

States Treasury's current value of funds rate in effect on the date the Title I insurance claim was paid.

(b) *Penalties and administrative costs.* The Secretary shall assess reasonable administrative costs and penalties as authorized in 31 U.S.C. 3717, unless there is no provision in the note providing for such charges and the debtor has not otherwise consented to liability for such charges.

#### § 201.63 Claims against lenders.

Claims against lenders for money owed to the Department, including unpaid insurance charges and unpaid repurchase demands, shall be collected in accordance with 24 CFR part 17, subpart C.

## PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

### Subpart A—General Requirements

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

SOURCE: 62 FR 20082, Apr. 24, 1997, unless otherwise noted.

### Subpart A—General Requirements

#### § 202.1 Purpose.

This part establishes minimum standards and requirements for approval by the Secretary of lenders and

mortgagees to participate in the Title I and Title II programs.

#### § 202.2 Definitions.

*Act* means the National Housing Act (12 U.S.C. 1702 *et seq.*).

*Claim* means a single family insured mortgage for which the Secretary pays an insurance claim within 24 months after the mortgage is insured.

*Default* means a single family insured mortgage in default for 90 or more days within 24 months after the mortgage is insured.

*Lender* or *Title I lender* means a financial institution that:

(a) Holds a valid Title I Contract of Insurance and is approved by the Secretary under this part as a supervised lender under § 202.6, a nonsupervised lender under § 202.7, an investing lender under § 202.9, or a governmental or similar institution under § 202.10; or

(b) Is under suspension or held a Title I contract that has been terminated but remains responsible for servicing or selling Title I loans that it holds and is authorized to file insurance claims on such loans.

*Loan* or *Title I loan* means a loan authorized for insurance under Title I of the Act.

*Mortgage, Title II mortgage or insured mortgage* means a mortgage or loan insured under Title II or Title XI of the Act.

*Mortgagee* or *Title II mortgagee* means a mortgage lender that is approved to participate in the Title II programs as a supervised mortgagee under § 202.6, a nonsupervised mortgagee under § 202.7, an investing mortgagee under § 202.9, or a governmental or similar institution under 202.10.

*Multifamily mortgagee* means a mortgagee approved to participate only in multifamily Title II programs, except that for purposes of § 202.8(b)(1) the term also means a mortgagee approved to participate in both single family and multifamily Title II programs.

*Normal rate* means the rate of defaults and claims on insured mortgages for the geographic area served by a HUD field office, or other area designated by the Secretary, in which a mortgagee originates mortgages.

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*Origination approval agreement* means the Secretary's agreement that a mortgagee is approved to originate single family insured mortgages.

*Title I program(s)* means an insurance program or programs authorized by Title I of the Act.

*Title II program(s)* means an insurance program or programs authorized by Title II or Title XI of the Act.

[62 FR 20082, Apr. 24, 1997, as amended at 62 FR 65181, Dec. 10, 1997; 75 FR 20731, Apr. 20, 2010]

### § 202.3 Approval status for lenders and mortgagees.

(a) *Initial approval.* A lender or mortgagee may be approved for participation in the Title I or Title II programs upon filing a request for approval on a form prescribed by the Secretary and signed by the applicant. The approval form shall be accompanied by such documentation as may be prescribed by the Secretary.

(1) Approval is signified by:

(i) The Secretary's agreement that the lender or mortgagee is considered approved under the Title I or Title II programs, except as otherwise ordered by the Mortgagee Review Board or an officer or subdivision of the Department to which the Mortgagee Review Board has delegated its power, unless the lender or mortgagee voluntarily relinquishes its approval;

(ii) Consent by the lender or mortgagee to comply at all times with the general approval requirements of § 202.5, and with additional requirements governing the particular class of lender or mortgagee for which it was approved as described under subpart B at §§ 202.6 through 202.10; and

(iii) Under the Title I program, the issuance of a Contract of Insurance constitutes an agreement between the Secretary and the lender and which governs participation in the Title I program.

(2) Limitations on approval:

(i) Separate approval as lender or mortgagee is required for participation in the Title I or Title II programs, respectively. Application must be made, and approval will be granted, on the basis of one or both categories of programs, as is appropriate.

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(ii) Separate approval as mortgagee is required for the Single Family Mortgage Insurance Programs and for the Multifamily Mortgage Insurance Programs. Application must be made, and approval will be granted, on the basis of either or both categories, as is appropriate.

(iii) In addition to the requirements for approval as a Title II mortgagee, the Secretary may from time to time issue eligibility requirements for participation in specific programs, such as the Direct Endorsement program.

(iv) A Title II mortgagee may be approved to operate either on a nationwide basis or on a geographically restricted basis in only those areas designated by the Secretary.

(v) A Title I lender may originate loans or purchase advances of credit only within a geographic lending area approved by the Secretary. Expansion of this lending area shall be subject to a determination by the Secretary that the lender is able to originate loans in compliance with part 201 of this chapter within such expanded area.

