

§ 266.15

and consist of not less than 5 rental units (including cooperative units) on 1 site. These units may be detached, semidetached, row house, or multifamily structures.

Qualified HFA means an HFA that meets the requirements described in § 266.100(a).

Risk-Sharing Agreement means a contract between an HFA and the Commissioner that incorporates the terms, obligations, and conditions specified in this part.

Secondary financing means any grant, loan, inferior lien, or other form of indebtedness used during loan origination prior to HUD endorsement to finance a multifamily property insured under this part which is inferior to the insured mortgage as defined above and does not have first priority for payment.

Single Room Occupancy, or SRO, projects means multifamily projects consisting of units that are not required to contain food preparation or sanitary facilities for occupancy by single individuals capable of independent living.

[59 FR 62524, Dec. 5, 1994, as amended at 85 FR 83440, Dec. 22, 2020]

§ 266.15 Risk-Sharing Agreement.

Execution of a Risk-Sharing Agreement is a prerequisite to participation in this program. The Risk-Sharing Agreement shall be in a form acceptable to the Commissioner.

[61 FR 7947, Feb. 29, 1996]

§ 266.20 Effect of amendments.

The Commissioner may amend the regulations in this part from time to time. Amendments to the regulations will not adversely affect the interest of a lender under a contract of insurance on any mortgage already insured or on any mortgage to be insured on which HUD has already issued its firm approval letter.

[59 FR 62524, Dec. 5, 1994, as amended at 85 FR 83440, Dec. 22, 2020]

§ 266.25 Limitation on HUD insurance liability.

The Commissioner shall have no obligation to recognize or deal with anyone other than the HFA in its role as mort-

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gagee of record and as party to a risk-sharing agreement with HUD with respect to the rights, benefits, and obligations of the HFA under the contract of insurance.

§ 266.30 Nonapplicability of 24 CFR part 246.

The regulations at 24 CFR part 246, pertaining to local rent control, do not apply to projects that are security for mortgages insured under this part.

[85 FR 83441, Dec. 22, 2020]

Subpart B—Housing Finance Agency Requirements

§ 266.100 Qualified housing finance agency (HFA).

(a) *Qualifications.* To participate in the program, an HFA must apply and be specifically approved for the program described in this part, in addition to being approved as a mortgagee under § 202.10 of this part. The HFA must maintain eligibility by continuing to comply with the requirements set forth in the Risk-Sharing Agreement and this part. To qualify for participation in the program described in this part, an HFA must:

(1) Carry an issuer credit rating of “A” or better, or an equivalent as evaluated by Standard and Poor’s or any other nationally recognized rating agency; or

(2) Receive an overall rating of “A” for the HFA for its general obligation bonds from a nationally recognized rating agency; or

(3) Otherwise demonstrate its capacity as a sound and experienced HFA based on, but not limited to, experience in financing multifamily housing, fund balances, administrative capabilities, investment policy, internal controls, financial management, portfolio quality, and State or local support; and

(4) Be a HUD-approved multifamily mortgagee in good standing; and

(5) Have at least five years experience in multifamily underwriting; and

(6) Certify that:

(i) The Department of Justice has not brought a civil rights suit against the HFA, and no suit is pending;

(ii) There has not been an adjudication of a civil rights violation in a civil

action brought against the HFA by a private individual, unless the HFA is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance;

(iii) There are no outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has not issued a charge against the HFA under the Fair Housing Act, unless the HFA is operating under a compliance agreement designed to correct the areas of noncompliance.

(b) *Approval levels.* Approval levels consist of the following:

(1) Level I approval to originate, service, and dispose of multifamily mortgages where the HFA uses its own underwriting standards, loan terms and conditions, and asset management and servicing procedures, and assumes 50 to 90 percent of the risk of loss (in 10 percent increments).

(2) Level II approval to originate, service, and dispose of multifamily mortgages where the HFA uses underwriting standards, loan terms and conditions, and asset management and servicing procedures approved by HUD, and:

(i) When the loan-to-replacement cost ratio for new construction and substantial rehabilitation projects or the loan-to-value ratio for existing projects is greater than or equal to 75 percent, the HFA shall assume 25 percent of the risk of loss.

(ii) When the loan-to-replacement cost ratio for new construction and substantial rehabilitation or the loan-to-value ratio for existing projects is less than 75 percent, the HFA shall assume 10 percent, or 25 percent at the HFA's option, of the risk of loss.

(3) For HFAs who plan to use Level I and Level II processing, the underwriting standards, loan terms and conditions, and asset management and servicing procedures to be used on Level II loans must be approved by HUD.

(4) Every five years, HUD will review the underwriting standards, loan terms and conditions, and asset management and servicing procedures for HFAs with Level II approval. HUD may require

changes to these procedures as a condition for continued Level II approval.

[59 FR 62524, Dec. 5, 1994, as amended at 62 FR 20088, Apr. 24, 1997; 85 FR 83441, Dec. 22, 2020]

§ 266.105 Application requirements.

(a) *Applications for approval as a HUD-approved multifamily mortgagee.* HFAs that are not HUD-approved mortgagees at the time of their application to participate in the program under this part must submit, concurrently, separate applications for approval to participate in the program and for approval to operate as a HUD-approved mortgagee. Application for approval as a HUD-approved mortgagee must be submitted to HUD in accordance with the applicable HUD requirements.

(b) *Applications for participation in program.* Applications from HFAs for approval to participate in the program under this part may be submitted at any time, and must be submitted in the form and manner established by HUD.

[61 FR 7947, Feb. 29, 1996, as amended at 85 FR 83441, Dec. 22, 2020]

§ 266.110 Reserve requirements.

(a) *HFAs with an issuer credit rating of "A" or better or overall rating of "A" or better on general obligation bonds.* An HFA with an issuer credit rating of "A" or better, or an equivalent designation, or an HFA with an overall rating of "A" or better on its general obligation bonds, is not required to have additional reserves so long as the HFA maintains that designation or rating, unless the Commissioner determines that a prescribed level of reserves is necessary. If the designation or rating is lost, the HFA must immediately establish a reserve account funded in accordance with the requirements set forth in paragraph (b) of this section. The reserve account must reflect all loans in the HFA's portfolio endorsed under this part.

(b) *Other HFAs.* (1) For other HFAs, a specifically identified dedicated account consisting entirely of liquid assets (*i.e.*, cash or cash equivalents or readily marketable securities) must be established and maintained in a financial institution acceptable to HUD. This account may be drawn upon by