CHAPTER 2: LENDER ELIGIBILITY AND APPROVAL

2.1 PURPOSE AND OVERVIEW

For a lender to originate and service GRRHP loans, the Agency must determine that the lender meets the eligibility criteria set forth in the statute and corresponding regulations. The purpose of this chapter is to assist the lender in understanding these requirements and requesting and obtaining approved lender status from the Agency. An overview of the lender approval process is shown in Exhibit 2-1.

Key Topics in this Chapter

- Determining Lender Eligibility
- Approving Lenders
- Maintaining Approved Status
- Working with Other Lenders

EXHIBIT 2-1

The Lender Approval Process for the GRRHP

Step 1: Lender requests approved lender status to originate and service GRRHP permanent, construction/permanent loans, or continuous guarantee loans. Lender requests approval under one of two tests:

The Basic Eligibility Test

This test is for lenders who are approved and currently active in HUD/FHA, Fannie Mae, Freddie Mac, or Ginnie Mae multifamily finance programs.

The Demonstrated Eligibility Test

This test is for other lenders who do not meet the basic eligibility requirements but propose to become an approved lender by demonstrating the ability to originate and service multifamily housing loans.

Step 2: Lender submits the necessary documentation for approval to the Agency (see Section 2 of this chapter).

Step 3: The Agency normally responds no later than 30 business days after receiving a complete application.

Step 4: Lender must remain active in the program to retain approved status. The Agency will conduct an eligibility audit of approved lenders annually to confirm continued eligibility.

SECTION 1: LENDER ELIGIBILITY

2.2 PURPOSE

The purpose of the GRRHP is to attract credit to develop multifamily housing opportunities in rural areas where the supply of credit is not adequate. A goal of the program is to use the knowledge and expertise of eligible private sector lenders to originate and service GRRHP loans.

Lender preliminary eligibility is determined by meeting one of two tests:

- The basic eligibility test (see Paragraph 2.4); or
- The demonstrated eligibility test (see Paragraph 2.5).

Eligible lenders must be able to originate and/or service construction and permanent GRRHP loans. To become eligible to participate in the GRRHP, a lender must meet the approval requirements as detailed in Paragraphs 2.6 and 2.7.

2.3 REQUESTING LENDER ELIGIBILITY CONSIDERATION

The application for lender eligibility may be made at the same time as the first loan application. The first loan application means:

- The first application for a loan guarantee for a new loan; or
- The first application before ownership of any GRRHP loan is transferred to that lender.

A lender will obtain approved status when it issues an Agency approved loan guarantee or it acquires a program guaranteed loan.

2.4 PRELIMINARY ELIGIBILITY- BASIC ELIGIBILITY TEST REQUIREMENTS

One of two preliminary eligibility tests must be met before a lender is deemed eligible to participate in the program. Under the basic eligibility test, a lender must be an approved and currently active lender who has originated at least one multifamily loan in the last 24 months and / or is currently servicing at least one multifamily loan in one of the following multifamily housing programs:

- HUD/Federal Housing Administration (FHA) insurance programs;
- Fannie Mae;
- Freddie Mac; or
- Ginnie Mae.

A letter or other verification of HUD/FHA, Fannie Mae, Freddie Mac, or Ginnie Mae current program approval and participation dated within 12 months of the application must be provided to the Agency as evidence that the lender meets the basic eligibility requirements. The lender will still be required to submit the documentation indicated in paragraphs 2.6 and 2.7.

2.5 PRELIMINARY ELIGIBILITY-DEMONSTRATED ELIGIBILITY TEST REQUIREMENTS

If a lender does not meet the basic eligibility test, they may still apply to become an eligible lender by demonstrating the ability to originate and service GRRHP loans. A lender applying to make loans under Options Two or Three must also have experience in underwriting and servicing construction loans and have experience in the construction to permanent conversion process.

A State or local housing finance agency (HFA), a member of the Federal Home Loan Bank (FHLB) System, or other lender may be eligible to participate if they can demonstrate satisfactory experience with multifamily lending and servicing.

A lender can meet the demonstrated eligibility test if they demonstrate to the Agency's satisfaction that they have:

- A thorough knowledge of multifamily lending and the capacity to underwrite, originate, process, close, service, manage, and dispose of multifamily housing loans in a reasonable and prudent manner; and
- A track record of making at least three multifamily loans, including at least one loan in the past two years.

2.6 ELIGIBILITY REQUIREMENTS

A. Origination and Servicing Plan

As part of their application for eligibility, all lenders must develop and submit an origination and servicing plan to be approved by the Agency. The plan must include the following information:

1. Policies and Procedures

The lender must provide a summary of their in-house policies and procedures from applicant screening through loan origination, processing, construction and/or permanent servicing, and termination.

