

§ 300.17

any time, to alter or waive any of the requirements contained in this chapter or elsewhere or to impose other and additional requirements; it further reserves the right, without prior notice and at any time, to amend or rescind any or all of the material set forth herein.

§ 300.17 Audits and reports.

The Association and its designees may at any reasonable time audit the books and examine the records of any issuer, mortgage servicer, trustee, agent or other person bearing on compliance with the requirements of the Association's programs, and the Association may require reasonable and necessary reports from such persons.

PART 310—BYLAWS OF THE GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

AUTHORITY: 12 U.S.C. 1723 and 42 U.S.C. 3535(d).

SOURCE: 60 FR 42015, Aug. 14, 1995, unless otherwise noted.

§ 310.1 Bylaws of the Association.

The bylaws of the Association shall be duly adopted by the Secretary of Housing and Urban Development pursuant to section 308 of the National Housing Act (12 U.S.C. 1723) and shall govern the performance of the powers and duties granted to or imposed upon the Association by law.

PART 320—GUARANTY OF MORTGAGE-BACKED SECURITIES

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AUTHORITY: 12 U.S.C. 1721(g) and 1723a(a); and 42 U.S.C. 3535(d).

SOURCE: 60 FR 42015, Aug. 14, 1995, unless otherwise noted.

Subpart A—Pass-Through Type Securities

§ 320.1 General.

The Association is authorized by section 306(g) of the National Housing Act (12 U.S.C. 1721(g)) upon such terms and conditions as it may deem appropriate, to guarantee the timely payment of principal of and interest on securities that are based on and backed by a trust or pool composed of mortgages which are insured or guaranteed by FHA, FmHA or VA. The Association's guaranty of mortgage-backed securities is backed by the full faith and credit of the United States. This subpart is limited to "modified pass-through" securities, and does not purport to set forth all the procedures and requirements that apply to the issuance and guaranty of such securities. All such transactions are governed by the specific terms and provisions of the Association's Mortgage-Backed Securities Guides (MBS Guides) and contracts entered into by the parties.

§ 320.3 Eligible issuers of securities.

(a) *Eligibility requirements.* A mortgage lender, including an instrumentality of a State or local government, to be eligible to issue or service mortgage-backed securities guaranteed by the Association must satisfy all of the following standards:

- (1) Be in good standing as a mortgagee approved by the FHA;
- (2) Be in good standing as a mortgage seller or servicer approved by the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Association. Loss of either FNMA approval or FHLMC approval may cause

the issuer to become ineligible to issue and service the Association's mortgage-backed securities and constitute a default under the applicable guaranty or contractual agreement whether or not the issuer qualified for new issuer approval on the basis of FNMA or FHLMC approval;

(3) Have management with adequate experience, and access to adequate facilities to issue or service mortgage-backed securities, as determined by the Association;

(4) Maintain the applicable minimum net worth discussed in paragraph (c) of this section; and

(5) Meet the requirements, conditions, and limitations prescribed by the Association in this part or the applicable MBS Guides.

(b) *Time of eligibility.* The Association shall not commit to guarantee, or guarantee any issue of mortgage-backed securities unless the mortgage lender requesting such commitment or guaranty qualifies as an eligible issuer both at the time of commitment approval and at the time of the issuance of the guaranty.

(c) *Net worth requirements.* Issuers shall maintain at all times a net worth acceptable to the Association of not less than the applicable minimum amount. The applicable minimum amount shall be published in the MBS Guides.

(d) *Disqualification.* A mortgage lender shall not qualify as an eligible issuer at any time in which:

(1) The lending policies of the issuer permit any discrimination based on race, religion, color, national origin, age, or sex of a borrower; or

(2) The issuer is not in compliance with any rules, regulations, or orders issued under title VI of the Civil Rights Act of 1964; Executive Order 11063, Equal Opportunity in Housing, November 20, 1962; Executive Order 11246, Equal Employment Opportunity, issued on September 24, 1965 and amended on October 13, 1967; title VII of the Civil Rights Act of 1968; title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988; or by the FHA or VA.

(e) *Ethics and standards.* A mortgage lender shall qualify as an eligible issuer only so long as it conducts its

business operations in accordance with accepted mortgage banking practices, ethics, and standards, as determined by the Association, and maintains its books and records in accordance with generally accepted accounting principles.

(f) *Change in control.* Issuers shall notify the Association of any change in issuer control. A change in control occurs whenever a new party obtains significant influence over an issuer, as defined by the Association. In a merger where the surviving party is not the approved issuer and in a consolidation, the surviving party must apply formally for approval as a new issuer prior to the merger or consolidation taking place. In other business combinations, such as a stock sale of an existing issuer, which result in a change in control of issuer, the issuer shall demonstrate that it continues to meet all issuer eligibility requirements prior to the business combination being finalized.

(g) *Cross-Default.* Related issuers, as defined by the Association, shall execute a cross-default agreement, in a form prescribed by the Association, that authorizes the default of one or more related issuers in the event of a default by any one of the related issuers. Issuers may be granted an exemption from this section, provided that they submit a legal opinion, acceptable to the Association, which demonstrates that the execution of a cross-default agreement would be prohibited by the issuer's Federal regulator.

(h) *Failure to comply.* In the event that an issuer subsequently fails to comply with any of the requirements prescribed in this part or the applicable MBS Guide, as determined by the Association, the Association may, among other things, withhold further commitments to guarantee securities until such time as the Association is satisfied that the issuer has resumed business operations in compliance with such requirements.

(Approved by the Office of Management and Budget under control numbers 2503-0003, 2503-0004, 2503-0006, 2503-0007, and 2503-0026)