(3) *Authorized agents.* A mortgagee approved under §§ 202.6, 202.7, or 202.10 as a nonsupervised mortgagee, supervised mortgagee, or governmental or similar institution approved as a Direct Endorsement mortgagee under 24 CFR 203.3 may, with the approval of the Secretary, designate a nonsupervised or supervised mortgagee with Direct Endorsement approval under 24 CFR 203.3 as authorized agent for the purpose of underwriting loans. The application for mortgage insurance may be submitted in the name of the FHA-approved mortgagee or its designated authorized agent under this paragraph.

(b) *Recertification.* On each anniversary of the approval of a lender or mortgagee, the Secretary will determine whether recertification, i.e., continued approval, is appropriate. The Secretary will review the yearly verification report required by § 202.5(m) and other pertinent documents, ascertain that all application and annual fees have been paid, and request any further information needed to decide upon recertification.

(c) *Termination*—(1) *Termination of the Title I Contract of Insurance*—(i) *Notice.*

A Contract of Insurance may be terminated in accordance with its terms by the Secretary or by the Secretary's designee upon giving the lender at least 5 days prior written notice.

(ii) *Informal meeting.* If requested, and before expiration of the 5-day notice period, a lender shall be entitled to an informal meeting with the Department official taking action to terminate the Contract of Insurance.

(iii) *Effect of termination.* Termination of a Contract of Insurance shall not affect:

(A) The Department's obligation to provide insurance coverage with respect to eligible loans originated before the termination, unless there was fraud or misrepresentation;

(B) A lender's obligation to continue to pay insurance charges or premiums and meet all other obligations, including servicing, associated with eligible loans originated before termination; or

(C) A lender's right to apply for and be granted a new Title I Contract of Insurance, provided that the requirements for approval under this part are met.

(2) *Credit Watch Termination.* (i) *Scope and frequency of review.* The Secretary will review, on an ongoing basis, the number of defaults and claims on mortgages originated, underwritten, or both, by each mortgagee in the geographic area served by a HUD field office. HUD will make this rate information available to mortgagees and the public through electronic means and will issue instructions for accessing this information through a Mortgagee Letter. For this purpose, and for all purposes under paragraph (c) of this section, a mortgage is considered to be originated in the same federal fiscal year in which its amortization commences. The Secretary may also review the insured mortgage performance of a mortgagee's branch offices individually and may terminate the authority of the branch or the authority of the mortgagee's overall operation.

(ii) *Credit Watch Status.* Mortgagees are responsible for monitoring their default and claim rate performance. A mortgagee is considered to be on Credit Watch Status if, at any time, the mortgagee has a rate of defaults and claims on insured mortgages originated, un-

derwritten, or both, in an area which exceeds 150 percent of the normal rate and its origination approval agreement has not been terminated.

(iii) *Notice of termination.* (A) *Notice of termination of origination approval agreement.* The Secretary may notify a mortgagee that its origination approval agreement will terminate 60 days after notice is given, if the mortgagee had a rate of defaults and claims on insured mortgages originated in an area which exceeded 200 percent of the normal rate and exceeded the national default and claim rate for insured mortgages.

(B) *Notice of termination of direct endorsement approval.* The Secretary may notify a mortgagee that its direct endorsement approval under 24 CFR part 203 will terminate 60 days after notice is given, if the mortgagee had a rate of defaults and claims on insured mortgages underwritten in an area which exceeded 200 percent of the normal rate and exceeded the national default and claim rate for insured mortgages. The termination of a mortgagee's direct endorsement approval pursuant to this section is separate and apart from the termination of a mortgagee's direct endorsement approval under 24 CFR part 203.

(C) *No need for prior action by Mortgagee Review Board.* The termination notices described in paragraphs (c)(2)(ii)(A) and (B) of this section may be given without prior action by the Mortgagee Review Board.

(D) *Underserved areas.* Before the Secretary sends the termination notice, the Secretary shall review the Census tract concentrations of the defaults and claims. If the Secretary determines that the excessive rate is the result of mortgage lending in underserved areas, as defined in 24 CFR 81.2, the Secretary may determine not to terminate the mortgagee's origination approval agreement and/or direct endorsement approval.

(iv) *Request for informal conference.* Prior to termination the mortgagee may submit a written request for an informal conference with the Deputy Assistant Secretary for Single Family Housing or that official's designee. HUD must receive the written request no later than 30 calendar days after the

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date of the proposed termination notice. Unless HUD grants an extension, the informal conference must be held no later than 60 calendar days after the date of the proposed termination notice. After considering relevant reasons and factors beyond the mortgagee's control that contributed to the excessive default and claim rates, the Deputy Assistant Secretary for Single Family Housing or designee may withdraw the termination notice.

