

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 24, 25, 30, 200, 201, 202, 203, 206, 241, 266 and 3500**

[Docket No. FR-4106-F-01]

RIN 2502-AG78

Approval of Lending Institutions and Mortgagees Streamlining; Final Rule

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends regulations at 24 CFR part 202 relating to the Approval of Lending Institutions and Mortgagees. In an effort to comply with the President's regulatory reform initiatives, these amendments streamline part 202 by removing provisions that are duplicative and unnecessary and by simplifying the organization of text that is being retained. It is not the purpose of this rule to introduce substantive changes, and none have been made.

EFFECTIVE DATE: May 27, 1997.

FOR FURTHER INFORMATION CONTACT: Lynn S. Herbert, Director, Lender Approval and Recertification Division, Office of Lender Activities and Program Compliance, Room B-133-P3214, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708-3976. (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development (HUD) conducted a page-by-page review of its regulations to determine which could be eliminated, consolidated, or otherwise improved. HUD has determined that part 202, setting forth regulations for the Approval of Lending Institutions and Mortgagees, can be streamlined by combining many provisions of its subparts A and B in order to remove

provisions which are duplicative and need not be repeated. As a result of this streamlining, general provisions that had been set forth separately for Title I lenders and Title II mortgagees are now consolidated in a new subpart A. A new subpart B contains provisions specific to each of the five classes of institutions that are eligible for approval as a lender or mortgagee, or both. Last is a new subpart C that contains provisions uniquely applicable to either Title I or Title II programs. Conforming changes have also been made to other parts of 24 CFR.

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency determines that there is good cause for omitting advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that this rule falls within that exception. These amendments merely remove unnecessary regulatory provisions. They contain policy that is already established and has been previously expressed, and they in no way affect the substance of existing provisions. Solicitation of public comment is therefore unnecessary.

Other Matters*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 rule does not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing unnecessary provisions. The rule has no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rulemaking is exempt from the environmental review procedures under HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the

National Environmental Policy Act of 1969 (42 U.S.C. 4332) because of the exemption under § 50.19(c)(1) which pertains to "the approval of policy documents that do not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out to provide for standards for construction or construction materials, manufactured housing, or occupancy." This rulemaking simply amends an existing regulation by eliminating administrative provisions and does not alter the environmental effect of the regulations being amended.

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 does 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. No programmatic or policy changes result from this rule that affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs result from promulgation of this rule.

List of Subjects*24 CFR Part 24*

Administrative practice and procedure, Drug abuse, Government contracts, Government procurement, Grant programs, Loan programs, Reporting and recordkeeping requirements.

24 CFR Part 25

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

24 CFR Part 30

Administrative practice and procedure, Grant programs—housing and community development, Loan programs—housing and community development, Mortgages, Penalties.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

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.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 241

Energy conservation, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 266

Aged, Fair housing, Intergovernmental relations, Mortgage

insurance, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 3500

Consumer protection, Condominiums, Housing, Mortgages, Mortgage servicing, Reporting and recordkeeping requirements.

Accordingly, in title 24 of the Code of Federal Regulations, parts 24, 25, 30, 200, 201, 202, 203, 206, 241, 266 and 3500 are amended to read as follows:

PART 24—GOVERNMENT DEPARTMENT AND SUSPENSION AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

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

Authority: Executive Order 12549, secs. 5151–5160, Drug-Free Workplace Act of 1988, Pub. L. 100–690, Title V, Subtitle D, (41 U.S.C. 701 *et seq.*); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 24.110 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 24.110 Coverage.

- (a) * * *
- (3) * * *

(ii) Sanctions under this part against mortgagees and lenders approved by HUD to participate in Federal Housing Administration programs may be initiated only with the approval of the Mortgagee Review Board.

* * * * *

PART 25—MORTGAGEE REVIEW BOARD

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

Authority: 12 U.S.C. 1708(c), 1708(d), 1709(s), and 1735(f)–14; 42 U.S.C. 3535(d).

4. Section 25.2 is amended by revising the final sentence to read as follows:

§ 25.2 Establishment of Board.

