

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Parts 201, 202 and 203

[Docket No. FR-4239-I-01]

RIN 2502-AG99

### Termination of an Approved Mortgagee's Origination Approval Agreement

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

**ACTION:** Interim rule.

**SUMMARY:** This interim rule clarifies and makes minor changes to 24 CFR parts 202 and 203 to improve the provisions regarding termination of a single family mortgagee's origination approval agreement with FHA. The interim rule also corrects errors in 24 CFR parts 201 and 202.

**DATES:** Effective date: January 9, 1998.  
Comment due date: February 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Phillip Murray, Director, Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, Room B-133-P3214, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708-1515 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at (800) 877-8339 (Federal Information Relay Service).

#### SUPPLEMENTARY INFORMATION:

Part 202 of title 24 contains the Department's requirements for approval of lenders and mortgagees for FHA insurance programs. The Department reorganized and streamlined part 202 by a recent final rule without making any substantive changes (62 FR 20080, April 24, 1997). The Department also published an interim rule announcing the Lender Insurance program (62 FR 30222, June 2, 1997). This new interim rule includes minor substantive changes to part 202 and corrections to the streamlining and Lender Insurance rules.

Part 202 is amended to state more clearly the provisions regarding termination of an FHA-approved single family mortgagee's origination approval agreement (OAA). The following matters are clarified or changed in § 202.3(d):

- When a mortgagee has a default and claim rate sufficient to support termination of the OAA under the standards of part 202, termination is at the discretion of the Secretary even if the Department in a previous time

period could have, but did not, place the mortgagee on credit watch. This is a clarification of the Department's current interpretation.

- A mortgagee will not be permitted to apply for a new OAA for 6 months after termination of an OAA. There is currently no delay required for an application for a new OAA.

- Claims and defaults will be measured for 24 months after a mortgage is insured, instead of the current 18 months for claims and 1 year for defaults. Two references to tracking a mortgagee's default and claims for originations "during a Federal fiscal year" are deleted as inconsistent with the uniform 24-month tracking period.

Corrections to the April 24, 1997 final rule include:

- Sections 201.20(a)(3) and 201.26(a)(1)(iii), which had been removed by an interim rule (61 FR 19797-8, May 2, 1996), were inadvertently restored in modified form by the final rule and are now removed again.

- The United States Code citation for the National Housing Act, which was inadvertently omitted, is added to the definition of "Act" in § 202.2.

- The definition of "mortgage" in § 202.2 is corrected to include mortgages insured under title XI of the National Housing Act to be consistent with the definition of "Title II program" which includes title XI.

- Two minor editorial corrections are made to § 202.5: a comma is inserted in the first sentence of § 202.5(i) and "that" is inserted in § 202.5(n)(1)(i) to improve clarity.

- "And" is changed to "an" in § 202.7(b)(4)(i)(A).

In addition, language is added to §§ 203.3 and 203.4 that clarifies HUD's current position that a mortgagee with a terminated OAA also has its approval under the Direct Endorsement and Lender Insurance programs terminated without further procedures.

#### Other Matters

##### *Justification for Interim 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 finds good cause to omit 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 good cause exists to publish this rule for effect without first

soliciting public comment. However, HUD is allowing for a full 60-day public comment period on the provisions of this interim rule, and HUD will consider the relevant issues raised by the commenters in its development of a final rule for the Lender Insurance program.

Many of the changes are corrections or clarifications that do not alter substantive policy currently in effect. Some of the changes are made for administrative efficiency without any likely substantive effect on mortgagees, such as the use of calendar years and uniform 24 month periods to measure default and claim rates. The new explicit prohibition against applying for a new OAA within 6 months of termination supplements the current requirement that HUD must determine that the underlying cause of the termination must have been satisfactorily remedied before a new origination approval agreement would be approved. Under current practice it is highly unlikely that HUD could ever make that determination within 6 months of a termination. The new provision is an administrative measure designed to avoid futile applications by the mortgagee that must be processed by HUD personnel even when denial is virtually certain.

##### *Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely clarifies and makes minor changes and corrections to the existing regulations. The rule will have no adverse or disproportionate economic impact on small businesses. Small entities are specifically invited, however, to comment on whether this rule will significantly affect them, and persons are invited to submit comments according to the instructions in the **DATES** and **ADDRESSES** sections in the preamble of this interim rule.

##### *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 regarding termination of a mortgagee's approval to originate insured mortgages and does not alter the environmental effect of the regulations being amended. The regulation being amended was also exempt under § 50.19(c)(1), as stated at 62 FR 20080, April 24, 1997.

