

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

NATIONWIDE HOME LOANS, INC.,

Respondent.

23-AF-0071-MR-004

June 7, 2023

**ORDER GRANTING SUMMARY JUDGMENT AND INITIAL DECISION**

On February 6, 2023, the Mortgagee Review Board (“Board”) of the United States Department of Housing and Urban Development (“HUD”) issued a Notice of Withdrawal withdrawing approval of Nationwide Home Loans, Inc. (“Nationwide”) as a Federal Housing Administration (“FHA”) mortgagee for one year. On March 13, 2023, the Court received Respondent’s request for a hearing to challenge HUD’s decision to withdraw Respondent from the FHA program.

On May 8, 2023, HUD moved for summary judgment on the basis that there is no genuine dispute that Respondent failed to meet the minimum adjusted net worth requirement in fiscal year 2021; violated a core FHA requirement concerning adjusted net worth warranting administrative action; and, violated the adjusted net worth requirement, which is a serious and repeated violation of a nonwaivable eligibility requirement that Respondent has not mitigated.

As of the date of this *Initial Decision*, Respondent has not filed a response to HUD’s *Motion*.

**I. Legal Principles**

**A. FHA Applicable Law & Guidance**

**FHA Approval of Mortgagees.** The National Housing Act (“the Act”), Pub. L. No. 84-345, 48 Stat. 1246 (1934), 12 U.S.C. §§ 1701 *et seq.* created the Federal Housing Administration and the Board, provided for the insurance of mortgages by the federal government, and established the Mutual Mortgage Insurance Fund, with which the government could guarantee qualifying mortgages. To be eligible for FHA insurance, the Act requires that all qualifying mortgages shall “[h]ave, or be held by, a mortgagee approved by the Administrator as responsible and able to service the mortgage properly.” 12 U.S.C. § 1709(b)(1). Pursuant to the Act, the FHA established requirements that mortgagees must satisfy to obtain, and to annually

renew, approval to originate FHA-insured loans. These are set forth at 24 C.F.R. Part 202 and the FHA Title II Mortgagee Approval Handbook 4060.1, REV-2 (2006).

**FHA’s Minimum Net Adjusted Worth Requirement.** Against the backdrop of one of the most significant real estate crises in U.S. history, HUD revised its regulations to increase the net worth minimum benchmarks for all annual mortgagee recertification packages submitted after May 2013. Federal Housing Administration: Continuation of FHA Reform; Strengthening Risk Management Through Responsible FHA-Approved Lenders, 75 Fed. Reg. 20718, 20733 (Apr. 20, 2010). In its explanation of the changes to the net worth requirements, HUD stated that the requirements had not been adjusted since 1993 and that the changes were being made “to ensure that FHA-approved mortgagees are sufficiently capitalized for the financial transactions occurring, and concomitant risks present, in today’s economy.” Id. at 20718.

The applicable net worth requirement is set out at 24 C.F.R. § 202.5(n)(3)(i) and states that:

[i]rrespective of size, ... each approved lender or mortgagee, for participation solely under the FHA single family programs, shall have a net worth of not less than \$1 million, plus an additional net worth of one percent of the total volume in excess of \$25 million of FHA single family insured mortgages originated, underwritten, purchased, or serviced during the prior fiscal year, up to a maximum required net worth of \$2.5 million. No less than 20 percent of the applicant’s or approved lender or mortgagee’s required net worth must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.

HUD issued the FHA Single Family Housing Policy Handbook (“Handbook”), which includes FHA approval and eligibility requirements for both Title I lenders and Title II mortgagees. The Handbook sets forth that mortgagees must meet the FHA’s adjusted net worth requirements at all times. FHA SINGLE FAMILY HOUSING POLICY HANDBOOK 4000.1, Section I.A.3.c.vii. Therefore, HUD requires that each mortgagee annually certify that it has complied with all FHA regulations and requirements necessary to maintain approval. 24 C.F.R. § 202.5(m); HANDBOOK at § I.A.8.b. The submission of a false certification is a violation of FHA requirements, which can result in referral to the Mortgagee Review Board. HANDBOOK at § I.A,8.b.(iv).