2. Portfolio Performance Data

Lenders must verify their track record in servicing construction and/or permanent loans. A lender applying under the basic eligibility test may document the ability to service multifamily loans by verifying current approved servicer status with HUD/FHA, Fannie Mae, Freddie Mac, or Ginnie Mae. Verification can be provided in the form of a letter or other verification of participation with any of these multifamily finance programs within 12 months of the application. The Agency does reserve the right to request additional information if needed.

Lenders who are not approved by HUD/FHA, Fannie Mae, Freddie Mac, or Ginnie Mae and are applying under the demonstrated eligibility test must provide a summary of multifamily servicing activity. At a minimum, the summary must include the dollar amount, number, and type of loans in the lender's portfolio and information on delinquencies and losses over the past three years. Delinquent multifamily loans must not exceed three percent of all multifamily loans outstanding as of the application date, and historic losses must not exceed three percent of total dollars loaned. In the case of a new or reorganized servicing operation, the principal staff of the lender must demonstrate experience consistent with these benchmarks.

For the purpose of this plan, a delinquency will be any loan where the borrower has failed to make the full amount of a required payment on the due date or within any grace period.

3. Standard Documents to be used in Processing GRRHP Loans

To the extent that the lender has developed standard documents that will be used in originating, monitoring, or servicing construction and/or permanent GRRHP loans, samples of these documents must be included as part of the origination and servicing plan. These documents may include, but are not limited to:

- The loan note,
- The mortgage,
- The security agreement,
- The regulatory agreement, and
- All loan closing documents.

If the lender does not submit a sample set of standard documents as part of the origination and servicing plan, the Office of the General Counsel (OGC) must review these documents for each GRRHP loan unless OGC has directed otherwise.

4. Key Personnel Involved in GRRHP Loan Program

This section should detail qualifications of the lender's key personnel responsible for administering and monitoring the GRRHP loans, as well as any third party relationships. Resumés of all personnel to be involved in underwriting, construction management, servicing, and property disposition of GRRHP loans, regardless of whether they are in-house staff or a third party, must be submitted as part of this section. Resumes must document multi-family housing experience including, but not limited, to underwriting.

5. Specific Areas Where the Lender's Policies and Procedures Will Deviate from Agency Standards

To the extent that the lender intends to use standards that are different from the Agency standards prescribed throughout this handbook, the lender must detail the proposed process or standard and obtain Agency approval prior to its use.

B. Demonstrate the Lender's Financial Stability

Lenders meeting the basic eligibility test will be considered financially stable. All other private lenders must be rated BBB (or equivalent rating) or better by a nationally recognized rating agency. A state or local housing finance government instrumentality authorized to issue housing bonds or otherwise provide financing for rural rental multi-family housing must have an investment grade long-term obligation rating from a rating agency such as Standard and Poor's or Moody's. Lenders that are not rated must submit data to the Agency to show they have sufficient capital and liquidity to meet any potential losses in their portfolio. Additionally, each lender must also submit an audited copy of the most recent annual financial statement prepared in accordance with Generally Accepted Accounting Practices (GAAP).

C. Lender's Certification to Comply with Program Requirements

As a part of the origination and servicing plan, lenders are required to certify their commitment to comply with all Agency policies and procedures, including, but not limited to, standards for underwriting, servicing, and property disposition. Lenders must also certify to comply with policies, procedures, guidelines and regulations of other funding sources involved in transactions, including but not limited to the Section 515 Rural Rental Housing Direct Loan Program, to the extent that it doesn't interfere with the GRRHP.

2.7 ADDITIONAL REQUIREMENTS FOR APPROVAL TO ORIGINATE AND SERVICE OPTION TWO AND OPTION THREE LOAN GUARANTEES

A construction and permanent loan provides advances during the construction period and remains in place as a permanent loan at the completion of construction. The Agency will guarantee such loans but requires additional information to determine that lenders are qualified to originate and service both the construction and permanent loan. The Agency <u>cannot</u> guarantee construction only loans due to statutory restrictions.

The request to originate and service construction and permanent loans must be made when the lender first applies to the program or when an approved lender first submits its first construction loan for a guarantee.

Under Options Two and Three a lender who originates and services construction and permanent loans and continuous guarantee loans must agree to manage the construction and draw activities in the manner described in Chapter 5.

Lenders must meet either the basic or the demonstrated eligibility test described in Paragraphs 2.4 and 2.5, and the lender eligibility requirements set forth in Paragraph 2.6. Lenders must clearly identify policies and procedures for multifamily construction lending. Lenders must also provide a summary of their multifamily construction lending activity in the same form as non-construction lending activity specified in Paragraph 2.5. The Agency may, at its discretion, consider other types of construction loans — such as those for commercial development — as a substitute for multifamily construction experience.

