

§ 203.4

24 CFR Ch. II (4-1-12 Edition)

provide the mortgagee with written notice of the grounds for the action and of the right to an informal hearing before the office initiating the termination action. Such hearing shall be expeditiously arranged, and the mortgagee may be represented by counsel. Any termination instituted under this section is distinct from withdrawal of mortgagee approval by the Mortgagee Review Board under part 25 of this title.

(ii) After consideration of the materials presented, the decision maker shall advise the mortgagee in writing whether the termination is rescinded, modified or affirmed.

(iii) The mortgagee may appeal such decision to the Deputy Assistant Secretary for Single Family Housing or his or her designee. A decision by the Deputy Assistant Secretary or designee shall constitute final agency action.

(iv) Termination of an origination approval agreement under part 202 of this chapter for a mortgagee or one or more branch offices automatically terminates Direct Endorsement approval for the mortgagee or the branch office or offices without any further requirement to comply with this paragraph.

(Approved by the Office of Management and Budget under control number 2502-0005)

[57 FR 58345, Dec. 9, 1992, as amended at 60 FR 42758, Aug. 16, 1995; 61 FR 2651, Jan. 26, 1996; 62 FR 20088, Apr. 24, 1997; 62 FR 65182, Dec. 10, 1997]

§ 203.4 Approval of mortgagees for Lender Insurance.

Each mortgagee that chooses to participate in the Lender Insurance program must use the Lender Insurance process to insure all of the mortgages that it underwrites, unless the mortgages are ineligible for the Direct Endorsement program as provided in § 203.5(b), or unless HUD determines that the mortgages are ineligible for the Lender Insurance program.

(a) *Direct Endorsement approval.* To be approved for the Lender Insurance program described in § 203.6, a mortgagee must be unconditionally approved for the Direct Endorsement program as provided in § 203.3.

(b) *Performance: Claim and default rate.* (1) In addition to being unconditionally approved for the Direct En-

dorsement program, a mortgagee must have had an acceptable claim and default rate (as described in paragraph (b)(3) of this section) for at least 2 years prior to its application for participation in the Lender Insurance program, and must maintain such a claim and default rate in order to retain Lender Insurance approval.

(2) HUD may approve a mortgagee that is otherwise eligible for Lender Insurance approval, but has an acceptable claim and default record of less than 2 years, if:

(i) The mortgagee is an entity created by a merger, acquisition, or reorganization completed less than 2 years prior to the date of the mortgagee's application for Lender Insurance approval;

(ii) One or more of the entities participating in the merger, acquisition, or reorganization had Lender Insurance approval at the time of the merger, acquisition, or reorganization;

(iii) All of the lending institutions participating in the merger, acquisition, or reorganization that had Lender Insurance approval at the time of the merger, acquisition, or reorganization had an acceptable claim and default record for the 2 years preceding the mortgagee's application for Lender Insurance approval; and

(iv) The claim and default record of the mortgagee derived by aggregating the claims and defaults of the entities participating in the merger, acquisition, or reorganization, for the 2-year period prior to the mortgagee's application for Lender Insurance approval, constitutes an acceptable rate of claims and defaults, as defined by this section.

(3) A mortgagee has an acceptable claim and default rate if its rate of claims and defaults is at or below 150 percent of the average rate for insured mortgages in the state(s) in which the mortgagee operates.

(c) *Reviews.* HUD will monitor a mortgagee's eligibility to participate in the Lender Insurance program on an ongoing basis.

(d) *Termination of approval.* (1) HUD may immediately terminate the mortgagee's approval to participate in the Lender Insurance program, in accordance with section 256(d) of the National

Housing Act (12 U.S.C. 1715z-21(d)), if the mortgagee:

(i) Violates any of the requirements and procedures established by the Secretary for mortgagees approved to participate in HUD's Lender Insurance program, Direct Endorsement program, or the Title II Single Family mortgage insurance program; or

(ii) If HUD determines that other good cause exists.

(2) Such termination will be effective upon receipt of HUD's notice advising of the termination. Within 30 days after receiving HUD's notice of termination, a mortgagee may request an informal conference with the Deputy Assistant Secretary for Single Family Housing or designee. The conference will be conducted within 30 days after HUD receives a timely request for the conference. After the conference, the Deputy Assistant Secretary (or designee) may decide to affirm the termination action or to reinstate the mortgagee's Lender Insurance program approval. The decision will be communicated to the mortgagee in writing, will be deemed a final agency action, and, pursuant to section 256(d) of the National Housing Act (12 U.S.C. 1715z-21(d)), is not subject to judicial review.

(3) Lender Insurance authority is automatically terminated for a mortgagee whose nationwide Direct Endorsement approval under § 203.3(d)(2) is terminated, without imposing any further requirement on the mortgagee to comply with this paragraph.

(4) Any termination instituted under this section is distinct from withdrawal of mortgagee approval by the Mortgagee Review Board under 24 CFR part 25.

(e) *Reinstatement.* A mortgagee whose Lender Insurance authority is terminated under this section may apply for reinstatement if the Lender Insurance authority for the mortgagee has been terminated for at least 6 months. In addition to addressing the criteria for Lender Insurance approval specified in paragraphs (a) and (b) of this section, the application for reinstatement must be accompanied by a corrective action plan addressing the issues resulting in the termination of the mortgagee's Lender Insurance authority, along with evidence that the mortgagee has imple-

mented the corrective action plan. HUD may grant the mortgagee's application for reinstatement if the mortgagee's application is complete and HUD determines that the underlying causes for the termination have been satisfactorily remedied.

[62 FR 30226, June 2, 1997, as amended at 62 FR 65182, Dec. 10, 1997; 77 FR 3604, Jan. 25, 2012]

§ 203.5 Direct Endorsement process.

(a) *General.* Under the Direct Endorsement program, the Secretary does not review applications for mortgage insurance before the mortgage is executed or issue conditional or firm commitments, except to the extent required by § 203.3(b)(4), § 203.3(d)(1), or as determined by the Secretary. Under this program, the mortgagee determines that the proposed mortgage is eligible for insurance under the applicable program regulations, and submits the required documents to the Secretary in accordance with the procedures set forth in § 203.255. This subpart provides that certain functions shall be performed by the Secretary (or Commissioner), but the Secretary may specify that a Direct Endorsement mortgagee shall perform such an action without specific involvement or approval by the Secretary, subject to statutory limitations. In each case, the Direct Endorsement mortgagee's performance is subject to pre-endorsement and post-endorsement review by the Secretary under § 203.255 (c) and (e).

(b) *Eligible programs.* (1) All single family mortgages authorized for insurance under the National Housing Act must be originated through the Direct Endorsement program, except the following:

(i) Mortgages underwritten for insurance by mortgagees that have applied for participation in, and have been approved for, the Lender Insurance program;

(ii) Mortgages authorized under sections 203(n), 203(p), 213(d), 221(h), 221(i), 225, 233, 237, 809, or 810 of the National Housing Act, or any other insurance programs announced by FEDERAL REGISTER notice; or

(iii) As provided in § 203.1.

(2) The provision contained in § 221.55 of this chapter regarding deferred sales