

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for
Housing—Federal Housing
Commissioner**

24 CFR Parts 25, 201, and 202

[Docket No. R-95-1769; FR-3847-F-01]

RIN 2502-AG43

**Approval of Lending Institutions and
Mortgagees; Investing Lenders in the
Title I Property Improvement and
Manufactured Home Insurance
Programs**

AGENCY: Office of the Assistant
Secretary for Housing—Federal Housing
Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations that govern the approval of lending institutions to participate in the property improvement and manufactured home loan insurance programs under Title I, section 2 of the National Housing Act. The rule creates a new category of approved lending institutions, to be known as “investing lenders,” and provides minimum requirements and criteria for their approval and operation. In addition, this rule makes conforming changes to several HUD regulations.

EFFECTIVE DATE: April 13, 1995.

FOR FURTHER INFORMATION CONTACT:
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toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Introduction

Under Title I, section 2 of the National Housing Act (12 U.S.C. 1703), the Department insures approved lending institutions against losses sustained as a result of borrower defaults on property improvement loans and manufactured home loans. The regulations governing the approval of lending institutions to participate in the Title I property improvement and manufactured home loan insurance programs are found in 24 CFR part 202.

This final rule amends part 202 to create a new category of approved lending institutions, to be known as “investing lenders.” This change will provide opportunities for a wider range

of financial institutions, including charitable and nonprofit associations and pension funds, to invest in Title I loans, without the obligation of maintaining the staff and facilities needed for loan origination and servicing.

By making greater levels of capital available, both the property improvement and manufactured home loan programs will benefit. Increased capital investment in Title I loans will help expand the availability of the property improvement loan program to all areas of the nation, and will increase its use in carrying out community revitalization and the rehabilitation of housing for low- and moderate-income families. In addition, making more funds available for Title I loans will help make the manufactured home loan program a more competitive financing vehicle to enable first-time buyers to achieve homeownership.

The rule adds a new § 202.2(f), which defines an “investing lender” as a financial institution, including a charitable or nonprofit organization or pension fund, which is approved by the Secretary to purchase, hold, and sell loans that have been originated and insured under the Title I program. An investing lender may not originate Title I loans in its own name, and it may not service such loans except with the prior approval of the Secretary.

In addition to the general approval requirements applicable to all Title I lenders, the rule adds a new § 202.7 that establishes the following additional requirements for approval as an investing lender:

1. An investing lender must have lawful authority to purchase, hold, and sell Title I property improvement and manufactured home loans in its own name. Since a Title I loan correspondent is not authorized to report loans for insurance, an investing lender may purchase loans only from a lender holding a valid Title I contract of insurance, and not from a loan correspondent.

2. An investing lender must have, or have made arrangements for, funds sufficient to support a projected investment of at least \$1,000,000 in property improvement and manufactured home loans. For example, the investing lender may have a warehouse line of credit or other funding program that would meet this requirement.

3. In lieu of the staffing and facilities requirements in § 202.3(b), an investing lender must have officers or employees who are capable of managing its activities in purchasing, holding, and selling Title I loans.

4. An investing lender must be responsible for the servicing of the Title I loans that it holds, through contractual or other arrangements with another lender holding a valid Title I contract of insurance, but it may not directly service such loans except with the prior approval of the Secretary.

**Conforming and Clarifying
Amendments**

The Department is also amending other sections of parts 25, 201, and 202 to conform them to the changes outlined above and to clarify the text of the regulations. The rule includes the following amendments:

1. The last sentence of § 25.2 is amended to clearly list those violations of the Title I lender approval requirements in part 202 that are subject to redelegation by the Mortgagee Review Board.

2. In § 25.3, the definition of “lender” is amended to more closely conform to the definition of this term in parts 201 and 202. In addition, a definition of “loan correspondent” is added, and the definition of “mortgagee” is revised to include Title I lenders and loan correspondents, as provided for in section 202(c)(7) of the National Housing Act (12 U.S.C. 1708(c)(7)).

3. Section 25.9(cc) is amended to correct an obsolete reference to the section in part 202 that lists the grounds for an administrative action against a Title I lender or loan correspondent.

4. In §§ 201.2(o) and 202.2(a), the definition of “lender” is amended to specify that a Title I lender may be approved for the purpose of holding Title I loans.

5. Section 202.3(c) is amended to clarify that a corporate officer or other person authorized to bind the lender shall be responsible for reporting all originations, purchases, and sales of Title I loans to the Secretary for the purpose of obtaining or transferring insurance coverage.

6. In § 202.7, which has been redesignated § 202.8, paragraph (c)(3) is amended to correct an obsolete reference to the Title I lender approval requirements.