Lenders who are newly determined to be eligible to participate in the GRRHP may be required to adhere to additional mitigation measures when processing loans with the Agency. Measures may include but are not limited to, a reduced or graduated guarantee, additional reporting requirements and headquarters review regardless of loan size, loan to cost or loan to value ratio.

2.8 PARTICIPATION BY LENDERS WITHOUT DEMONSTRATED ABILITY

Lenders that do not meet the requirements for approval may participate in the loan or may act as an agent of an approved lender. These arrangements are discussed in Section 4 of this chapter.

SECTION 2: ELIGIBILITY APPLICATION PROCESSING

2.9 OVERVIEW

There are two ways an applicant may submit an application for lender eligibility:

- Applications may be submitted to the National Office when the lender submits its first loan application to the RHS State Office.
- Applications may be submitted directly to the National Office any time prior to submission of the first loan application.

There is no standard application form for lender approval. Prospective lenders must submit a request on their letterhead and include all of the items listed in Paragraph 2.11.

2.10 AGENCY ASSESSMENT OF THE REQUEST

The Agency normally will respond to complete applications within 30 business days. Incomplete applications, especially those that do not include the submission requirements listed in Paragraph 2.11, will generally be returned automatically to the lender. Information required from third parties, such as the eligibility letter from HUD/FHA, Fannie Mae, Freddie Mac, or Ginnie Mae or lender credit ratings, must accompany the application.

The Agency will review completed applications and determine if the applicant meets all of the requirements for eligibility. The Agency may request additional information as necessary to evaluate the lender's qualifications.

As a part of the lender application, the Agency may collect a non-refundable fee, if applicable. The application fee and other program fees are discussed in Chapter 6.

2.11 SUBMISSION REQUIREMENTS — LENDER APPLICATION

The following are submission requirements for lender eligibility applications.

- Lender legal name and legal address.

- Identification of contact person responsible for coordinating with the Agency including phone number, fax number, and email address.

- List of principal officers and their responsibilities.

- Certification that the lender has not been debarred or suspended from Federal programs. Lenders must complete *Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions"*.

- Certification that the officers or principals of the lender have not been debarred or suspended from any Federal programs.

- Certification that the lender is not in default or delinquent on any Federal debt or loan.

- A recent letter, or other proof, verifying participation as a currently active, approved multifamily lender in good standing with HUD/FHA, Fannie Mae, Freddie Mac, or Ginnie Mae (see Paragraph 2.4); or evidence that the lender is a State HFA, a member of the FHLB system, or other lender experienced in multifamily lending who can meet the requirements of the Agency.

- A copy of the lender's origination and servicing plan for construction and/or permanent multifamily loans.

- Verification of lender credit rating or evidence of financial stability as discussed in Paragraph 2.6 B.

- A certification by the lender that they will:

  ◊ Comply with all Agency policies and procedures, including all monitoring requirements of the Agency;

  ◊ Maintain all original eligibility and approval conditions; and

  

  ◊ Inform the State Office and National Office in writing within 60 days if there are any substantive changes in corporate structure or business practices, such as a change in management or in the size or scope of business operations.

  Notify the State Office or National Office if the contact person changes.

2.12 ISSUANCE OF APPROVED LENDER STATUS

Lenders determined eligible, will be informed in writing of their approval to participate in the program. Those lenders deemed not eligible will be informed of the reasons for their denial to participate in the program.

Lenders not approved may appeal the decision by following an informal appeals procedure, through mediation or alternative dispute resolution, or by following the formal appeals procedures referenced in Attachment 1-A.

SECTION 3: MAINTENANCE OF LENDER APPROVAL

2.13 REQUIREMENTS FOR RETAINING APPROVED STATUS

Lenders participating in the program are expected to maintain compliance with all of the requirements for participation. If a change in the lender's operations or financial status results in the lender becoming ineligible to participate in the program, the Agency must be notified immediately. Lender approval under the program is automatically maintained until one of the following occurs:

- The lender is inactive for three consecutive years;
- The lender fails to maintain requirements for eligibility;
- The lender voluntarily withdraws from participation in the program; or
- The Agency removes a lender's approval.

Example: Lender Z has not participated in the program in any way (originating or owning a loan) in the past three years. Lender Z's approval lapses. Lender Z may reapply for approval in the program when Lender Z obtains another loan under the program.

Example: Lender Y originates loans guaranteed under the program and then promptly sells them. Lender Y does this continuously, never going more than two years between originating loans under the program. Lender Y remains in the program in good standing and is considered an active participant.

The definition of an active lender is a lender who does at least one of the following:

- Has originated at least one loan under the program in the last 24 months; or
- Holds in their portfolio at least one loan guaranteed under the program.

