

be appealed in accordance with the procedures set forth in paragraph (d)(2) of this section. Unsatisfactory performance solely with respect to mortgages under 24 CFR part 206 may, at the option of the Secretary, be grounds for denial of participation or for continued pre-endorsement review for 24 CFR part 206 mortgages without affecting the mortgagee's processing of mortgages under other parts.

(5) The mortgagee shall promptly notify those HUD offices which have granted approval under this section of any changes that affect qualifications under this section.

(c) [Reserved]

(d) *Mortgagee sanctions.* Depending upon the nature and extent of the non-compliance with the requirements applicable to the Direct Endorsement process, as determined by the Secretary, the Secretary may take any of the following actions:

(1) *Probation.* The Secretary may place a mortgagee on Direct Endorsement probation for a specified period of time for the purpose of evaluating the mortgagee's compliance with the requirements of the Direct Endorsement procedure. Such probation is distinct from probation imposed by the Mortgagee Review Board under part 25 of this chapter. During the probation period specified by this section, the mortgagee may continue to process Direct Endorsement mortgages, subject to conditions required by the Secretary. The Secretary may require the mortgagee to:

- (i) Process mortgages in accordance with paragraph (b)(4) of this section;
- (ii) Submit to additional training;
- (iii) Make changes in the quality control plan required by §202.5(h) of this chapter; and
- (iv) Take other actions, which may include, but are not limited to, periodic reporting to the Secretary, and submission to the Secretary of internal audits.

(2) *Termination of Direct Endorsement approval.* (i) A mortgagee's approval to participate in the Direct Endorsement program may be terminated in a particular jurisdiction by the local HUD office or on a nationwide basis by HUD Central Office. The HUD office instituting the termination action shall

provide the mortgagee with written notice of the grounds for the action and of the right to an informal hearing before the office initiating the termination action. Such hearing shall be expeditiously arranged, and the mortgagee may be represented by counsel. Any termination instituted under this section is distinct from withdrawal of mortgagee approval by the Mortgagee Review Board under part 25 of this title.

(ii) After consideration of the materials presented, the decision maker shall advise the mortgagee in writing whether the termination is rescinded, modified or affirmed.

(iii) The mortgagee may appeal such decision to the Deputy Assistant Secretary for Single Family Housing or his or her designee. A decision by the Deputy Assistant Secretary or designee shall constitute final agency action.

(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.

(Approved by the Office of Management and Budget under control number 2502-0005)

[57 FR 58345, Dec. 9, 1992, as amended at 60 FR 42758, Aug. 16, 1995; 61 FR 2651, Jan. 26, 1996; 62 FR 20088, Apr. 24, 1997; 62 FR 65182, Dec. 10, 1997]

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

Each mortgagee that chooses to participate in the Lender Insurance program must use the Lender Insurance process to insure all of the mortgages that it underwrites, unless the mortgages are ineligible for the Direct Endorsement program as provided in §203.5(b), or unless HUD determines that the mortgages are ineligible for the Lender Insurance program.

(a) *Direct Endorsement approval.* To be approved for the Lender Insurance program described in §203.6, a mortgagee must be unconditionally approved for the Direct Endorsement program as provided in §203.5.

## § 203.5

(b) *Performance: Claim and default rates.* In addition to being unconditionally approved for the Direct Endorsement program, a mortgagee must have had an acceptable claim and default record for at least 2 years prior to its application for participation in the Lender Insurance program. HUD determines acceptable claim and default record as follows:

(1) A mortgagee is eligible for the Lender Insurance program if its claim and default rate is at or below 150 percent of the national average rate for all insured mortgages.

(2) A mortgagee that operates in a single State (Single State mortgagee) may choose to have its claim and default rate compared with the average rate in the State in which it operates, in which case the Single State mortgagee is eligible for the Lender Insurance program if its claim and default rate is at or below 150 percent of the State average rate for insured mortgages.

(c) *Annual review.* HUD will monitor a mortgagee's eligibility to participate in the Lender Insurance program on a yearly basis.

(d) *Termination of approval.* If a mortgagee that has been approved by HUD for the Lender Insurance program violates the requirements and procedures established by the Secretary for such program, or if HUD determines that other good cause exists (including, but not limited to, HUD's determination that the mortgagee is not using prudent review techniques), HUD may immediately terminate the mortgagee's approval to participate in the Lender Insurance program, in accordance with section 256(d) of the National Housing Act (12 U.S.C. 1715z-21(d)). Within 30 days after receiving HUD's notice of termination, a mortgagee may request an informal conference with the Deputy Assistant Secretary for Single Family Housing. The conference will be conducted within 30 days after HUD receives a timely request for the conference. After the conference, the Deputy Assistant Secretary may decide to affirm the termination action or to reinstate the mortgagee's Lender Insurance program approval. The decision will be communicated to the mortgagee in writing and will be deemed a

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final agency action. 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.

[62 FR 30226, June 2, 1997, as amended at 62 FR 65182, Dec. 10, 1997]

### § 203.5 Direct Endorsement process.

(a) *General.* Under the Direct Endorsement program, the Secretary does not review applications for mortgage insurance before the mortgage is executed or issue conditional or firm commitments, except to the extent required by § 203.3(b)(4), § 203.3(d)(1), or as determined by the Secretary. Under this program, the mortgagee determines that the proposed mortgage is eligible for insurance under the applicable program regulations, and submits the required documents to the Secretary in accordance with the procedures set forth in § 203.255. This subpart provides that certain functions shall be performed by the Secretary (or Commissioner), but the Secretary may specify that a Direct Endorsement mortgagee shall perform such an action without specific involvement or approval by the Secretary, subject to statutory limitations. In each case, the Direct Endorsement mortgagee's performance is subject to pre-endorsement and post-endorsement review by the Secretary under § 203.255 (c) and (e).

(b) *Eligible programs.* (1) All single family mortgages authorized for insurance under the National Housing Act must be originated through the Direct Endorsement program, except the following:

(i) Mortgages underwritten for insurance by mortgagees that have applied for participation in, and have been approved for, the Lender Insurance program;

(ii) Mortgages authorized under sections 203(n), 203(p), 213(d), 221(h), 221(i), 225, 233, 237, 809, or 810 of the National Housing Act, or any other insurance programs announced by FEDERAL REGISTER notice; or

(iii) As provided in § 203.1.