(v) *Limitation on the establishment of new branches.* Upon receipt of a proposed termination notice of its origination approval agreement, the mortgagee shall not establish a new branch or new branches for the origination of FHA-insured mortgages in the area or areas that are covered by the proposed termination notice. As of January 18, 2005, a mortgagee that is in receipt of a notice of proposed termination may not establish any new branch in the location or locations cited in the proposed termination notice until either:

(A) The proposed termination notice is withdrawn or

(B) The Secretary reinstates the mortgagee's origination approval agreement, in accordance with paragraph (e) of this section.

(vi) *Effects of termination.* (A) *Termination of origination approval agreement.* If a mortgagee's origination approval agreement is terminated, it may not originate single family insured mortgages unless the origination approval agreement is reinstated by the Secretary in accordance with paragraph (e) of this section, notwithstanding any other provision of this part except § 202.3(c)(2)(vii)(A).

(B) *Termination of direct endorsement approval.* If a mortgagee's direct endorsement approval is terminated, it may not underwrite single family insured mortgages for the area(s) identified in the termination notice, unless the direct endorsement approval is reinstated by the Secretary in accordance with paragraph (e) of this section, notwithstanding any other provision of this part except § 202.3(c)(2)(vii)(A).

(vii) *Rights and obligations in the event of termination.* Termination of the origination approval agreement and/or direct endorsement approval shall not affect:

(A) The eligibility of the mortgage for insurance, absent fraud or misrepresentation, if the mortgagor and all terms and conditions of the mortgage had been approved before the termination by the Direct Endorsement or Lender Insurance mortgagee or were covered by a firm commitment issued by the Secretary; however, no other mortgages originated or underwritten after the date of termination by the mortgagee shall be insured unless the mortgagee's origination approval agreement and/or direct endorsement approval is reinstated by the Secretary;

(B) The right of a mortgagee whose direct endorsement approval has been terminated to transfer cases to another mortgagee with direct endorsement approval for the area covered by the termination.

(C) A mortgagee's obligation to continue to pay insurance premiums and meet all other obligations, including servicing, associated with insured mortgages;

(D) A mortgagee's right to apply for reinstatement of the origination approval agreement and/or direct endorsement approval in accordance with paragraph (e) of this section; or

(E) A mortgagee's right to purchase insured mortgages or to service its own portfolio or the portfolios of other mortgagees with which it has a servicing contract.

(d) *Withdrawal and suspension of approval.* Lender or mortgagee approval may be suspended or withdrawn by the Mortgagee Review Board as provided in part 25 of this title.

(e) *Reinstatement—(1) General.* A mortgagee whose origination approval agreement and/or direct endorsement approval has been terminated under paragraph (c) of this section may apply for reinstatement if:

(i) The origination approval agreement and/or direct endorsement approval for the affected branch or branches has been terminated for at least six months; and

(ii) The mortgagee continues to be an approved mortgagee meeting the general standards of § 202.5 and the specific requirements of §§ 202.6, 202.7, 202.8 or 202.10, and 202.12.

(2) *Application for reinstatement.* The mortgagee's application for reinstatement must:

(i) Be in a format prescribed by the Secretary and signed by the mortgagee;

(ii) Be accompanied by an independent analysis of the terminated office's operations and identifying the underlying cause of the mortgagee's unacceptable default and claim rate. The independent analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform audits under the government auditing standards issued by the General Accounting Office; and

(iii) Be accompanied by a corrective action plan addressing each of the issues identified in the independent analysis described in paragraph (e)(2)(ii) of this section, along with evidence demonstrating that the mortgagee has implemented the corrective action plan.

(3) *HUD action on reinstatement application.* The Secretary will grant the mortgagee's application for reinstatement if the mortgagee's application is complete and the Secretary determines that the underlying causes for the termination have been satisfactorily remedied.

[62 FR 20082, Apr. 24, 1997, as amended at 62 FR 30225, June 2, 1997; 62 FR 65181, Dec. 10, 1997; 69 FR 75807, Dec. 17, 2004; 75 FR 20731, Apr. 20, 2010; 78 FR 57060, Sept. 17, 2013]

#### § 202.4 Request for determination of compliance.

Pursuant to section 539(a) of the Act, any person may file a request that the Secretary determine whether a lender or mortgagee is in compliance with § 202.12(a) or with provisions of this chapter implementing sections 223(a)(7) and 535 of the Act such as §§ 201.10(g), 203.18d and 203.43(c)(5) of this chapter (only section 535 applies to lenders). The request for determination shall be made to the following address: Department of Housing and Urban Development, Office of Lender Activities and Program Compliance, 451 Seventh Street SW., Washington, DC, 20410. The Secretary shall inform the requestor of the disposition of the request. The Secretary shall publish in the FEDERAL REGISTER the disposition of any case

referred by the Secretary to the Mortgagee Review Board.

#### § 202.5 General approval standards.

To be approved for participation in the Title I or Title II programs, and to maintain approval, a lender or mortgagee shall meet and continue to meet the general requirements of paragraphs (a) through (n) of this section (except as provided in § 202.10(b)) and the requirements for one of the eligible classes of lenders or mortgagees in §§ 202.6 through 202.10.