7. In § 202.8 (redesignated § 202.9), the introductory text to paragraph (a) is amended to clarify that, for purposes of that section, the term “lender” also includes loan correspondents. In addition, paragraph (b)(8) is amended to change an obsolete reference to the Under Secretary and to correct a typographical error.

Justification for Final Rulemaking

The requirements for approval as an investing lender in §§ 202.2(f) and 202.7

are based upon § 202.16, which contains the approval requirements for an investing mortgagee in HUD's mortgage insurance programs. Section 202.16 had its genesis in an interim rule published in the **Federal Register** on July 30, 1980 (45 FR 50561). One of the provisions added by the interim rule was § 203.6 to create a new class of investing mortgagees. Although the Department solicited public comments, it received no comments with regard to § 203.6.

In 1991, the Department published a proposed rule that would revise the mortgagee approval regulations and move them from part 203 to part 202 (see 56 FR 29100, June 25, 1991). In this proposed rule, the section on investing mortgagees would be redesignated as § 202.16 and would incorporate the existing requirements for investing mortgagees found in § 203.6, except that trusts would no longer be eligible to be approved as mortgagees. None of the public comments received on the June 25, 1991 proposed rule addressed the provisions of § 202.16, and the proposed rule was published in the **Federal Register** essentially without change in a final rule on December 9, 1992 (57 FR 58326).

As previously stated, creation of a new category of investing lender will provide opportunities for a wider range of financial institutions, including charitable and nonprofit associations and pension funds, to invest in Title I loans and make greater levels of capital available to these programs. Considering the past experience with the investing mortgagee provision, the Department believes that publishing a proposed rule and requesting public comments on these regulatory changes would be unnecessary. Therefore, the Department finds good cause to omit prior public procedure, and promulgates these changes as a final rule.

Findings and Other Matters

Environmental Impact

Under HUD's regulations implementing the National Environmental Policy Act at 24 CFR 50.20(k), this rule is exempt from the requirements of an environmental finding. The rule relates solely to internal administrative procedures that do not involve a development decision or affect the physical condition of project areas or building sites, but only relate to criteria and requirements for the approval of lending institutions to participate in HUD loan insurance programs.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this final rule, and in so doing certifies that this final rule would not have a significant economic impact on a substantial number of small entities. The majority of institutions that would participate in the Title I program as investing lenders are large financial institutions and pension funds.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this rule relate solely to the approval of lending institutions, and will not impinge upon the relationship between the Federal government and State and local governments. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12606, The Family, has determined that this rule will not have potential for significant impact on family formation, maintenance, or general well-being, and thus, is not subject to review under the Order. The rule relates solely to the approval of lending institutions. No significant changes in existing HUD policies or programs will result from promulgation of this rule.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published November 14, 1994 (59 FR 57632) under Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are:

- 14.110 Manufactured Home Loan Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;
- 14.142 Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures; and

14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans.

List of Subjects

24 CFR Part 25

Administrative practice and procedure, Loan programs—housing and community development, Organization and functions (Government agencies).

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 25, 201, and 202 are amended as follows:

PART 25—MORTGAGEE REVIEW BOARD

1. The authority citation for 24 CFR part 25 continues to read as follows:

Authority: 12 U.S.C. 1715b; 42 U.S.C. 3535(d).

2. Section 25.2 is amended by revising the last sentence to read as follows:

§ 25.2 Establishment of Board.

* * * With respect to actions taken against Title I lenders and loan correspondents, the Mortgagee Review Board may redelegate its authority to take administrative actions for failure to remain in compliance with the requirements for approval in 24 CFR 202.3(j), 202.4(a), 202.5 (a) and (c), and 202.6 (a) and (e).

3. Section 25.3 is amended by revising the definitions of "Lender" and "Mortgagee", and by adding a definition of "Loan correspondent" in alphabetical order, to read as follows:

§ 25.3 Definitions.

* * * * *

Lender. A financial institution that holds a valid Title I contract of insurance and is approved by the Secretary under 24 CFR part 202 to originate, purchase, hold, service, and/or sell loans insured under 24 CFR part 201. In matters involving the imposition of civil money penalties, the term "lender" also includes a financial institution that holds a Title I contract of insurance that has been terminated, but that remains responsible for

servicing or selling Title I loans that it holds and is authorized to file insurance claims on such loans.

* * * * *

Loan correspondent. A financial institution approved by the Secretary to originate direct loans under Title I, section 2 of the National Housing Act, 12 U.S.C. 1703, for sale or transfer to a sponsoring lending institution that holds a valid Title I contract of insurance and that is not under suspension.

