

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Parts 201, 202 and 203

[Docket No. FR-4239-F-02]

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:** Final rule.

**SUMMARY:** On December 10, 1997 (62 FR 65180), the Department issued an interim rule to clarify and make minor changes to 24 CFR parts 202 and 203. The rule improved the provisions regarding termination of a single family mortgagee's origination approval agreement with FHA, and corrected errors in 24 CFR parts 201 and 202. The Department is now issuing a final rule without change from the interim rule. The Department is also making a correction to a previous amendment of part 202.

**EFFECTIVE DATE:** September 17, 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. An interim rule issued on December 10, 1997 (62 FR 65180) amended part 202 to state more clearly the provisions regarding termination of an FHA-approved single family mortgagee's origination approval agreement (OAA). The following matters were clarified or changed in § 202.3(c):

- 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 was a clarification of the Department's existing interpretation.

- A mortgagee will not be permitted to apply for a new OAA for 6 months

after termination of an OAA. Previously, there was 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.

Language was added to 24 CFR 203.3 and 203.4 that clarified HUD's existing position that a mortgagee with a terminated OAA also has its approval under the Direct Endorsement and Lender Insurance programs terminated without further procedures. The interim rule also corrected certain errors in parts 201 and 202.

#### Discussion of Public Comments

The Department received one comment from the public. The commenter disagreed with the aspect of part 202 that allows HUD to terminate an OAA based on certain default and claims levels. The commenter argued that there was an underlying fallacy in the assumption that high default and claims ratios are evidence of defective lending or servicing practices by the lender. In addition, the commenter disagreed with HUD's finding under the Regulatory Flexibility Act that the interim rule will not have a significant economic impact on a substantial number of small entities. HUD had invited small servicers to comment on whether the rule will significantly affect them but no such comments were received (the commenter is a large bank.)

These comments are not directed to the clarifications and technical changes to part 202 made by the interim rule, but to provisions added to part 202 in 1991 after proposed rulemaking. Furthermore, the commenter wrongly concludes that HUD will terminate an OAA on the basis of servicing obligations. As part of that proposed rulemaking, the Department thoroughly considered the basic concept of termination based on particularly high default and claims rates for originating lenders, and finds no arguments or information that cause the Department to reconsider at this time the policy reflected in part 202.

#### Technical Correction

On April 24, 1997, 62 FR 20080, HUD issued a final rule that streamlined 24 CFR part 202 and made related changes to other parts of title 24. As published, the final rule that streamlined 24 CFR part 202 contained some technical errors. These errors were discussed in the Supplementary Information section of a corrective rule published on February 26, 1998. However, HUD

inadvertently failed to correct one of the errors discussed in that section, by failing to include the words "loans or" in the corrected third sentence of 24 CFR 202.7(a). HUD is now making that correction.

#### 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 final rule will not have a significant economic impact on a substantial number of small entities. This final rule merely clarifies and makes minor changes and corrections to the existing regulations. The final rule will have no adverse or disproportionate economic impact on small businesses.

##### *Environmental Impact*

This final 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). This final rulemaking simply adopts without change an interim rule that itself amended existing regulations regarding termination of a mortgagee's approval to originate insured mortgages and did 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 final 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 final 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 final 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.

*Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

This rule will not pose an environmental health risk or safety risk on children.

*Catalog*

The Catalog of Federal Domestic Assistance numbers for the programs affected by this final 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, the interim rule published at 62 FR 65180, December 10, 1997, amending 24 CFR parts 201, 202 and 203 is adopted as final without change, and part 202 is further amended to read as follows:

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

1. 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(b).

2. Section 202.7 is amended by revising the final sentence of paragraph (a) to read as follows:

**§ 202.7 Nonsupervised lenders and mortgagees.**

(a) \* \* \* A nonsupervised lender or mortgagee may originate, purchase, hold, service or sell insured loans or mortgages, respectively.

\* \* \* \* \*

Dated: July 29, 1998.

**Ira Peppercorn,**

*General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.*

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