(a) *Business form.* (1) The lender or mortgagee shall be a corporation or other chartered institution, a permanent organization having succession, or a partnership. A partnership must meet the requirements of paragraphs (a)(1)(i) through (iv) of this section.

(i) Each general partner must be a corporation or other chartered institution consisting of two or more persons.

(ii) One general partner must be designated as the managing general partner. The managing general partner shall comply with the requirements of paragraphs (b), (c), and (f) of this section. The managing general partner must have as its principal activity the management of one or more partnerships, all of which are mortgage lenders or property improvement or manufactured home lenders, and must have exclusive authority to deal directly with the Secretary on behalf of each partnership. Newly admitted partners must agree to the management of the partnership by the designated managing general partner. If the managing general partner withdraws or is removed from the partnership for any reason, a new managing general partner shall be substituted, and the Secretary shall be immediately notified of the substitution.

(iii) The partnership agreement shall specify that the partnership shall exist for the minimum term of years required by the Secretary. All insured mortgages and Title I loans held by the partnership shall be transferred to a lender or mortgagee approved under this part prior to the termination of the partnership. The partnership shall be specifically authorized to continue its existence if a partner withdraws.

(iv) The Secretary must be notified immediately of any amendments to the partnership agreement that would affect the partnership's actions under the Title I or Title II programs.

(2) *Use of business name.* The lender or mortgagee must use its HUD-registered business name in all advertisements and promotional materials related to FHA programs. HUD-registered business names include any alias or "doing business as" (DBA) on file with FHA. The lender or mortgagee must keep copies of all print and electronic advertisements and promotional materials for a period of 2 years from the date that the materials are circulated or used to advertise.

(3) *Non-FHA-approved entities.* A lender or mortgagee that accepts a loan application from a non-FHA-approved entity must confirm that the entity's legal name and Tax ID number are included in the FHA loan origination system record for the subject loan. The loan to be insured by FHA must be underwritten by the FHA-approved lender or mortgagee.

(b) *Employees.* The lender or mortgagee shall employ competent personnel trained to perform their assigned responsibilities in consumer or mortgage lending, including origination, servicing, and collection activities, and shall maintain adequate staff and facilities to originate and service mortgages or Title I loans, in accordance with applicable regulations, to the extent the mortgagee or lender engages in such activities.

(c) *Officers.* All employees who will sign applications for mortgage insurance on behalf of the mortgagee or report loans for insurance shall be corporate officers or shall otherwise be authorized to bind the lender or mortgagee in the origination transaction. The lender or mortgagee shall ensure that an authorized person reports all originations, purchases, and sales of Title I loans or Title II mortgages to the Secretary for the purpose of obtaining or transferring insurance coverage.

(d) *Escrows.* The lender or mortgagee shall not use escrow funds for any purpose other than that for which they were received. It shall segregate escrow commitment deposits, work comple-

tion deposits, and all periodic payments received under loans or insured mortgages on account of ground rents, taxes, assessments, and insurance charges or premiums, and shall deposit such funds with one or more financial institutions in a special account or accounts that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, except as otherwise provided in writing by the Secretary.

(e) *Servicing.* A lender shall service or arrange for servicing of the loan in accordance with the requirements of 24 CFR part 201. A mortgagee shall service or arrange for servicing of the mortgage in accordance with the servicing responsibilities contained in subpart C of 24 CFR part 203 and in 24 CFR part 207, with all other applicable regulations contained in this title, and with such additional conditions and requirements as the Secretary may impose.

(f) *Business changes.* The lender or mortgagee shall provide prompt notification to the Secretary, in such form as prescribed by the Secretary, of:

(1) All changes in its legal structure, including, but not limited to, mergers, terminations, name, location, control of ownership, and character of business; and

(2) Any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, loan originator, of the lender or mortgagee, or the lender or mortgagee itself, that is subject to one or more of the sanctions in paragraph (j) of this section.

(g) *Financial statements.* The lender or mortgagee shall:

(1) Furnish to the Secretary a copy of its audited financial statements within 90 days of its fiscal year end, except as provided in §202.6(c);

(2) Furnish such other information as the Secretary may request; and

(3) Submit to an examination of that portion of its records that relates to its Title I and/or Title II program activities.

(h) *Quality control plan.* The lender or mortgagee 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.

(i) *Fees.* The lender or mortgagee, unless approved under §202.10, shall pay an application fee and annual fees, including additional fees for each branch office authorized to originate Title I loans or submit applications for mortgage insurance, at such times and in such amounts as the Secretary may require. The Secretary may identify additional classes or groups of lenders or mortgagees that may be exempt from one or more of these fees.

