

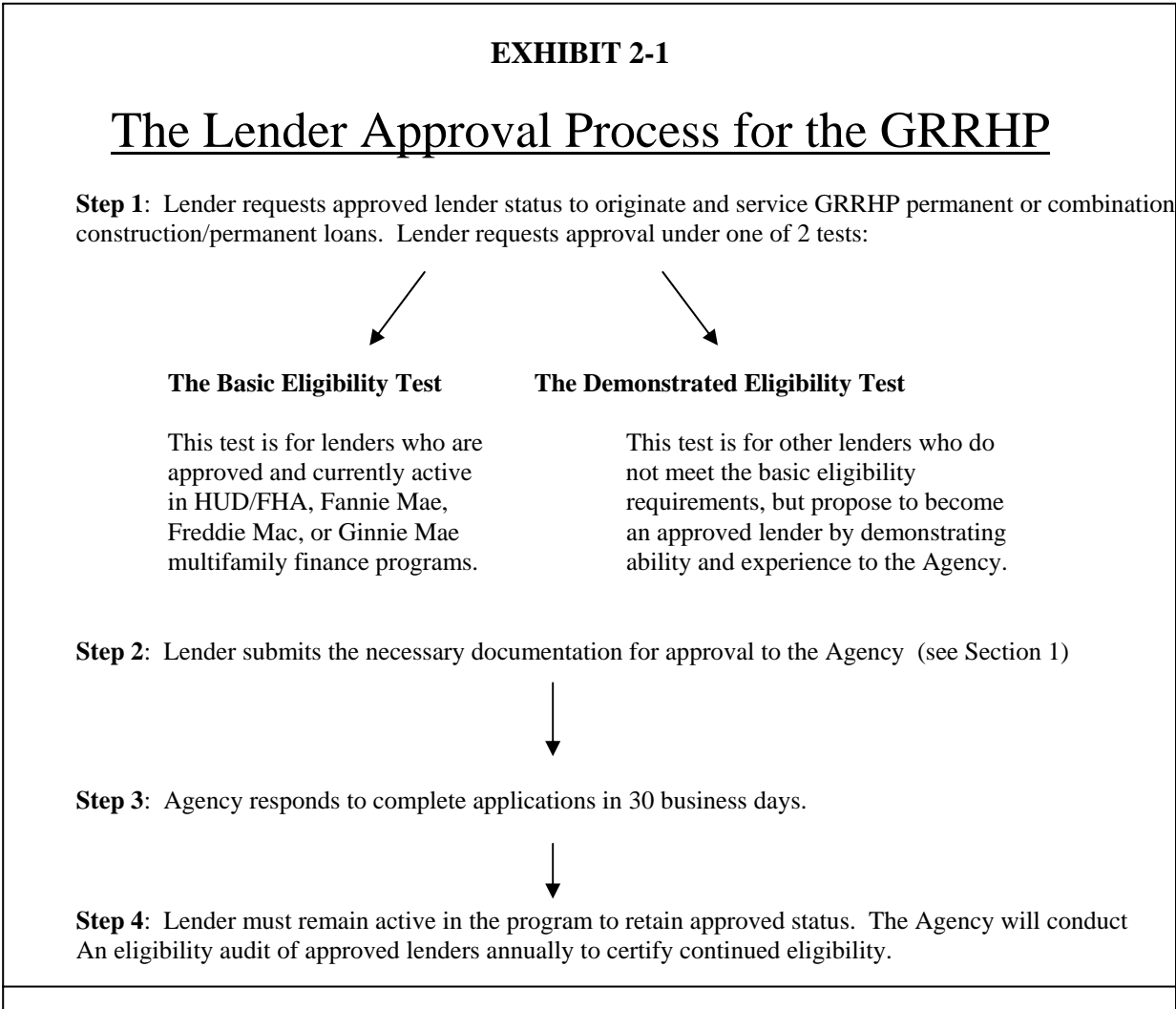
CHAPTER 2: LENDER ELIGIBILITY AND APPROVAL

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



SECTION 1: LENDER ELIGIBILITY

2.2 PURPOSE

The purpose of the GRRHP is 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 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 approved to originate or service permanent GRRHP loans and/or combination construction/permanent loans. These requirements are detailed in Paragraphs 2.6 and 2.7.

2.3 REQUESTING LENDER APPROVAL

The application for lender approval must 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 must be approved before a loan guarantee is issued or a guaranteed loan is acquired.

2.4 BASIC ELIGIBILITY TEST REQUIREMENTS

Two eligibility tests must be met before a lender may request approved lender status. Under the basic eligibility test, a lender must be an approved and currently active lender in one of the following multifamily housing programs.

- HUD/FHA insurance programs;
- Fannie Mae;
- Freddie Mac; or
- Ginnie Mae.

“Currently active” means that the lender has originated at least one multifamily loan in the last 24 months, or is currently servicing at least one multifamily loan in portfolio.

A letter or other verification of HUD, Fannie Mae, Freddie Mac, or Ginnie Mae program participation within the last 24 months must be provided to the Agency as evidence that the lender meets the basic eligibility requirements.