* * * With respect to actions taken against Title I lenders and loan correspondents, the Board may redelegate its authority to take administrative actions for failure to remain in compliance with the requirements for approval in 24 CFR 202.5(i), 202.5(n), 202.7(b)(4), 202.8(b)(1) and 202.8(b)(3).

5. Section 25.3 is amended by revising the definitions of “Lender” and “Loan correspondent” to read as follows:

§ 25.3 Definitions.

* * * * *

Lender. A financial institution as defined in paragraphs (a) and (b) of the definition of lender in § 202.2 of this title.

Loan correspondent. A financial institution as defined in paragraph (c) of the definition of lender in § 202.2 of this title.

* * * * *

6. Section 25.9 is amended by revising paragraphs (x) and (cc) to read as follows:

§ 25.9 Grounds for an administrative action.

* * * * *

(x) Failure to submit a report required under 24 CFR 202.12(c) within the time determined by the Commissioner, or to commence or complete a plan for corrective action under that section within the time agreed upon by the Commissioner.

* * * * *

(cc) Violation by a Title I lender or loan correspondent of any of the applicable provisions of this section or 24 CFR 202.11(a)(2).

* * * * *

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

7. The authority citation for 24 CFR part 30 continues to read as follows:

Authority: 12 U.S.C. 1701q–1, 1703, 1723i, 1735f–14, 1735f–15; 15 U.S.C. 1717a; 42 U.S.C. 3535(d).

8. Section 30.320 is amended by revising paragraph (k) to read as follows:

§ 30.320 Violations by mortgagees and lenders.

* * * * *

(k) Makes a payment that is prohibited under 24 CFR 202.5(l);

* * * * *

PART 200—INTRODUCTION TO FHA PROGRAMS

9. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

10. Section 200.10 is revised to read as follows:

§ 200.10 Lender requirements.

The requirements set forth in part 202 of this chapter regarding approval, recertification, withdrawal of approval, approval for servicing, report requirements and conditions for supervised mortgagees, nonsupervised mortgagees, investing mortgagees, and governmental and similar institutions, apply to these programs.

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

11. The authority citation for 24 CFR part 201 continues to read:

Authority: 12 U.S.C. 1703; 42 U.S.C. 1436a and 3535(d).

§ 201.10 [Amended]

12. Section 201.10 is amended to remove the last sentence of paragraph (g).

13. Section 201.20 is amended by adding paragraph (a)(3) to read as follows:

§ 201.20 Property improvement loan eligibility.

(a) * * *

(3) For any property improvement loan or combination of such loans on the same property with a total principal balance in excess of \$15,000, the borrower shall have equity in the property being improved at least equal to the loan amount. However, this requirement shall not be applicable to any loan originated by or on behalf of a governmental institution to provide assistance to a low- or moderate-income family or individual. Acceptable procedures for determining the market value of the property and evaluating whether the borrower has sufficient equity in the property will be established by the Secretary and published in the **Federal Register**.

* * * * *

14. Section 201.26 is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 201.26 Conditions for loan disbursement.

(a) * * *

(1) * * *

(iii) For any loan or combination of loans on the same property with a total unpaid principal balance in excess of \$15,000, the borrower has equity in the property being improved at least equal to the loan amount, except that this requirement shall not be applicable to any loan originated by or on behalf of a governmental institution to provide assistance to a low- or moderate-income family or individual.

* * * * *

15. Part 202 is revised to read as follows:

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

Subpart A—General Requirements

Sec.

202.1 Purpose.

202.2 Definitions

202.3 Approval status for lenders and mortgagees.

202.4 Request for determination of compliance.

202.5 General approval standards.

Subpart B—Classes of Lenders and Mortgagees

202.6 Supervised lenders and mortgagees.

202.7 Nonsupervised lenders and mortgagees.

202.8 Loan correspondent lenders and mortgagees.

202.9 Investing lenders and mortgagees.

202.10 Governmental institutions, Government-sponsored enterprises, Public Housing Agencies and State housing agencies.

Subpart C—Title I and Title II Specific Requirements

202.11 Title I.

202.12 Title II.

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

Subpart A—General Requirements

§ 202.1 Purpose.

