

Office of Assistant Secretary for Housing, HUD

§ 202.5

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 by the mortgagee shall be insured unless a new originated approval agreement is accepted by the Secretary;

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

(C) A mortgagee's right to apply for a new origination approval agreement if it 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, if the mortgagee has had no origination approval agreement for at least 6 months, and if the Secretary determines that the underlying causes for termination have been satisfactorily remedied; or

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(d) *Withdrawal and suspension of approval.* Lender or mortgagee approval may be suspended or withdrawn by the Mortgagee Review Board as provided in part 25 of this title.

[62 FR 20082, Apr. 24, 1997, as amended at 62 FR 30225, June 2, 1997; 62 FR 65181, Dec. 10, 1997]

§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)-(n) of this §202.5 (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.* 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) through (4) of this section.

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

(2) 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.

(3) 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.

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

(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 part 201 of this chapter. A mortgagee shall service or arrange for servicing of the mortgage in accordance with the servicing responsibilities contained in subpart C of part 203 and in part 207 of this chapter, with all other applicable regu-

lations 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 of all changes in its legal structure, including, but not limited to, mergers, terminations, name, location, control of ownership, and character of business.

(g) *Financial statements.* The lender or mortgagee shall, upon request by the Secretary, furnish a copy of its latest financial statement, furnish such other information as the Secretary may request, and submit to an examination of that portion of its records which 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.* Neither the lender or mortgagee, nor any officer, partner, director, principal or employee of the lender or mortgagee shall:

(1) Be suspended, debarred or otherwise restricted under part 24 or part 25 of this title, or under similar procedures of any other Federal agency;

(2) Be indicted for, or have been convicted of, an offense which reflects upon the responsibility, integrity or ability 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 audits or investigations; or

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

(k) *Branch offices.* A lender may, upon approval by the Secretary, maintain branch offices for the origination of Title I 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.* 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 a yearly verification report 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 two 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) Each supervised or nonsupervised lender or mortgagee approved under §§202.6 and 202.7 shall have a net worth of not less than \$250,000 in assets acceptable to the Secretary. Each Title II supervised or nonsupervised mortgagee, except a multifamily mortgagee, shall have additional net worth in excess of \$250,000 of not less than one percent of the mortgage volume exceeding \$25,000,000 in value, but total net worth is not required to exceed \$1,000,000. Mortgage volume is calculated as of the end of the fiscal year being audited and equals the sum of:

(i) The aggregate original amount of insured mortgages that the mortgagee originated and that were insured during the fiscal year, or that the mortgagee purchased as a sponsor from its loan correspondent(s) during the fiscal year; and

(ii) The aggregate principal amount, as of the end of the fiscal year, of all mortgages that are serviced by the mortgagee at the end of the fiscal year but were not counted as mortgages originated by the mortgagee or purchased from its loan correspondent(s).

(2) Net worth requirements for loan correspondent lenders or mortgagees approved under §202.8 are described in that section.

[62 FR 20082, Apr. 24, 1997, as amended at 62 FR 65181, Dec. 10, 1997; 63 FR 9742, Feb. 26, 1998; 67 FR 53451, Aug. 15, 2002]

Subpart B—Classes of Lenders and Mortgagees

§202.6 Supervised lenders and mortgagees.

(a) *Definition.* A supervised lender or mortgagee is a financial institution which 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