(j) *Ineligibility.* For a lender or mortgagee to be eligible for FHA approval, neither the lender or mortgagee, nor any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the lender or mortgagee shall:

(1) Be suspended, debarred, under a limited denial of participation (LDP), or otherwise restricted under 2 CFR part 2424 or 24 CFR part 25, or under similar procedures of any other federal agency;

(2) Be indicted for, or have been convicted of, an offense that reflects adversely upon the integrity, competency, or fitness to meet the responsibilities of the lender or mortgagee to participate in the Title I or Title II programs;

(3) Be subject to unresolved findings as a result of HUD or other governmental audit, investigation, or review;

(4) Be engaged in business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility;

(5) Be convicted of, or have pled guilty or *nolo contendere* to, a felony related to participation in the real estate or mortgage loan industry:

(i) During the 7-year period preceding the date of the application for licensing and registration; or

(ii) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust or money laundering;

(6) Be in violation of provisions of the Secure and Fair Enforcement (SAFE) Mortgage Licensing Act of 2008 (12 U.S.C. 5101 *et seq.*) or any applicable provision of state law; or

(7) Be in violation of any other requirement established by the Secretary.

(k) *Branch offices.* A lender may, upon approval by the Secretary, maintain branch offices for the origination of Title I or Title II loans. A branch office of a mortgagee must be registered with the Department in order to originate mortgages or submit applications for mortgage insurance. The lender or mortgagee shall remain fully responsible to the Secretary for the actions of its branch offices.

(l) *Conflict of interest and responsibility.* A mortgagee may not pay anything of value, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person or entity if such person or entity has received any other consideration from the mortgagor, seller, builder, or any other person for services related to such transactions or related to the purchase or sale of the mortgaged property, except that consideration, approved by the Secretary, may be paid for services actually performed. The mortgagee shall not pay a referral fee to any person or organization.

(m) *Reports.* Each lender and mortgagee must submit an annual certification on a form prescribed by the Secretary. 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 insured mortgages or Title I loans. In addition, each mortgagee shall file the following:

(1) An audited or unaudited financial statement, within 30 days of the end of each fiscal quarter in which the mortgagee experiences an operating loss of 20 percent of its net worth, and until the mortgagee demonstrates an operating profit for 2 consecutive quarters or until the next recertification, whichever is the longer period; and

(2) A statement of net worth within 30 days of the commencement of voluntary or involuntary bankruptcy, conservatorship, receivership, or any transfer of control to a federal or state supervisory agency.

(n) *Net worth—(1) Applicability.* The requirements of this section apply to

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approved supervised and non-supervised lenders and mortgagees under § 202.6 and § 202.7, and approved investing lenders and mortgagees under § 202.9. For ease of reference, these institutions are referred to as “approved lenders and mortgagees” for purposes of this section. The requirements of this section also apply to applicants for FHA approval under §§ 202.6, 202.7, and 202.9. For ease of reference, these entities are referred to as “applicants” for purposes of this section.

(2) *Phased-in net worth requirements for 2010 and 2011*—(i) *Applicants*. Effective on May 20, 2010, applicants shall comply with the net worth requirements set forth in paragraph (n)(2)(iii) of this section.

(ii) *Approved mortgagees*. Effective on May 20, 2011, each approved lender or mortgagee with FHA approval as of May 20, 2010 shall comply with the net worth requirements set forth in paragraphs (n)(2)(iii) or (n)(2)(iv) of this section, as applicable.

(iii) *Net worth requirements for non-small businesses*. Each approved lender or mortgagee that exceeds the size standard for its industry classification established by the Small Business Administration at 13 CFR 121.201 Sector 52 (Finance and Insurance), Subsector 522 (Credit Intermediation and Related Activities) shall have a required minimum net worth of not less than \$1,000,000. No less than 20 percent of the approved lender or mortgagee’s required minimum net worth must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.

(iv) *Net worth requirements for small businesses*. Each approved lender or mortgagee that meets the size standard for its industry classification established by the Small Business Administration at 13 CFR 121.201 Sector 52 (Finance and Insurance), Subsector 522 (Credit Intermediation and Related Activities) shall have a required minimum net worth of not less than \$500,000. No less than 20 percent of the approved lender or mortgagee’s required minimum net worth must be liquid assets consisting of cash or its equivalent acceptable to the Secretary. If, based on the audited financial statement or other financial report that is required to be prepared at the end of

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its fiscal year and provided to HUD at the commencement of the new fiscal year, an approved lender or mortgagee no longer meets the Small Business Administration size standard for its industry classification, the approved lender or mortgagee shall meet the net worth requirements set forth in paragraph (n)(2)(iii) of this section for a non-small business approved lender or mortgagee by the last day of the fiscal year in which the audited financial statement or other financial report, as applicable, was submitted.

(3) *Net worth requirements for 2013 and subsequent years*. Effective May 20, 2013:

(i) 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 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 minimum 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, is required. 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, is required. 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)(3)(i) of this section.