This part establishes minimum standards and requirements for approval by the Secretary of lenders and mortgagees to participate in the Title I and Title II programs.

§ 202.2 Definitions.

Act means the National Housing Act.

Claim means a single family insured mortgage for which the Secretary pays an insurance claim within 18 months after endorsement for insurance.

Default means a single family insured mortgage in default for 90 or more days within 1 year after endorsement for insurance.

Lender or Title I lender means a financial institution that:

(a) Holds a valid Title I Contract of Insurance and is approved by the Secretary under this part as a supervised lender under § 202.6, a nonsupervised lender under § 202.7, an investing lender under § 202.9 or a governmental or similar institution under § 202.10;

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

(c) Is a loan correspondent approved for Title I programs only under § 202.8.

Loan or Title I loan means a loan authorized for insurance under Title I of the Act.

Mortgage, Title II mortgage or insured mortgage means a mortgage or a loan insured under Title II of the Act.

Mortgagee or Title II mortgagee means a mortgage lender which is approved to participate in the Title II programs as a supervised mortgagee under § 202.6, a

nonsupervised mortgagee under § 202.7, a loan correspondent under § 202.8, an investing mortgagee under § 202.9 or a governmental or similar institution under § 202.10.

Multifamily mortgagee means a mortgagee approved to participate only in multifamily Title II programs, except that for purposes of § 202.8(b)(1) the term also means a mortgagee approved to participate in both single family and multifamily Title II programs.

Normal rate means the rate of defaults and claims on insured mortgages for the geographic area served by a HUD field office, or other area designated by the Secretary, in which a mortgagee originates mortgages.

Origination approval agreement means the Secretary's agreement that a mortgagee is approved to originate single family insured mortgages.

Title I program(s) means an insurance program or programs authorized by Title I of the Act.

Title II program(s) means an insurance program or programs authorized by Title II or Title XI of the Act.

§ 202.3 Approval status for lenders and mortgagees.

(a) *Initial approval.* A lender or mortgagee may be approved for participation in the Title I or Title II programs upon filing a request for approval on a form prescribed by the Secretary and signed by the applicant. The approval form shall be accompanied by such documentation as may be prescribed by the Secretary.

(1) Approval is signified by:

(i) The Secretary's agreement that the lender or mortgagee is considered approved under the Title I or Title II programs, except as otherwise ordered by the Mortgagee Review Board or an officer or subdivision of the Department to which the Mortgagee Review Board has delegated its power, unless the lender or mortgagee voluntarily relinquishes its approval;

(ii) Consent by the lender or mortgagee to comply at all times with the general approval requirements of § 202.5, and with additional requirements governing the particular class of lender or mortgagee for which it was approved as described under subpart B at §§ 202.6–202.10; and

(iii) Under the Title I program, the issuance of a Contract of Insurance or approval as a loan correspondent lender which constitutes an agreement between the Secretary and the lender and which governs participation in the Title I program.

(2) Limitations on approval:

(i) Separate approval as lender or mortgagee is required for participation

in the Title I or Title II programs, respectively. Application must be made, and approval will be granted, on the basis of one or both categories of programs, as is appropriate.

(ii) Separate approval as mortgagee is required for the Single Family Mortgage Insurance Programs and for the Multifamily Mortgage Insurance Programs. Application must be made, and approval will be granted, on the basis of either or both categories, as is appropriate.

(iii) In addition to the requirements for approval as a Title II mortgagee, the Secretary may from time to time issue eligibility requirements for participation in specific programs, such as the Direct Endorsement program.

(iv) A Title II mortgagee may be approved to operate either on a nationwide basis or on a geographically restricted basis in only those areas designated by the Secretary.

(v) A Title I lender may originate loans or purchase advances of credit only within a geographic lending area approved by the Secretary. Expansion of this lending area shall be subject to a determination by the Secretary that the lender is able to originate loans in compliance with part 201 of this chapter within such expanded area.