2.5 DEMONSTRATED ELIGIBILITY TEST REQUIREMENTS

If a lender does not meet the basic eligibility test, they may still apply to become an approved lender by demonstrating adequate ability to originate and service GRRHP loans.

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

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 APPROVAL REQUIREMENTS

A. Origination and Servicing Plan

As part of their application for approval, 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, servicing, and termination.

2. Portfolio Performance Data

Lenders must verify their track record in servicing loans. A lender applying under the basic eligibility test may document the ability to service multifamily loans by verifying 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 the last 24 months.

Lenders who are not approved by HUD/FHA, Fannie Mae, Freddie Mac or Ginnie Mae 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 outstanding 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 terminating 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 standard documents, 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. Resumes 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.

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.

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 better by a nationally recognized rating agency. HFA's must have a top-tier rating from Moodys or Standard & Poors rating service. 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. Lenders must also submit an audited copy of the most recent annual financial statement prepared in accordance with Generally Accepted Accounting Practices (GAAP).

C. The 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.

2.7 ADDITIONAL REQUIREMENTS FOR APPROVAL TO ORIGINATE AND SERVICE COMBINATION CONSTRUCTION/PERMANENT LOANS

A combination construction and permanent loan consists of a loan or fund advances to finance construction, and a permanent loan for a term of up to 40 years or the economic life of the loan, if less. 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 cannot guarantee construction loans that are not combination loans, due to statutory restrictions.

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

A lender who originates and services combination construction and permanent loans must agree to manage the construction and draw activities in the manner described in the Chapter 5.

Lenders must meet either the basic or the demonstrated eligibility test in Paragraphs 2.4 and 2.5 and the lender approval requirements set forth in Paragraph 2.6. Lenders must clearly identify policies and processes for multifamily construction lending. Lenders must also provide a summary of their multifamily construction lending activity in the same form as 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.

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 or broker of an approved lender. These arrangements are discussed in Section 4 of this chapter.

SECTION 2: LENDER APPROVAL PROCESS

2.9 OVERVIEW

All applications for lender approval must be submitted to the RHS State Office with the lender's first loan application. Requests for lender approval will be forwarded to the National Office with the first loan application. All of the items listed in Paragraph 2.11 are required as a part of the lender application. An application for approval as a participating lender can be found at any State Office.

2.10 AGENCY ASSESSMENT OF THE REQUEST

The Agency 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, Ginnie Mae or lender credit ratings, must be submitted as soon as possible.

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

As a part of the lender application, the Agency will collect a non-refundable fee. 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 approval applications.

- Lender legal name and legal address.
- Identification of contact person responsible for coordinating with the Agency including phone number, fax number, and e-mail 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, Fannie Mae, Freddie Mac or Ginnie Mae (see Paragraph 2.4); or evidence that the lender is a State housing finance agency (HFA), a member of the Federal Home Loan Bank (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 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 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.



2.12 ISSUANCE OF APPROVED LENDER STATUS

Lenders will be informed in writing of lender approval or denial and the reasons for denial. The lender approval will be completed when the loan guarantee application is approved by the Agency.

If a lender is not approved, they 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 as when first approved. If a change in the lender's operations or financial status results in the lender becoming ineligible, 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 therefore lapses. Lender Z may reapply for approval in the program when Lender Z next has a 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 within 120 days of the end of their fiscal year and send it to the National Office for review. 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. 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 must reapply to regain approved status. 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 proceedings, and 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 it has a duty to ensure that the government is not placed at higher risk as a result of this action. The Agency requires that all sales of loans, other than sales to Fannie Mae, Freddie Mac, or Ginnie Mae be approved in advance.

The Agency requires that lenders be approved before they 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; and
- Agree in writing to assume all original loan requirements, including liabilities and servicing responsibilities.

The RHS Regional Attorney must review the proposed substitution documents to ensure that the substitution meets all legal requirements unless OGC has directed otherwise.

The USDA Finance Office must be notified of substitutions using *Form RD 1980-11, Guaranteed Rural Housing Lender Record Change*.

2.15 USE OF AGENTS AND BROKERS BY THE APPROVED LENDER

An approved lender may use agents or brokers to carry out their duties. However, the approved lender bears full and complete responsibility for all of the actions of their agents. For experienced lenders, the use of an agent or broker gives them the opportunity to reach out to other geographic areas where they might not usually do business. For the areas being served by these agents and brokers, it allows the greater availability of credit for multifamily development.



Use of agents and brokers is also allowed to provide the opportunity for inexperienced lenders to develop experience under the tutelage of experienced lenders. One example of use of a lender 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 or broker originates or services a GRHHP loan, the lender must identify the broker or agent on the relevant documentation. If the lender proposes to use a broker or 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.

2.16 LOAN PARTICIPATIONS

A loan participation 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 in most cases be the sole point of contact with the Agency for the loan.

2.17 TRANSFER OF SERVICING

In most cases, the Agency will require that the originating lender service the entire loan and remain mortgagee or secured party of record. In cases where the originating lender cannot service the loan, the Agency will permit the transfer of servicing responsibility to another lender, subject to Agency concurrence prior to the transfer.

Agency approval is not required for the transfer of servicing on guaranteed mortgages to Ginnie Mae.

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.