CHAPTER 4: LENDER RESPONSIBILITIES
[7 CFR 3555.51]

4.1 INTRODUCTION

In addition to demonstrating the ability to make single-family residential loans successfully, lenders must operate responsibly on an ongoing basis and comply with all SFHGLP requirements. The Agency will provide notice of all program changes; however, the lender is responsible for staying up to date on all program policies and procedures and ensures that its staff is adequately trained. The Agency encourages lenders to attend or participate in training provided by the Agency or other approved methods, as outlined in Chapter 3 of this Handbook. For Agency provided training, any of the State Offices can arrange training for lenders and their staff members. New lenders who request participation in the SFHGLP by submitting *Form RD 3555-16* will be required to take training prior to approval by the Agency. Lenders are encouraged to register for automatic email notification regarding loan origination, servicing or automated underwriting updates. Lenders may register at: https://public.govdelivery.com/accounts/USDARD/subscriber/topics?qsp=USDARD_25.

4.2 OPERATE RESPONSIBLY

The lender must:

- Operate in a prudent and businesslike manner. A lender that maintains its approval from Fannie Mae, Freddie Mac, VA, or HUD is presumed to act responsibly as long as all other elements of the Lender Agreement are maintained.

- Establish and maintain adequate written policies for loan origination, underwriting, servicing, and quality control. The quality control plan must contain information as outlined in Attachment 3-A, Chapter 3 of this Handbook. It must be compliant for the organization on which approval is based and include a representative sampling of SFHGLP loans. The lender must provide copies of the quality control plan for Agency review.

4.3 MAINTAIN A WELL-TRAINED STAFF

A lender must ensure that its loan processors, underwriters, and servicers are fully trained to implement the SFHGLP properly. The lender must document either that it has provided its staff adequate training, or request training from the Agency before it originates SFHGLP loans.

- **Maintain knowledgeable staff.** The lender must ensure that new staff members are trained on relevant SFHGLP areas. On a periodic basis, lenders are encouraged to seek refresher training for staff to promote efficiency and consistency in delivering the SFHGLP.

- **Performance improvement.** If the Agency finds that a lender needs to improve its overall performance, the Agency will require that the lender's staff participate in technical assistance or on-site training.

4.4 COLLECT LOAN PAYMENTS AND ENSURE PAYMENT OF TAXES AND INSURANCE

The servicing lender, or their representative, must collect the borrower's monthly payment and apply the funds to the borrower's account in accordance with the terms of the promissory note and mortgage. The servicing lender must maintain first lien position and ensure that real estate taxes and hazard insurance premiums are paid when they are due. If tax and insurance funds are collected from the borrower, they must be held in escrow in accordance with the RESPA, and must be deposited in an account insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA). A lender that is not able to hold funds in escrow must have a plan that ensures that taxes and insurance are paid, as described in Attachment 4-A.

4.5 MAINTAIN FIDELITY BONDING

The lender must maintain fidelity insurance covering its employees' errors and omissions at a level of coverage deemed prudent based on the size of the lender's operation. The fidelity bond or errors and omission insurance that is generally acceptable to the secondary market agencies (Ginnie Mae, Fannie Mae, and Freddie Mac) will meet Rural Development requirements.

4.6 SELL LOANS ONLY TO APPROVED LENDERS [7 CFR 3355.54]

A. Procedure

A SFHGLP loan may be sold only to an Agency-approved lender, Fannie Mae or Freddie Mac. The selling lender must report any guaranteed loan sale to the Agency by using *Form RD 3555-11, "Lender Record Change"*, or electronically transmit the information. The notification of transfer of the loan(s) should be sent to the Rural Development Housing Services Branch in St. Louis as indicated on *Form RD 3555-11*. If the loan is sold to a party not approved to participate in the SFHGLP, the loan note guarantee will be considered invalid for the non-approved lender.

Should a lender be unable to complete the sale of a loan due to the loss of the original loan note guarantee (Form RD 3555-17), the lender may request a copy from the Agency. The Agency will provide a copy marked “Duplicate Original” and reserves the right to assess a fee for this service.

B. Purchaser Risks and Responsibilities

The purchaser of a SFHGLP loan acquires all the rights of a loan holder under the guarantee. This means that, should there ever be a loss; the purchaser is entitled to file a loss claim with the Agency. However, the purchaser must ensure that it properly fulfills all servicing obligations, and must provide the Agency any requested assistance for its program monitoring.

4.7 REPORT SIGNIFICANT CHANGES

The lender must immediately inform the Agency, in writing, of significant changes in its structure or status. Failure to keep the Agency informed of changes in accordance with *Form RD 3555-16* could lead to withdrawal of approval. Significant changes include instances where the lender:

- Changes its name, location, address, tax identification number, or corporate structure;
- Changes its fidelity bonding or errors and omissions insurance coverage;
- Becomes insolvent;
- Files for any type of bankruptcy protection, is forced into involuntary bankruptcy, or requests an assignment for the benefit of creditors;
- Takes any actions to cease operations, or discontinue servicing its SFHGLP portfolio;
- Becomes delinquent on any Federal debt, or is debarred, suspended, or sanctioned in connection with participation in any Federal program;
- Is debarred, suspended, or sanctioned in accordance with any applicable State licensing or certification requirement or regulation; or
- Wishes to withdraw from participation in the SFHGLP.