(3) Authorized agents. A mortgagee approved under § 202.6, § 202.7 or § 202.10 as a nonsupervised mortgagee, supervised mortgagee or governmental or similar institution may, with the approval of the Secretary, designate a nonsupervised or supervised mortgagee as authorized agent for the purpose of submitting applications for mortgage insurance in its name and on its behalf.

(b) *Recertification.* On each anniversary of the approval of a lender or mortgagee, the Secretary will determine whether recertification, i.e., continued approval, is appropriate. The Secretary will review the yearly verification report required by § 202.5(n)(2) and other pertinent documents, ascertain that all application and annual fees have been paid, and request any further information needed to decide upon recertification.

(c) *Termination.* (1) Termination of the Title I Contract of Insurance.

(i) Notice. A Contract of Insurance may be terminated in accordance with its terms by the Secretary or by the Secretary's designee upon giving the lender at least 5 days prior written notice.

(ii) Informal meeting. If requested, and before expiration of the 5-day notice period, a lender shall be entitled to an informal meeting with the Department

official taking action to terminate the Contract of Insurance.

(iii) Effect of termination. Termination of a Contract of Insurance shall not affect:

(A) The Department's obligation to provide insurance coverage with respect to eligible loans originated before the termination, unless there was fraud or misrepresentation;

(B) A lender's obligation to continue to pay insurance charges or premiums and meet all other obligations, including servicing, associated with eligible loans originated before termination; or

(C) 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 part are met.

(2) Termination of the origination approval agreement.

(i) Scope and frequency of review. Every three months, the Secretary will review the number of defaults and claims on mortgages originated by each mortgagee in the geographic area served by a HUD field office. For this purpose and for all other purposes under paragraph (c) of this section, a mortgage is considered to be originated in the same Federal fiscal year in which it is insured. The Secretary may also review the performance of a mortgagee's branch offices individually and may impose the sanctions provided for in this section on a branch as well as on a mortgagee's overall operation.

(ii) Effect of default and claim rate determination.

(A) If a mortgagee had a rate of defaults and claims on insured mortgages originated in an area during the Federal fiscal year which was in excess of 200 percent of the normal rate, and in excess of the national default and claim rate for insured mortgages, the Secretary will notify the mortgagee that its origination approval agreement shall be terminated 60 days after notice was given, without action by the Mortgagee Review Board, except as provided in paragraph (c)(2)(ii)(C) of this section.

(B) Before the Secretary sends the termination notice, the Secretary shall review the census tract area concentrations of the defaults and claims. If the Secretary determines that the excessive rate is the result of mortgage lending in under-served areas, the Secretary may determine not to terminate the origination approval agreement.

(C) Prior to termination the mortgagee may request an informal conference with the Deputy Assistant Secretary for Single Family Housing or that official's designee. After considering relevant reasons and factors beyond the

mortgagee's control that contributed to the excessive default and claim rates, the Deputy Assistant Secretary for Single Family Housing or designee may withdraw the termination notice and notify the mortgagee that it is being placed on credit watch status.

(iii) Credit watch status. If a mortgagee had a rate of defaults and claims on insured mortgages originated in an area during a Federal fiscal year which was greater than 150 percent but equal to or less than 200 percent of the normal rate, the Secretary will notify the mortgagee that it is being placed on credit watch status. Before the credit watch notice is sent, the Secretary shall review the census tract area concentrations of the defaults and claims. If the Secretary determines that the excessive rate is the result of mortgage lending in under-served areas, the Secretary may determine not to place the mortgagee on credit watch status.

(iv) Effect of credit watch status. Insured mortgages originated during a 6 month period from the date of the credit watch notice will be reviewed for excessive default rates. A mortgagee will be removed from credit watch status if the rate of defaults and claims for the 6 month tracking period decreases to 150 percent or less of the normal rate 1 year after that 6 month tracking period. The origination approval agreement for a mortgagee on credit watch status may be terminated if the mortgagee's rate of defaults and claims on insured mortgages originated in an area during the 6 month tracking period is more than 150 percent of the normal rate 1 year after that 6 month tracking period. The Secretary shall provide 60 days notice and an opportunity for an informal conference, as required by paragraph (c)(2)(ii)(C) of this section, to a mortgagee which will have its origination approval agreement terminated subsequent to a credit watch.

