

Excerpt from OMB Circular No. a-129 Policies for federal Credit Programs and Non-Tax Receivables (2013)

Section III: Credit Extension and Management Policy

A. ***

B. ***

C. Management of Guaranteed Loan Lenders and Servicers.

1. Lender and Servicer Eligibility.

a. Participation Criteria. Federal credit granting agencies shall establish and publish in the Federal Register specific eligibility criteria for lender or servicer participation in Federal credit programs. These criteria should include:

i. Requirements that the lender or servicer is not currently debarred/suspended from participation in a Government Contract or delinquent on a Government debt;

ii. Qualification requirements for principal officers and staff of the lender or servicer;

iii. Fidelity/surety bonding and/or errors and omissions insurance with the Federal Government as a loss payee, where appropriate, for new or non-regulated lenders or lenders with questionable performance under Federal guarantee programs; and

iv. Financial and capital requirements for lenders not regulated by a Federal financial institution regulatory agency, including minimum net worth requirements based on business volume.

b. Review of Eligibility. Agencies shall review and document a lender's or servicer's eligibility for continued participation in a Federal credit program at least every two years. Ideally, these reviews should be conducted in conjunction with on-site reviews of lender or servicer operations (see Section III.C.3) or other required reviews, such as renewal of a lender or servicing agreement (see Section III.C.2). Lenders or servicers not meeting standards for continued participation should be decertified. In addition to the participation criteria above, agencies should consider lender or servicer performance as a critical factor in determining continued eligibility for participation.

c. Fees. When authorized and appropriated for such purposes, agencies should assess non-refundable fees to defray the costs of determining and reviewing lender or servicer eligibility.

d. Decertification. Agencies should establish specific procedures to decertify lenders, end servicing contracts, or take other appropriate action any time there is:

i. Significant and/or continuing non-conformance with agency standards; and/or

ii. Failure to meet financial and capital requirements or other eligibility criteria.

Agency procedures should define the process and establish timetables by which decertified lenders or former servicers can apply for reinstatement of eligibility for Federal credit programs.

e. Loan Servicers. Lenders or agencies transferring and/or assigning the right to service loans to a loan servicer should use only servicers meeting applicable standards set by the Federal agency. Where appropriate, agencies may adopt standards for loan servicers established by a Government Sponsored Enterprise (GSE) or a similar organization (e.g., Government National Mortgage Association for single family mortgages) and/or may authorize lenders to use servicers that have been approved by a GSE or similar organization.

2. **Agreements.** Agencies should enter into written agreements with lenders that have been determined to be eligible for participation in a guaranteed loan program. Lender agreements and servicing contracts should incorporate general participation requirements, performance standards and other applicable requirements of this Circular. Agencies are encouraged, where not prohibited by authorizing legislation, to set a fixed duration for the agreement to ensure a formal review of the lender or servicer eligibility for continued participation in the program.

a. General Participation Requirements. Lender agreements should include:

i. Requirements for lender or servicer eligibility, including participation criteria, eligibility reviews, fees, reporting, and decertification (see Section III.C.1, above);

ii. Agency and lender responsibilities for sharing the risk of loan defaults (see Section II.C.1.a); and, where feasible,

iii. Maximum delinquency, default and claims rates for lenders or servicers, taking into account individual program characteristics.

b. Lender Performance Standards. Agencies should include due diligence requirements for originating, servicing, and collecting loans in their lender agreements. This may be accomplished by referencing agency regulations or guidelines.

Examples of due diligence standards include collection procedures for past due accounts, delinquent debtor counseling procedures and litigation to enforce loan contracts.

Agencies should ensure, through the claims review process, that lenders have met these standards prior to making a claim payment. Agencies should reduce claim amounts or reject claims for lender non-performance.

c. Reporting Requirements. Federal credit granting agencies should require certain data to monitor the health of their credit portfolios, track and evaluate lender and servicer performance, and satisfy OMB, Treasury, and other reporting requirements which include the Treasury Report on Receivables (TROR). Examples of the data that agencies must maintain include:

- i. Activity Indicators. Number and amount of outstanding loans at the beginning and end of the reporting period and the agency share of risk in the case of a guaranteed loan; number and amount of loans made during the reporting period; and number and amount of loans terminated during the period.
- ii. Status Indicators. A schedule showing the number and amount of past due loans by “age” of the delinquency, and the number and amount of loans in default, foreclosure or liquidation (when the lender is responsible for such activities).

Agencies may have several sources for such data, but some or all of the information may best be obtained from lenders and servicers. Lender agreements should require lenders to report necessary information frequently, but at a minimum on a monthly basis (or other reporting period based on the level of lending and payment activity).

d. Loan Servicers. Lender agreements must specify that loan servicers must meet applicable participation requirements and performance standards. The agreement should also specify that servicers acquiring loans must provide any information necessary for the lender to comply with reporting requirements to the agency. Servicers may not resell the loans except to qualified servicers.