[75 FR 20732, Apr. 20, 2010; 75 FR 23582, May 4, 2010; 77 FR 51468, Aug. 24, 2012; 78 FR 57060, Sept. 17, 2013]

### Subpart B—Classes of Lenders and Mortgagees

#### § 202.6 Supervised lenders and mortgagees.

(a) *Definition.* A supervised lender or mortgagee is a financial institution that is a member of the Federal Reserve System or an institution whose accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. A supervised mortgagee may submit applications for mortgage insurance. A supervised lender or mortgagee may originate, purchase, hold, service or sell loans or insured mortgages, respectively.

(b) *Additional requirements.* In addition to the general approval requirements in § 202.5, a supervised lender or mortgagee shall meet the following requirements:

(1) *Net worth.* The net worth requirements appear in § 202.5(n).

(2) *Notification.* A lender or mortgagee shall promptly notify the Secretary in the event of termination of its supervision by its supervising agency.

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

(4) *Audit report.* Except as provided in paragraph (c) of this section, a lender or mortgagee must:

(i) Comply with the financial reporting requirements in 24 CFR part 5, sub-

part 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, and shall include:

(A) Financial statements 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

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

(ii) Submit a report on compliance tests prescribed by the Secretary.

(c) *Financial statement requirements for small supervised lenders and mortgagees.*

(1) *Definitions.* For the purposes of this section, the following definitions apply:

(i) *Federal banking agency* means the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; and the National Credit Union Administration; or any successor agency thereof.

(ii) *Small supervised lender or mortgagee* means a supervised lender or mortgagee possessing consolidated assets below the threshold for required audited financial reporting as established by the federal banking agency that is responsible for the oversight of that supervised lender or mortgagee.

(2) *Financial statement requirements.* Small supervised lenders and mortgagees shall not be subject to the requirement to submit a copy of an audited financial statement under § 202.5(g) and the audit report requirements under paragraph (b)(4) of this section. Small supervised lenders and mortgagees are required, within 90 days of their fiscal year end, to furnish to the Secretary the unaudited financial regulatory report—a consolidated or fourth quarter Report of Condition and Income (Federal Financial Institutions Examination Council forms 031 and 041, also

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known as the “Call Report”), a consolidated or fourth quarter Thrift Financial Report, or a consolidated or fourth quarter NCUA Call Report (NCUA Form 5300 or 5310), or such other financial regulatory report as may be required—that aligns with the small supervised lender’s or mortgagee’s fiscal year end and that the small supervised lender or mortgagee is required to submit to their respective federal banking agency.

(3) *Requirement for audited financial statement and other information based on determination of heightened risk to the FHA insurance fund.* If the Secretary determines that a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund, the lender or mortgagee must provide, upon request, additional financial documentation, up to and including an audited financial statement, and other information as the Secretary determines necessary. The Secretary may determine that a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund based upon, but not limited to, one or more of the following factors:

- (i) Failing to provide required financial submissions under §202.6(c)(2) within the required 90-day period following the lender’s or mortgagee’s fiscal year end;
- (ii) Maintaining insufficient adjusted net worth or unrestricted liquid assets as required by §202.5(n);
- (iii) Reporting opening cash and equity balances that do not agree with the prior year’s reported cash and equity balances;
- (iv) Experiencing an operating loss of 20 percent or greater of the lender’s or mortgagee’s net worth for the annual reporting period as governed by §202.5(m)(1);
- (v) Experiencing an increase in loan volume over the prior 12-month period, determined by the Secretary to be significant;
- (vi) Undertaking significant changes to business operations, such as a merger or acquisition; and
- (vii) Other factors that the Secretary considers appropriate in indicating a

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heightened risk to the FHA insurance fund.

[75 FR 20734, Apr. 20, 2010, as amended by 78 FR 57060, Sept. 17, 2013]

### §202.7 Nonsupervised lenders and mortgagees.

(a) *Definition.* A nonsupervised lender or mortgagee is a lending institution which has as its principal activity the lending or investing of funds in real estate mortgages, consumer installment notes, or similar advances of credit, or the purchase of consumer installment contracts, and which is not approved under any other section of this part. A nonsupervised mortgagee may submit applications for mortgage insurance. A nonsupervised lender or mortgagee may originate, purchase, hold, service or sell insured loans or mortgages, respectively.

(b) *Additional requirements.* In addition to the general approval requirements in §202.5, a nonsupervised lender or mortgagee shall meet the following requirements:

(1) *Net worth and liquid assets.* The net worth and liquidity requirements appear in §202.5(n).

(2) *Credit source—(i) Title I.* A lender shall have and maintain a reliable warehouse line of credit or other funding program acceptable to the Secretary of not less than \$500,000 for use in originating or purchasing Title I loans.

(ii) *Title II.* Except for multifamily mortgagees, a mortgagee shall have a warehouse line of credit or other mortgage funding program acceptable to the Secretary which is adequate to fund the mortgagee’s average 60 day origination operations, but in no event shall the warehouse line of credit or funding program be less than \$1,000,000.