(v) Rights and obligations in the event of termination. If a mortgagee's origination approval agreement is terminated, it may not originate single family insured mortgages unless a new origination approval agreement is accepted by the Secretary, notwithstanding any other provision of this part except § 202.3(c)(2)(v)(A). Termination of the origination approval agreement shall not affect:

(A) The Secretary's ability to insure eligible mortgages, absent fraud or misrepresentation, if the mortgagor and all terms and conditions of the mortgage had been approved before the termination by the Direct Endorsement 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 origination 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 provided that the mortgagee is still an approved mortgagee, the general approval standards of § 202.5 and the specific requirements of §§ 202.6, 202.7, 202.8, 202.10 and 202.12(c) continue to be met, and 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.

§ 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 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 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 mortgagee 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 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 principal amount of mortgages that the mortgagee originated and that were insured during the fiscal year or 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.

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 mortgagee shall meet the following requirements:

(1) *Net worth.* The net worth requirements appear in § 202.5(n).

(2) *Liquid assets.* A Title II mortgagee shall have liquid assets consisting of cash or its equivalent acceptable to the Secretary in the amount of 20 percent of its net worth, up to a maximum liquidity requirement of \$100,000.

(3) *Notification.* A lender or mortgagee shall promptly notify the Secretary in the event of termination of its supervision by its supervising agency.

(4) *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 alternative insurance coverage approved by the Secretary, that assures the faithful performance of the responsibilities of the mortgagee.

§ 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 supervised lender or mortgagee may originate, purchase, hold, service or sell insured 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.* The net worth requirements appear in § 202.5(n).

(2) *Liquid assets.* The mortgagee shall have liquid assets consisting of cash or its equivalent acceptable to the Secretary in the amount of 20 percent of its net worth, up to a maximum liquidity requirement of \$100,000.

(3) *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.

(4) *Audit report.* (i) A lender or mortgagee shall file an audit report with

the Secretary within 90 days of the close of its fiscal year (or within an extended time if an extension is granted in the sole discretion of the Secretary) and at such other times as may be requested. 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 a balance sheet and a statement of operations and retained earnings, and analysis of the 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.

(i) A mortgagee must submit a report on compliance tests prescribed by the Secretary.

(5) *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 alternative insurance coverage approved by the Secretary, that assures the faithful performance of the responsibilities of the mortgagee.

§ 202.8 Loan correspondent lenders and mortgagees.

(a) *Definitions—Loan correspondent.*

(1) A loan correspondent lender does not hold a Title I Contract of Insurance and may not purchase or hold loans but may be approved to originate Title I direct loans for sale or transfer to a sponsor or sponsors which holds a valid Title I Contract of Insurance and is not under suspension.

(2) A loan correspondent mortgagee is a mortgagee that has as its principal activity the origination of mortgages for sale or transfer to its sponsor or sponsors or that meets the definition of a supervised mortgagee in § 202.6(a) but applies for approval as a loan correspondent mortgagee. A loan correspondent mortgagee may originate mortgages and submit applications for mortgage insurance but it may not hold, purchase or service insured mortgages, except that a loan correspondent mortgagee meeting the definition of a supervised mortgagee in § 202.6(a) may service insured mortgages in its own portfolio.

Sponsor. (1) With respect to Title I programs, a sponsor is a lender that holds a valid Title I Contract of

Insurance and meets the net worth requirement for the class of lender to which it belongs.

(2) With respect to Title II programs, a sponsor is a mortgagee which holds a valid origination approval agreement, is approved to participate in the Direct Endorsement program, and meets the net worth requirement for the class of mortgagee to which it belongs.

(b) *Additional requirements.* In addition to the general approval requirements in § 202.5, a loan correspondent lender or mortgagee shall meet the following requirements:

(1) *Net worth.* A loan correspondent lender or mortgagee shall have a net worth of not less than \$50,000 in assets acceptable to the Secretary, plus an additional \$25,000 for each branch office authorized by the Secretary, up to a maximum requirement of \$250,000, except that a multifamily mortgagee shall have a net worth of not less than \$250,000 in assets acceptable to the Secretary.

