

§ 202.5

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 Mortgage 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

24 CFR Ch. II (4–1–25 Edition)

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 completion 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.* Lenders or mortgagees shall implement a written quality control plan, acceptable to the Secretary, that assures compliance with the regulations of this chapter and other issuances of the Secretary regarding loan or mortgage origination and servicing unless the lenders or mortgagees were approved under §202.9 without servicing authority.

(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 that the lender or mortgagee registers with the Department, 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

§ 202.5

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 or mortgagee may, upon approval by the Secretary, maintain branch offices for the origination of Title I or Title II loans. 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, purchase, hold, sell, or service 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

24 CFR Ch. II (4–1–25 Edition)

transfer of control to a federal or state supervisory agency.

(n) *Net worth—(1) Applicability.* The requirements of paragraph (n) of this section apply to approved supervised and nonsupervised lenders and mortgagees under §§202.6 and 202.7, and approved investing lenders and investing mortgagees under §202.9. For ease of reference, these institutions are referred to as “approved lenders or mortgagees” for purposes of paragraph (n) of this section. These requirements also apply to applicants for FHA approval under §§202.6, 202.7, and 202.9. For ease of reference, these institutions are referred to as “applicants” for purposes of paragraph (n) of this section.

(2) *Requirements—(i) Single family net worth requirements.* 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’s 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 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. 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. 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)(2)(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; 89 FR 7277, Feb. 2, 2024; 89 FR 30276, Apr. 23, 2024]

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, 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) 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