(3) *Audit report.* (i) 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, and shall include:

(A) 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 mortgagee's net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds; and

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

(ii) A mortgagee must submit a report on compliance tests prescribed by the Secretary.

(4) *Fidelity bond.* A Title II mortgagee shall have 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.

[62 FR 20082, Apr. 24, 1997, as amended at 62 FR 65182, Dec. 10, 1997; 63 FR 9742, Feb. 26, 1998; 63 FR 44361, Aug. 18, 1998; 67 FR 53451, Aug. 15, 2002; 77 FR 51468, Aug. 24, 2012]

#### § 202.8 Sponsored third-party originators.

(a) *Definitions—Sponsor.* (1) With respect to Title I programs, a sponsor is a lender that holds a valid Title I Contract of Insurance and meets the net worth requirement for the class of lender to which it belongs.

(2) With respect to Title II programs, a sponsor is a mortgagee that holds a valid origination approval agreement, is approved to participate in the Direct Endorsement program, and meets the net worth requirement for the class of mortgagee to which it belongs.

(3) Each sponsor shall be responsible to the Secretary for the actions of its sponsored third-party originators or mortgagees in originating loans or mortgages, unless applicable law or regulation requires specific knowledge on the part of the party to be held responsible. If specific knowledge is required, the Secretary will presume that a sponsor has knowledge of the actions of its sponsored third-party originators or mortgagees in originating loans or mortgages and the sponsor is responsible for those actions unless it can rebut the presumption with affirmative evidence.

*Sponsored third-party originator.* A sponsored third-party originator may hold a Title I Contract of Insurance or Title II Origination Approval Agreement if it is an FHA-approved lender or mortgagee. If the sponsored third-party originator is not an FHA-approved lender or mortgagee, then the sponsored third-party originator may not hold a Title I Contract of Insurance or Title II Origination Approval Agreement. A sponsored third-party originator is authorized to originate Title I direct loans or Title II mortgage loans for sale or transfer to a sponsor or sponsors, as defined in this section, that holds a valid Title I Contract of Insurance or Title II Origination Approval Agreement and is not under suspension, subject to the sponsor determining that the third-party originator has met the eligibility criteria of paragraph (b) of this section.

(b) *Eligibility to originate loans to be insured by FHA.* A sponsored third-party originator may originate loans to be insured by FHA, provided that:

(1) The sponsored third-party originator is working with and through an FHA-approved lender or mortgagee; and

(2) The sponsored third-party originator or an officer, partner, director, principal, manager, supervisor, loan processor, or loan originator of the sponsored third-party originator has not been subject to the sanctions or administrative actions listed in § 202.5(j), as determined and verified by the FHA-approved lender or mortgagee.

[75 FR 20734, Apr. 20, 2010, as amended at 77 FR 51468, Aug. 24, 2012]

#### § 202.9 Investing lenders and mortgagees.

(a) *Definition.* An investing lender or mortgagee is an organization that is not approved under any other section of this part. An investing lender or mortgagee may purchase, hold or sell Title I loans or Title II mortgages, respectively, but may not originate Title I loans or Title II mortgages in its own name or submit applications for the insurance of mortgages. An investing lender or mortgagee may not service Title I loans or Title II mortgages without prior approval of the Secretary.

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(b) *Additional requirements.* In addition to the general approval requirements in § 202.5, an investing lender or mortgagee shall meet the following requirements:

(1) *Funding arrangements.* An investing lender or mortgagee shall have, or have made arrangements for, funds sufficient to support a projected investment of at least \$1,000,000 in property improvement, manufactured home or real estate loans or mortgages.

(2) *Officers and staff.* In lieu of the staffing and facilities requirements in § 202.5(b), an investing lender or mortgagee shall have officers or employees who are capable of managing its activities in purchasing, holding, and selling Title I loans or Title II mortgages.

(3) *Fidelity bond.* An 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.

[62 FR 20082, Apr. 24, 1997, as amended at 63 FR 9742, Feb. 26, 1998; 75 FR 20734, Apr. 20, 2010]

### **§ 202.10 Governmental institutions, Government-sponsored enterprises, public housing agencies and State housing agencies.**

(a) *Definition.* A Federal, State or municipal governmental agency, a Federal Reserve Bank, a Federal Home Loan Bank, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association may be an approved lender or mortgagee. A mortgagee approved under this section may submit applications for Title II mortgage insurance. A lender or mortgagee approved under this section may originate, purchase, service or sell Title I loans and insured mortgages, respectively. A mortgagee or lender approved under this section is not required to meet a net worth requirement. A 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 per-

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formance of the responsibilities of the mortgagee. There are no additional requirements beyond the general approval requirements in § 202.5 or as provided under paragraph (b) of this section.