(2) *Notification.* A loan correspondent lender or mortgagee and each of its sponsors shall provide prompt notification to the Secretary if their loan correspondent agreement is terminated.

(3) *Audit report.* A loan correspondent lender or mortgagee shall file an audit report with the Secretary within 90 days of the close of its fiscal year (or within such extended time as may be granted by in the sole discretion of the Secretary), and at such other times as the Secretary may request, except that a loan correspondent mortgagee meeting the definition of § 202.6(a) need not file annual audit reports. 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:

(i) A financial statement, in a form acceptable to the Secretary, including a balance sheet, statement of operations and retained earnings, an analysis of the net worth adjusted to reflect only assets acceptable to the Secretary and an analysis of escrow funds; and

(ii) Such other financial information as the Secretary may require to determine the accuracy and validity of the audit report.

(4) *Liquid assets.* A loan correspondent mortgagee shall maintain liquid assets consisting of cash or its equivalent acceptable to the Secretary in the amount of 20 percent of its net worth, up to a maximum liquidity requirement of \$100,000.

(5) A loan correspondent lender or mortgagee may sell or transfer loans or mortgages only to its sponsors, although a loan correspondent mortgagee may sell to a mortgagee that is not a sponsor with the Secretary's approval. There is no limitation on the number of sponsors that a loan correspondent lender or mortgagee may have and no limitation on the number of loan correspondents that a lender or mortgagee may sponsor.

(6) Each sponsor must obtain approval of its loan correspondent lenders or mortgagees from the Secretary.

(7) Each sponsor shall be responsible to the Secretary for the actions of its loan correspondent lenders or mortgagees in originating loans or mortgages, unless applicable law or regulation requires specific knowledge on the part of the party to be held responsible. If specific knowledge is required, the Secretary will presume that a sponsor has knowledge of the actions of its loan correspondent lenders or mortgagees in originating loans or mortgages and the sponsor is responsible for those actions unless it can rebut the presumption with affirmative evidence.

(8) A loan correspondent mortgagee shall comply with the warehouse line of credit requirements of § 202.7(b)(3)(ii), unless there is a written agreement by its sponsor to fund all mortgages originated by the loan correspondent mortgagee.

(9) For mortgages processed through Direct Endorsement under §§ 203.5 and 203.255(b) of this chapter, underwriting shall be the responsibility of the Direct Endorsement sponsor and the mortgage shall be closed in the loan correspondent mortgagee's own name or the name of the sponsor that will purchase the loan. For mortgages not processed through Direct Endorsement, the mortgage must be both underwritten and closed in the loan correspondent's own name.

(10) A loan correspondent lender shall close all loans in its own name prior to sale or transfer of the loans to its sponsor.

§ 202.9 Investing lenders and mortgagees.

(a) *Definition.* An investing lender or mortgagee is an organization that is not approved under any other section of this part. An investing lender or mortgagee may purchase, hold or sell Title I loans or Title II mortgages, respectively, but may not originate Title I loans or Title II mortgages in its own name or submit applications for the insurance of mortgages. An investing mortgagee may not service Title I loans or Title II mortgages without prior approval of the Secretary. An investing lender or

mortgagee is not required to meet a net worth requirement.

(b) *Additional requirements.* In addition to the general approval requirements in § 202.5, an investing lender or mortgagee shall meet the following requirements:

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

(2) *Officers and staff.* In lieu of the staffing and facilities requirements in § 202.5(b), an investing lender or mortgagee shall have officers or employees who are capable of managing its activities in purchasing, holding, and selling Title I loans or Title II mortgages.

(3) *Fidelity bond.* An investing mortgagee shall maintain fidelity bond coverage and errors and omissions insurance acceptable to the Secretary and in an amount required by the Secretary, or alternative insurance coverage approved by the Secretary, that assures the faithful performance of the responsibilities of the mortgagee.

§ 202.10 Governmental institutions, Government-sponsored enterprises, public housing agencies and State housing agencies.

