

§ 202.6

24 CFR Ch. II (4–1–20 Edition)

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

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

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