(b) *Public housing agencies and State housing agencies.* Under such terms and conditions as the Secretary may prescribe and notwithstanding the general requirements of § 202.5 or the requirements of paragraph (a) of this section, a public housing agency or its instrumentality or a State housing agency may be approved as a mortgagee for the purpose of originating and holding multifamily mortgages funded by issuance of tax exempt obligations by the agency.

(c) *Audit requirements.* The insuring of loans and mortgages under the Act constitutes “financial assistance” for purposes of audit requirements set out in part 44 of this title. State and local governments (as defined in 24 CFR 44.2) that receive insurance as lenders and mortgagees shall conduct audits in accordance with HUD audit requirements at part 44 of this title.

### **Subpart C—Title I and Title II Specific Requirements**

#### **§ 202.11 Title I.**

(a) *Types of administrative action.* In addition to termination of the Contract of Insurance, certain sanctions may be imposed under the Title I program. The administrative actions that may be applied are set forth in 24 CFR part 25. Civil money penalties may be imposed against Title I lenders and mortgagees pursuant to 24 CFR part 30.

(b) *Grounds for action.* Administrative actions shall be based upon both the grounds set forth in 24 CFR part 25 and as follows:

(1) Failure to properly supervise and monitor dealers under the provisions of part 201 of this title;

(2) Exhaustion of the general insurance reserve established under part 201 of this title;

(3) Maintenance of a Title I claims/loan ratio representing an unacceptable risk to the Department; or

(4) Transfer of a Title I loan to a party that does not have a valid Title I Contract of Insurance.

[75 FR 20734, Apr. 20, 2010]

### § 202.12 Title II.

(a) *Tiered pricing*—(1) *General requirements*—(i) *Prohibition against excess variation*. The customary lending practices of a mortgagee for its single family insured mortgages shall not provide for a variation in mortgage charge rates that exceed 2 percentage points. A variation is determined as provided in paragraph (a)(6) of this section.

(ii) *Customary lending practices*. The customary lending practices of a mortgagee include all single family insured mortgages originated by the mortgagee, including mortgages that were originated by the mortgagee's sponsored third-party originator(s).

(iii) *Basis for permissible variations*. Any variations in the mortgage charge rate up to two percentage points under the mortgagee's customary lending practices must be based on actual variations in fees or cost to the mortgagee to make the mortgage loan, which shall be determined after accounting for the value of servicing rights generated by making the loan and other income to the mortgagee related to the loan. Fees or costs must be fully documented for each specific loan.

(2) *Area*. For purposes of this section, an area is:

(i) An area used by HUD for purposes of § 203.18(a) of this chapter to determine the median 1-family house price for an area; or

(ii) The area served by a HUD field office but excluding any area included in paragraph (a)(2)(i) of this section.

(3) *Mortgage charges*. Mortgage charges include any charges under the mortgagee's control and not collected for the benefit of third parties. Examples are interest, discount points and origination fees.

(4) *Interest rate*. Whenever a mortgagee offers a particular interest rate for a mortgage type in an area, it may not restrict the availability of the rate in the area on the basis of the principal amount of the mortgage. A mortgagee may not direct mortgage applicants to any specific interest rate category on the basis of mortgage size.

(5) *Mortgage charge rate*. The mortgage charge rate is defined as the amount of mortgage charges for a mortgage expressed as a percentage of the initial principal amount of the mortgage.

(6) *Determining excess variations*. Variation in mortgage charge rates for a mortgage type is determined by comparing all mortgage charge rates offered by the mortgagee within an area for the mortgage type for a designated day or other time period, including mortgage charge rates for all actual mortgage applications.

(7) *Mortgage type*. A mortgage type for purposes of paragraph (a)(6) of this section will include those mortgages that are closely parallel in important characteristics affecting pricing and charges, such as level of risk or processing expenses. The Secretary may develop standards and definitions regarding mortgage types.

(8) *Recordkeeping*. Mortgagees are required to maintain records on pricing information, satisfactory to the Secretary, that would allow for reasonable inspection by HUD for a period of at least 2 years. Additionally, many mortgagees are required to maintain racial, ethnic, and gender data under the regulations implementing the Home Mortgage Disclosure Act (12 U.S.C. 2801–2810).

(b) *Servicing*. Any mortgagee that services mortgages must be approved by the Secretary under § 202.6, § 202.7 or § 202.10, or be specifically approved for servicing under § 202.9(a).

(c) *Report and corrective plan requirements*. If a mortgagee approved for participation in Title II programs is notified by the Secretary that it had a rate of defaults and claims on HUD-insured mortgages during the preceding year, or during recent years, which was higher than the normal rate, it shall submit a report, within 60 days, containing an explanation for the above-normal rate of defaults and claims, and, if required by the Secretary, a plan for corrective action with regard to mortgages in default and its mortgage processing system in general.

[62 FR 20082, Apr. 24, 1997, as amended at 75 FR 20734, Apr. 20, 2010; 77 FR 51469, Aug. 24, 2012]