(a) *Definition.* A Federal, State or municipal governmental agency, a Federal Reserve Bank, a Federal Home Loan Bank, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association may be an approved lender or mortgagee. A mortgagee approved under this section may submit applications for Title II mortgage insurance. A lender or mortgagee approved under this section may originate, purchase, service or sell Title I loans and insured mortgages, respectively. A mortgagee or lender approved under this section is not required to meet a net worth requirement. A mortgagee shall maintain fidelity bond coverage and errors and omissions insurance acceptable to the Secretary and in an amount required by the Secretary, or alternative insurance coverage approved by the Secretary, that assures the faithful performance of the responsibilities of the mortgagee. There are no additional requirements beyond the general approval requirements in § 202.5 or as provided under paragraph (b) of this section.

(b) *Public housing agencies and State housing agencies.* Under such terms and conditions as the Secretary may prescribe and notwithstanding the general requirements of § 202.5 or the

requirements of paragraph (a) of this section, a public housing agency or its instrumentality or a State housing agency may be approved as a mortgagee for the purpose of originating and holding multifamily mortgages funded by issuance of tax exempt obligations by the agency.

(c) *Audit requirements.* The insuring of loans and mortgages under the Act constitutes "financial assistance" for purposes of audit requirements set out in part 44 of this title. State and local governments (as defined in 24 CFR 44.2) that receive insurance as lenders and mortgagees shall conduct audits in accordance with HUD audit requirements at part 44 of this title.

Subpart C—Title I and Title II Specific Requirements

§ 202.11 Title I.

(a) *Administrative actions.*—(1) *Types of action.* In addition to termination of the Contract of Insurance, certain sanctions may be imposed under the Title I program. The administrative actions that may be applied are set forth in 24 CFR 25.5. Civil money penalties may be imposed against Title I lenders and mortgagees pursuant to § 25.12 and part 30 of this title.

(2) *Grounds for action.* Administrative actions shall be based upon both the grounds set forth in § 25.9 and as follows:

(i) Failure to properly supervise and monitor dealers under the provisions of part 201 of this title;

(ii) Exhaustion of the general insurance reserve established under part 201 of this title;

(iii) Maintenance of a Title I claims/loan ratio representing an unacceptable risk to the Department; or

(iv) Transfer of a Title I loan to a party that does not have a valid Title I Contract of Insurance.

(b) [Reserved].

§ 202.12 Title II.

(a) *Tiered pricing.*—(1) *General requirements.* (i) Prohibition against excess variation. The customary lending practices of a mortgagee for its single family insured mortgages shall not provide for a variation in mortgage charge rates that exceeds two percentage points. A variation is determined as provided in paragraph (a)(6) of this section.

(ii) Customary lending practices. The customary lending practices of a mortgagee include all single family insured mortgages originated by the mortgagee, including those funded by the mortgagee or purchased from the originator if requirements of the

mortgagee have the effect of leading to violation of this section by the originator. The responsibility of sponsors of loan correspondent mortgagees is also governed by § 202.8(b)(7).

(iii) Basis for permissible variations. Any variations in the mortgage charge rate up to two percentage points under the mortgagee's customary lending practices must be based on actual variations in fees or cost to the mortgagee to make the mortgage loan, which shall be determined after accounting for the value of servicing rights generated by making the loan and other income to the mortgagee related to the loan. Fees or costs must be fully documented for each specific loan.

(2) *Area.* For purposes of this section, an area is:

(i) An area used by HUD for purposes of § 203.18(a) of this chapter to determine the median 1-family house price for an area; or

(ii) The area served by a HUD field office but excluding any area included in paragraph (a)(2)(i) of this section.

(3) *Mortgage charges.* Mortgage charges include any charges under the mortgagee's control and not collected for the benefit of third parties. Examples are interest, discount points and origination fees.

(4) *Interest rate.* Whenever a mortgagee offers a particular interest rate for a mortgage type in an area, it may not restrict the availability of the rate in the area on the basis of the principal amount of the mortgage. A mortgagee may not direct mortgage applicants to any specific interest rate category on the basis of mortgage size.