All active lenders must have an "eligibility audit" annually that must be sent to the National Office for review within 120 days of the end of their fiscal year. The audit will consist of a financial and program performance audit conducted by a certified public accountant in accordance with Generally Accepted Government Accounting Standards (GAGAS). In addition, the Agency will periodically visit the lender's business office to conduct an on-site review. The lender must also certify that all eligibility requirements are being maintained.

Lenders who have lost approval status must reapply to regain approved. Their past performance under the program may count as demonstrated ability during the pre-application process. In the event of loss of approval either through Agency action or voluntary termination by the lender, the Agency may require the transfer of servicing of loans to an approved lender. If the loss of approval is due to non-compliance, the Agency may pursue other actions against the lender, including, but not limited to, debarment, criminal and/or civil proceedings.

SECTION 4: OTHER ISSUES

2.14 SUBSTITUTION OF LENDER

The Agency recognizes that lenders may wish to sell loans that they originate, but the Agency has a duty to ensure that the Government is not placed at higher risk as a result of this action. The Agency requires that each loan sale, other than sales to Fannie Mae, Freddie Mac, or through Ginnie Mae, be approved in advance.

The Agency requires that only approved lenders can take ownership of a guaranteed loan. This policy is to ensure that loans are properly serviced at all times. Therefore, after the issuance of a Loan Note Guarantee, the lender must not sell or transfer the loan, or any portion, without the prior written approval of the Agency. The Agency will not pay any loss if a loan or portion of a loan is transferred without Agency approval.

To be approved, a substitute lender must:

- Be an approved lender or be eligible to become an approved lender in accordance with Section 1 of this chapter.
- Be able to service the loan in accordance with the original loan documents;
- Agree in writing to assume all original loan requirements, including liabilities and servicing responsibilities; and
- Submit a signed *Form RD 3555-11, "Guaranteed Rural Housing Lender Record Change*, to the State Office".

The Office of the General Counsel (OGC) Regional Attorney must review the proposed substitution documents to ensure that the substitution meets all legal requirements unless OGC has directed otherwise.

Following the approval of the substitution, the State Office will submit *Form RD 3555-11* to the USDA Finance Office.

2.15 USE OF AGENTS BY THE APPROVED LENDER

An approved lender may use agents such as brokers to carry out their duties. However, the approved lender bears full and complete responsibility for all of the actions of these agents. For experienced lenders, the use of an agent gives them the opportunity to reach out to other geographic areas where they might not do business.

Use of agents provides the opportunity for inexperienced lenders to develop experience under the tutelage of experienced lenders. One example of use of a lender's agent would be the use of a mortgage broker to underwrite and originate a loan for an approved lender. The loan must be closed in the name of the approved lender, who retains ownership and responsibility for the loan. Lenders can use the experience gained acting as the agent for another lender as evidence of their demonstrated ability for multifamily lending should they wish to become approved in the future.

If an agent originates or services a GRHHP loan, the lender must identify the agent on the loan guarantee application. If the lender proposes to use an agent on a consistent basis, the Agency must be informed of this relationship but does not need to approve the arrangement unless the lender is delinquent or in default under the Lender Agreement.

Lenders who are currently not eligible to participate in the program may do so through a correspondent relationship with a lender who is approved. A correspondent relationship is a contractual relationship between an approved lender and a non-approved lender or mortgage broker in which the correspondent performs certain origination, underwriting, or servicing functions for the approved lender. The correspondent must be an entity or individual eligible to conduct business with the Agency.

2.16 LOAN PARTICIPATIONS

A participated loan is a loan that is funded by two or more lenders. Loan participations are permitted, subject to Agency review. In every case, a lead lender must be designated, and that lead lender must be an approved GRRHP lender. The lead lender will execute the Lender Agreement with the Agency and assume full responsibility for compliance with program requirements. The lead lender is responsible for establishing an intercreditor agreement with each participating lender and ensuring that the GRRHP loan is a first lien or a parity lien, if a parity lien is approved by the Agency. The lead lender will be, in most cases, the sole point of contact with the Agency for the loan.

2.17 TRANSFER OF SERVICING

The Agency requires that the originating lender services the entire loan and remains as the mortgagee or secured party of record. In cases where the originating lender cannot service the loan, the Agency may permit the transfer of servicing responsibility to another lender, subject to Agency concurrence prior to the transfer as provided in Paragraph 2.14.

Agency approval is not required for the transfer of servicing on guaranteed mortgages which are inGinnie Mae securities. However, the lender must notify the Agency that the transfer has taken place.

Loans and/or mortgage servicing on loans backing Ginnie Mae guaranteed securities may only be transferred to a Ginnie Mae issuer and may only be transferred with prior Ginnie Mae approval.