Mortgagee. For purposes of this regulation, the term "mortgagee" includes:

(1) The original lender under the mortgage, as that term is defined at sections 201(a) and 207(a)(1) of the National Housing Act, 12 U.S.C. 1707(a) and 1713(a)(1);

(2) A lender or loan correspondent as defined in this section; or

(3) A branch office or subsidiary of the mortgagee, lender, or loan correspondent. The term "mortgagee" also includes successors and assigns of the mortgagee, lender, or loan correspondent, as are approved by the Commissioner.

* * * * *

4. Section 25.9 is amended by revising paragraph (c) to read as follows:

§ 25.9 Grounds for an administrative action.

* * * * *

(c) Violation by a Title I lender or loan correspondent of any of the applicable provisions of this section or of 24 CFR 202.9(b).

* * * * *

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

5. The authority citation for 24 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 1703; 42 U.S.C. 3535(d).

6. Section 201.2 is amended by revising paragraph (o) to read as follows:

§ 201.2 Definitions.

* * * * *

(o) *Lender* means a financial institution that:

(1) Holds a valid Title I contract of insurance and is approved by the Secretary under 24 CFR part 202 to originate, purchase, hold, service, and/or sell loans insured under this part; or

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

purposes of loan origination under subparts A, B, and C of this part, the term "lender" also includes a "loan correspondent" as defined in paragraph (q) of this section.

* * * * *

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

7. The authority citation for 24 CFR part 202 continues to read as follows:

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

8. Section 202.2 is amended by revising paragraph (a) and by adding a new paragraph (f) to read as follows:

§ 202.2 Definitions.

* * * * *

(a) *Lender* means a financial institution that:

(1) Holds a valid Title I contract of insurance and is approved by the Secretary under this part to originate, purchase, hold, service, and/or sell loans insured under 24 CFR part 201; or

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

* * * * *

(f) *Investing lender* means a financial institution, including a charitable or nonprofit organization or pension fund, that is approved under this part to purchase, hold, and sell loans that have been originated and insured under 24 CFR part 201. An investing lender may not originate Title I loans in its own name, and it may not service such loans except with the prior approval of the Secretary.

9. Section 202.3 is amended by revising paragraph (c) to read as follows:

§ 202.3 General approval requirements.

* * * * *

(c) It shall ensure that a corporate officer or other person authorized to bind the lender shall be responsible for reporting all originations, purchases, and sales of Title I loans to the Secretary for the purpose of obtaining or transferring insurance coverage.

* * * * *

10. Part 202 is amended by redesignating §§ 202.7 and 202.8 as §§ 202.8 and 202.9, respectively, and by adding a new § 202.7 to read as follows:

§ 202.7 Requirements for investing lenders.

In addition to the general approval requirements in § 202.3, a financial institution shall meet the following

requirements to qualify as an investing lender:

(a) An investing lender shall have lawful authority to purchase, hold, and sell Title I property improvement and manufactured home loans in its own name.

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

(c) In lieu of the staffing and facilities requirements in § 202.3(b), an investing lender shall have officers or employees who are capable of managing its activities in purchasing, holding, and selling Title I loans.

(d) An investing lender shall be responsible for the servicing of the Title I loans that it holds, through contractual or other arrangements with another lender holding a valid Title I contract of insurance, but it may not directly service such loans except with the prior approval of the Secretary.

11. Newly designated § 202.8 is amended by revising paragraph (c)(3) to read as follows:

§ 202.8 Termination of insurance contract.

* * * * *

(c) * * *

(3) 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 subpart are met.

12. Newly designated § 202.9 is amended by revising the paragraph (a) introductory text and paragraph (b)(8) to read as follows:

§ 202.9 Administrative actions.

(a) *General.* Administrative actions that may be taken against Title I lenders are set forth in 24 CFR 25.5 and paragraph (a) of this section. Civil money penalties may also be imposed against Title I lenders in accordance with 24 CFR 25.13 and 24 CFR part 30. For purposes of this section, the term "lender" shall also include loan correspondents as defined in § 202.2(b) of this subpart.

* * * * *

(b) * * *

(8) Such other reason as the Mortgagee Review Board, Secretary, Deputy Secretary, or Hearing Officer, as appropriate, determines to be justified. Such reasons include, but are not limited to, failure to exercise prudent credit judgment; failure to observe proper business practices; failure to observe proper loan origination or servicing procedures; or failure to

comply with HUD requirements or other requirements of law or regulation.

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Dated: February 8, 1995.

Nicolas P. Retsinas,

*Assistant Secretary for Housing Federal
Housing Commissioner.*

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