(5) *Mortgage charge rate.* The mortgage charge rate is defined as the amount of mortgage charges for a mortgage expressed as a percentage of the initial principal amount of the mortgage.

(6) *Determining excess variations.* Variation in mortgage charge rates for a mortgage type is determined by comparing all mortgage charge rates offered by the mortgagee within an area for the mortgage type for a designated day or other time period, including mortgage charge rates for all actual mortgage applications.

(7) *Mortgage type.* A mortgage type for purposes of paragraph (a)(6) of this section will include those mortgages that are closely parallel in important characteristics affecting pricing and charges, such as level of risk or processing expenses. The Secretary may develop standards and definitions regarding mortgage types.

(8) *Recordkeeping.* Mortgagees are required to maintain records on pricing

information, satisfactory to the Secretary, that would allow for reasonable inspection by HUD for a period of at least 2 years. Additionally, many mortgagees are required to maintain racial, ethnic, and gender data under the regulations implementing the Home Mortgage Disclosure Act (12 U.S.C. 2801-2810).

(b) *Servicing.* Any mortgagee that services mortgages must be approved by the Secretary under § 202.6, § 202.7 or § 202.10, or be specifically approved for servicing under § 202.9(a).

(c) *Report and corrective plan requirements.* If a mortgagee approved for participation in Title II programs is notified by the Secretary that it had a rate of defaults and claims on HUD-insured mortgages during the preceding year, or during recent years, which was higher than the normal rate, it shall submit a report, within 60 days, containing an explanation for the above-normal rate of defaults and claims, and, if required by the Secretary, a plan for corrective action with regard to mortgages in default and its mortgage processing system in general.

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

16. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d). Subpart C also is issued under 12 U.S.C. 1715u.

17. Section 203.3 is amended by revising paragraph (d)(1)(iii) to read as follows:

§ 203.3 Approval of mortgagees for Direct Endorsement.

* * * * *

- (d) * * *
- (1) * * *

(iii) Make changes in the quality control plan required by § 202.5(h) of this chapter; and

* * * * *

18. Section 203.5 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 203.5 Direct Endorsement process.

* * * * *

(c) * * * Mortgagee procedures that evidence such due diligence shall be incorporated as part of the quality control plan required under § 202.5(h) of this chapter. * * *

* * * * *

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

19. The authority citation for 24 CFR part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-1720; 42 U.S.C. 3535(d).

20. Section 206.9 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) *HUD approved mortgagees.* Any mortgagee authorized under paragraph (a) of this section and approved under part 202 of this chapter, except an investing mortgagee approved under § 202.9 of this chapter, is eligible to apply for insurance. A mortgagee approved under §§ 202.6, 202.7, 202.9 or 202.10 of this chapter may purchase, hold and sell mortgages insured under this part without additional approval.

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

21. The authority citation for 24 CFR part 241 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-6; 42 U.S.C. 3535(d).

22. Section 241.1040 is amended to read as follows:

§ 241.1040 Eligible lenders.

Lenders approved as mortgagees under §§ 202.6, 202.7 or 202.9 of this chapter are eligible for insurance of equity loans under this subpart.

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

23. The authority citation for 24 CFR part 266 continues to read as follows:

Authority: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

24. Section 266.100 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 266.100 Qualified housing finance agency (HFA).

(a) To participate in the program, an HFA must apply and be specifically approved for the pilot program described in this part, in addition to being approved as a mortgagee under § 202.10. * * *

* * * * *

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

25. The authority citation for 24 CFR part 3500 continues to read as follows:

Authority: 12 U.S.C. 2601 *et seq.*, 42 U.S.C. 3535(d).

26. Section 3500.2 is amended by revising the final sentence of the definition of "mortgage broker" to read as follows:

§ 3500.2 Definitions.

* * * * *

Mortgage broker * * * A loan correspondent approved under § 202.8 of this title for Federal Housing Administration programs is a mortgage broker for purposes of this part.

* * * * *

Dated: April 9, 1997.

Andrew Cuomo,

Secretary.

[FR Doc. 97-10282 Filed 4-23-97; 8:45 am]

BILLING CODE 4210-32-P