan-to-value ratio of the project to be insured.

Mortgage means such a single first lien upon the real estate as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the real estate is situated, together with the credit instruments, if any, secured thereby.

Mortgagee means the original lender under a mortgage and its successors and assigns approved by the Commissioner.

Mortgagor means the original borrower under a mortgage and its successor and assigns.

Multifamily housing means housing accommodations on the mortgaged property that are designed principally for residential use, conform to standards satisfactory to the Secretary, and consist of not less than 5 rental units (including cooperative units) on 1 site. These units may be detached, semidetached, row house, or multifamily structures.

Qualified HFA means an HFA that meets the requirements described in § 266.100(a).

Risk-Sharing Agreement means a contract between an HFA and the Commissioner that incorporates the terms, obligations, and conditions specified in this part.

Secondary financing means any grant, loan, inferior lien, or other form of indebtedness used during loan origination prior to HUD endorsement to finance a multifamily property insured under this part which is inferior to the insured mortgage as defined above and

does not have first priority for payment.

Single Room Occupancy, or SRO, projects means multifamily projects consisting of units that are not required to contain food preparation or sanitary facilities for occupancy by single individuals capable of independent living.

Supportive services means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single room occupancy unit, the term includes any service provided to assist tenants in locating and retaining permanent housing. This definition is to be used in conjunction with the "gross rent" calculation.

§ 266.10 Allocations of assistance and credit subsidy.

(a) *Notice of availability of assistance.* HUD will announce the availability of assistance under this program through publication of a Notice in the FEDERAL REGISTER. Such Notice will invite qualified HFAs to submit an application for approval and/or for additional units under this part. The Notice will indicate the deadline date for submission of applications, required documentation, the address to which the applications must be submitted and other relevant information.

(b) Credit subsidy will be obligated and allocated in accordance with outstanding Department instructions.

§ 266.15 Risk-Sharing Agreement.

Execution of a Risk-Sharing Agreement is a prerequisite to participation in this program. The Risk-Sharing Agreement shall be in a form acceptable to the Commissioner.

[61 FR 7947, Feb. 29, 1996]

§ 266.20 Effect of amendments.

The Commissioner may amend the regulations in this part from time to time. Amendments to the regulations will not adversely affect the interest of a lender under a Contract of Insurance on any mortgage already insured or on any mortgage to be insured on which

HUD has already issued its firm approval letter.

§ 266.25 Limitation on HUD insurance liability.

The Commissioner shall have no obligation to recognize or deal with anyone other than the HFA in its role as mortgagee of record and as party to a risk-sharing agreement with HUD with respect to the rights, benefits, and obligations of the HFA under the contract of insurance.

§ 266.30 Nonapplicability of 24 CFR part 246.

The provisions of 24 CFR part 246 do not apply to projects that are security for mortgages insured under this part.

Subpart B—Housing Finance Agency Requirements

§ 266.100 Qualified housing finance agency (HFA).

(a) *Qualifications.* To participate in the program, an HFA must apply and be specifically approved for the pilot program described in this part, in addition to being approved as a mortgagee under § 202.10. The HFA must maintain eligibility by continuing to comply with the requirements set forth in the Risk-Sharing Agreement and this part. To qualify for participation in the program described in this part, an HFA must:

- (1) Carry the designation of “top tier” or its equivalent as evaluated by Standard and Poor’s or any other nationally recognized rating Agency; or
- (2) Receive an overall rating of “A” for the HFA for its general obligation bonds from a nationally recognized rating agency; or
- (3) Otherwise demonstrate its capacity as a sound and experienced HFA based on, but not limited to, experience in financing multifamily housing, fund balances, administrative capabilities, investment policy, internal controls, financial management, portfolio quality, and State or local support; and
- (4) Be a HUD-approved multifamily mortgagee in good standing; and
- (5) Have at least five years experience in multifamily underwriting; and
- (6) Certify that:

(i) The Department of Justice has not brought a civil rights suit against the Agency, and no suit is pending;

(ii) There has not been an adjudication of a civil rights violation in a civil action brought against the HFA by a private individual, unless the HFA is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance;

(iii) There are no outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has not issued a charge against the HFA under the Fair Housing Act, unless the HFA is operating under a compliance agreement designed to correct the areas of noncompliance.

(b) *Approval levels.* Approval levels consist of the following:

(1) Level I approval to originate, service, and dispose of multifamily mortgages where the HFA uses its own underwriting standards and loan terms and conditions, and assumes 50 to 90 percent of the risk of loss (increments of 10 percent).

(2) Level II approval to originate, service, and dispose of multifamily mortgages where the HFA uses underwriting standards and loan terms and conditions approved by HUD, and:

(i) When the loan-to-replacement cost ratio for new construction and substantial rehabilitation projects or the loan-to-value ratio for existing projects is greater than or equal to 75 percent, the HFA shall assume 25 percent of the risk of loss.

(ii) When the loan-to-replacement cost ratio for new construction and substantial rehabilitation or the loan-to-value ratio for existing projects is less than 75 percent, the HFA shall assume 10 percent, or 25 percent at the HFA’s option, of the risk of loss.

(3) For HFAs who plan to use Level I and Level II processing, the underwriting standards and loan terms and conditions to be used on Level II loans must be approved by HUD.

[59 FR 62524, Dec. 5, 1994, as amended at 62 FR 20088, Apr. 24, 1997]