#### *Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

#### *Catalog*

The Catalog of Federal Domestic Assistance number for the programs affected by this interim rule are 14.117 and 14.142.

#### **List of Subjects**

##### *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.

Accordingly, parts 201, 202 and 203 of title 24 of the Code of Federal Regulations are amended as follows:

#### **PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS**

1. The authority citation for 24 CFR part 201 is revised to read as follows:

**Authority:** 12 U.S.C. 1703 and 3535(d).

##### **§ 201.20 [Amended]**

2. Section 201.20 is amended by removing paragraph (a)(3).

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

##### **§ 201.26 Conditions for loan disbursement.**

(a) \* \* \*

(1) The lender shall ensure that the following conditions are met:

- (i) The borrower is eligible for a property improvement loan in accordance with § 201.20(a) (1) or (2); and
- (ii) The interest of the borrower in the property is valid, through such title or other evidence as are generally acceptable to prudent lending institutions and leading attorneys in the community in which the property is situated.

\* \* \* \* \*

#### **PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES**

4. The authority citation for part 202 continues to read as follows:

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

5. Section 202.2 is amended by revising the definitions of "Act", "Claim", "Default", and "Mortgage, Title II mortgage or insured mortgage", to read as follows:

##### **§ 202.2 Definitions.**

*Act* means the National Housing Act (12 U.S.C. 1702 *et seq.*)

*Claim* means a single family insured mortgage for which the Secretary pays an insurance claim within 24 months after the mortgage is insured.

*Default* means a single family insured mortgage in default for 90 or more days within 24 months after the mortgage is insured.

\* \* \* \* \*

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

\* \* \* \* \*

6. Section 202.3 is amended by revising paragraph (c)(2)(ii)(A), the first sentence of paragraph (c)(2)(iii), and paragraph (c)(2)(v)(C) to read as follows:

##### **§ 202.3 Approval status for lenders and mortgagees.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) The Secretary may notify a mortgagee that its origination approval agreement will terminate 60 days after notice is given, if the mortgagee had a rate of defaults and claims on insured mortgages originated in an area which exceeded 200 percent of the normal rate, and exceeded the national default and claim rate for insured mortgages. The notice may be given without action by the Mortgagee Review Board even if the Secretary previously had the right to issue a credit watch notice to the mortgagee under this section but did not do so.

\* \* \* \* \*

(iii) Credit watch status. The Secretary may notify a mortgagee that it is on credit watch status if the mortgagee had a rate of defaults and claims on insured mortgages originated in an area which exceeded 150 percent, but not 200 percent, of the normal rate. \* \* \*

\* \* \* \* \*

(v) \* \* \*

(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

\* \* \* \* \*

7. Section 202.5 is amended by revising the first sentence of paragraph (i) and paragraph (n)(1)(i) to read as follows:

##### **§ 202.5 General approval standards.**

\* \* \* \* \*

(i) \* \* \* 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. \* \* \*

\* \* \* \* \*

(n) \* \* \*

(1) \* \* \*

(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

\* \* \* \* \*

8. Section 202.7 is amended by revising paragraph (b)(4)(i)(A) to read as follows:

**§ 202.7 Nonsupervised lenders and mortgagees.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(i) \* \* \*

(A) A financial statement in a form acceptable to the Secretary, including a balance sheet and a statement of operations and retained earnings, an

analysis of the mortgagee's net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds; and

\* \* \* \* \*

**PART 203—SINGLE FAMILY MORTGAGE INSURANCE**

4. The authority citation for 24 CFR part 203 is revised to read as follows:

**Authority:** 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

5. Section 203.3 is amended by adding a new paragraph (d)(2)(iv) to read as follows:

**§ 203.3 Approval of mortgagees for Direct Endorsement.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(iv) Termination of an origination approval agreement under part 202 of this chapter for a mortgagee or one or more branch offices automatically terminates Direct Endorsement approval

for the mortgagee or the branch office or offices without any further requirement to comply with this paragraph.

6. Section 203.4 is amended by adding a new sentence at the end of paragraph (d) to read as follows:

**§ 203.4 Approval of mortgagees for Lender Insurance.**

\* \* \* \* \*

(d) \* \* \* Termination of an origination approval agreement under part 202 of this chapter or termination of Direct Endorsement approval under § 203.3(d)(2) for a mortgagee or one or more branch offices automatically terminates Lender Insurance approval for the mortgagee or the branch office or offices without any further requirement to comply with this paragraph.

Dated: October 22, 1997.

**Nicolas P. Retsinas,**  
*Assistant Secretary for Housing—Federal Housing Commissioner.*  
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