4.8 ADHERE TO SFHGLP GUIDELINES

The lender must follow all SFHGLP guidelines. Failure to comply could result in reduction or denial of a loss claim or revocation of approval to participate in the program. These program guidelines include:

- **Approved Forms**. The lender must use forms approved by the FHA, Fannie Mae, Freddie Mac, or FCS lenders only when forms are not provided by the Agency.
- **Eligibility Requirements**. The lender is fully responsible for ensuring that the loan applicant and property meet all SFHGLP eligibility requirements. This takes place during the underwriting process.
- **Underwriting Requirements**. The Agency approved lender is responsible for underwriting the loan even if an agent originates the loan.
- **Servicing Requirements.** The lender must comply with the loan servicing requirements in this handbook. The approved lender is responsible for proper servicing even if it has sub-contracted the servicing.
- **Monitoring Requirements**. The lender must submit all required reports and cooperate with all Agency monitoring efforts and information requests.

4.9 INDEMNIFICATION

If the Agency determines that the originating lender did not originate a loan in accordance with the requirements of 7 CFR 3555 and this Handbook, the Agency may utilize available legal remedies against the originating lender, including revoking the originating lender's eligibility status in accordance with § 3555.52 and Chapter 3 of this Handbook. The Agency may also require the originating lender:

(1) To indemnify the Agency for the loss, if the loan default under the guarantee occurred within 60 months of loan closing, when one or more of the following conditions is present:

- The originating lender utilized unsupported data or omitted material information when submitting the request for a conditional commitment to the Agency;
- The originating lender failed to properly verify and analyze the applicant's income and employment history in accordance with Agency guidelines;
- The originating lender failed to address property deficiencies indentified in the appraisal or inspection report that affect the health and safety of the occupants or the structural integrity of the property;

- The originating lender used an appraiser that was not properly licensed or certified, as appropriate, to make residential real estate appraisal in accordance with § 3555.103(a); or,

(2) To indemnify the Agency for the loss, regardless of how long ago the loan closed, if the Agency determines that there was fraud or misrepresentation in connection with the origination of the loan of which the originating lender had actual knowledge at the time it became such lender or which the originating lender participated in or condoned. Misrepresentation includes negligent misrepresentation.

4.10 PREVENT MORTGAGE FRAUD

Fraud is an intentional deception made for personal gain. It can come in the form of schemes or can be committed by borrowers and/or loan officers or agents on behalf of or representing the approved lender. It can involve the submittal of falsified information about employment, income or assets in order to qualify for a loan. Lenders remain accountable for the contents of a loan file, including:

- The sources of and authenticity of all qualifying documentation.
- Representation made on the loan application, such as occupancy, employment income, assets, equity contribution, etc.

Lenders must ensure they have adequate operational quality control procedures in place to help detect and effectively prevent mortgage fraud. Sound pre-funding quality control practices and a rigorous post-funding quality program are examples to safeguard against fraud. The quality control procedures should address updating company policies and procedures when fraud is discovered.

When a lender becomes aware of fraud, they must report the findings surrounding the discovery to the National Office. Information for National Office is located in Appendix 4 of this Handbook. Include the following information:

- Provide the name, email address, and telephone number of the company point of contact of the case reported.
- Indicate if the fraud involves origination or servicing.
- Indicate the originating lender (underwriting lender) and/or servicing lender, as applicable.

- Include the lender's taxing identification number and the lender loan number.
- Agency borrower identification.
- Property street, city, state and zip code.
- Detailed description of findings.
- Identify the mortgage broker, loan officer, appraiser, closing agent, real estate agents, as applicable.

Refer to Chapter 1 of this Handbook for additional information regarding falsely submitted information, fraud and unauthorized assistance.

4.11 WITHDRAWAL OF APPROVAL

A lender's approval to participate in the SFHGLP does not expire as long as the lender is an active program participant who is complying with Agency guidelines, continues to meet the criteria of *Form RD 3555-16* and remains an eligible lender with Fannie Mae, Freddie Mac, HUD, VA or other lender approval criteria explained at Section 3.2 of Chapter 3 of this Handbook. The Agency may periodically require updated information to ensure the GLS lender file remains accurate. When the Agency withdraws a lender's approval adversely, the Agency retains the right to pursue debarment and other legal actions, as appropriate.

A. Criteria to Withdraw Approval

A lender's approval may be withdrawn when:

The lender is neither servicing loans guaranteed under the program, does not hold SFHGLP loans, nor has originated a SFHGLP loan in the previous 24 months. Updated training to ensure a lender's continued knowledge of the program may be required when lenders originate minimal loans in the previous 24 months.

The Agency will withdraw a lender's approval if the lender experiences uncorrected performance problems. The Agency will notify the lender in writing of the reasons for the termination and of its appeal rights as described in Appendix 3 of this Chapter. If a lender chooses to stop participating in the SFHGLP, the lender should notify the Agency in writing.

B. Sale of Loans upon Termination

Upon the Agency's termination of a lender's approval, any SFHGLP loans held by the lender must be sold within six months to an Agency-approved lender. Failure to sell the loans, if the lender is able to do so, may result in the Agency withdrawing its guarantee from the loans. If poor loan quality prevents the sale, the lender may continue to hold the SFHGLP loans in its portfolio; however, it must contract with an Agency-approved lender to conduct all servicing activities and give proper notifications to the Agency.

4.12 ADDITIONAL LENDER RESPONSIBILITES UPON APPROVAL

- *Guaranteed Underwriting System (GUS)*. An automated underwriting system is available to approved participating lenders. Lenders may utilize GUS by entering into a User Agreement. Information on obtaining access to GUS is provided in Section 5.3 of Chapter 5 of this Handbook. The following link provides a guide for gaining access to GUS, a lender user guide for utilizing GUS and the necessary forms to gain access:

  https://usdalinc.sc.egov.usda.gov/USDALincTrainingResourceLib.do

- *Electronic Lender Loan Closing*. Lenders who have an approved lender participation agreement will be eligible to submit closed loans electronically to the Agency. The lender must execute a User Agreement to again access to the system. Payment of the fee will be electronic in lieu of paper check. Requesting and receiving the Loan Note Guarantee will be through the automated method. Additional information is provided in Section 16.3 B of Chapter 16 of this Handbook. An on-line user guide is available through the link provided above. Scroll to *Lender Loan Closing/Administration*.

- *Payment of Annual Fees*. For loans subject to payment of annual fees, payment of such fees will be received electronically. Lender/servicers will enter into a User Agreement to receive automatic notification and electronically pay annual fees due. Lenders who fail to pay the annual fee when due will be subject to late fees. The late fee charged the lender for non-payment cannot be passed onto the borrower. The link noted above provides information on completing a User Agreement and utilizing the *Guaranteed Annual Fee* system. At the link provided above, scroll to Guaranteed Annual Fee (GAF) billing and payment.

- *Electronic Status Reporting*. Lender/Servicers who service SFHGLP portfolio are required to report monthly defaults and quarterly status reports of all SFHGLP loan serviced. Lender/servicers will enter into an Agreement to gain access to the reporting system. The link noted above provides information on completing a *Trading Partner Agreement* and utilizing the *Electronic Status Reporting (ESR)* system. At the link provided above, scroll to Electronic Status Reporting (ESR). Email questions or request for assistance to: RD.DCFO.GLB@stl.usda.gov. Refer to Section 17.3 of Chapter 17 and Appendix 8 of this Handbook for additional information regarding electronic reporting.

- *Loss Mitigation, Property Disposition, Loss Claim Administration*. An automated method of processing loss mitigation requests pre-liquidation, property disposition and loss claim administration post-liquidation is available to participating lender/servicers. Lenders will enter into a User Agreement. Information on obtaining access is provided at the link noted above. At the link provided above, scroll to Loss Mitigation, Property Management or Loss Claim Administration and Servicing.

ATTACHMENT 4-A

CONDITIONS FOR LENDERS NOT HOLDING FUNDS IN ESCROW

A lender who does not hold borrower funds in escrow for taxes and insurance should consider the following:

- The Agency's loan guarantee covers a maximum of twelve months' past-due real estate taxes and hazard insurance.
- Loan losses attributable to the borrower's failure to maintain appropriate hazard insurance will not be covered by the Agency's loan guarantee.
- Loan losses attributable to the borrower's failure to pay real estate taxes when due will not be covered by the Agency's loan guarantee.
- The lender will report annually to the Agency the number of borrowers who failed to pay real estate taxes and/or hazard insurance premiums and which resulted in the lender advancing funds on the borrowers' behalf.

Lenders who do not hold borrower funds in escrow should consider doing the following to minimize the risk of taxes and insurance not being paid:

- Prior to loan closing, the lender must extensively counsel applicants about the need for prompt payment of real estate taxes and hazard insurance premiums. Applicants must sign a statement indicating that they fully understand the significance of these obligations.
- The lender must include the estimated monthly tax and insurance expenses in the ratio calculations when determining the borrower's loan eligibility.
- The lender should encourage applicants to set money aside for taxes and insurance through payroll deductions or bank accounts with direct deposit.
- The lender must ensure that taxes and insurance are paid by monitoring insurance policy expiration, contacting the taxing authority annually, and reviewing local newspapers for tax delinquencies.

ATTACHMENT 4-B

SAMPLE FOR ACKNOWLEDGMENT OF REAL ESTATE TAX AND HAZARD INSURANCE REQUIREMENTS

_____________(Date)____________

I (We), ____, hereby acknowledge that ____(lender), has explained the requirements for monthly deposits, or set-asides for payment of annual real estate taxes and hazard insurance premiums. I (We), the undersigned, do state that I (We) understand and agree to set-aside _______ dollars each month ($ monthly amount) to pay real estate taxes and hazard insurance premiums when they are due.

______________________________________(Borrower Signature)

______________________________________(Borrower Signature)

______________________________________(Lender)