**FHA’s Requirement that Mortgagees Notify of Net Worth Deficiency.** FHA rules require that a mortgagee “submit the required annual audit report of its financial condition...within 90 days of the close of its fiscal year.” See 24 C.F.R. §§ 25.6(e). In addition to the submission of an audited financial statement, mortgagees are required to provide an estimated net worth computation.

#### B. Mortgagee Review Board

The Act also established the Mortgagee Review Board (“Board”) and empowered it to take certain actions, including a withdrawal of any mortgagee found to be engaging in activities

that violate FHA requirements or nondiscrimination requirements. 12 U.S.C. § 1708(c)(1). The violation of these requirements may result in the withdrawal of the approval of a mortgagee to participate in the single-family mortgage insurance program. Specifically, the Board is empowered to initiate the withdrawal of any mortgagee “found to be engaging in activities in violation of [FHA] requirements.” 12 U.S.C. § 1708(c)(1). The Board may issue an order withdrawing a mortgagee “if the Board has made a determination of a serious violation or repeated violations by the mortgagee.” *Id.* at § 1708(c)(3)(D). The Board shall “determine the terms of such withdrawal, but the term shall not be less than 1 year.” *Id.* The violations creating grounds for an administrative action by the Board, including a withdrawal action, are listed in 24 C.F.R. § 25.6. These violations include among other things:

(e) Failure of nonsupervised mortgagee to submit the required annual audit report of its financial condition prepared in accordance with instructions issued by the Secretary within 90 days of the close of its fiscal year, or such longer period as the Assistant Secretary of Housing – Federal Housing Commissioner may authorize in writing prior to the expiration of 90 days;

...

(g) Failure to comply with any agreement, certification, undertaking, or condition of approval listed on, or applicable to, either a mortgagee’s application for approval or an approved mortgagee’s branch office notification;

(h) Failure of an approved mortgagee to meet or maintain the applicable net worth, liquidity or warehouse line of credit requirements of 24 CFR part 202 pertaining to net worth, liquid assets, and warehouse line of credit or other acceptable funding plan;

...

(j) Violation of the requirements of any contract or agreement with the Department, or violation of the requirements set forth in any statute, regulation, handbook, mortgagee letter, or other written rule or instruction;

...

(p) Business practices which do not conform to generally accepted practices of prudent mortgagees or which demonstrate irresponsibility;

...

(ff) Any other violation of the Federal Housing Administration requirements that the Board or the Secretary determines to be so serious as to justify an administrative sanction.

24 C.F.R. § 25.6(e), (g), (h), (j), (p), and (ff).

In situations where the Board seeks to impose a withdrawal, it must issue a notice that describes the nature and duration of the administrative action, specifically states the reasons for the action, and informs the mortgagee of its right to a hearing regarding the administrative action and of the manner and time in which to request a hearing. 24 C.F.R. § 25.9(b); see also 12 U.S.C. § 1708(c)(4).

Part 202 of Title 24 of the Code of Federal Regulations establishes the minimum requirements for continued approval to participate in FHA’s mortgage insurance programs. See 24 C.F.R. § 202.1. Approved lenders renew their FHA approval on an annual basis through, inter alia, submission of audited financial statements, supplemental information such as an adjusted net worth computation, and other information requested by the Secretary. 24 C.F.R. §§ 202.5(g), 202.7(b)(4). Approved lenders are subject to the HUD Uniform Financial Reporting Standards. See 24 C.F.R. § 5.801(a)(5); see also 24 C.F.R. § 202.7(b)(3) (referencing 24 C.F.R. § 5.801(a)(5)). Under those standards, the mortgagee “must provide to HUD such financial information as required by HUD...on an annual basis ... [and these] must be ... [p]repared in accordance with Generally Accepted Accounting Principles as further defined by HUD in supplementary guidance,” such as the OID Audit Guide. See 24 C.F.R. § 5.801(b)(1).

### C. Summary Judgment

Hearings concerning the Board’s withdrawal of lender’s FHA approval are conducted in accordance with procedures set forth at 24 C.F.R. Part 26, Subpart B. See 24 C.F.R. § 25.10. Pursuant to 24 C.F.R. § 26.32(l), this Court is authorized to “decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact.” The Court may exercise its discretion in application of Rule 56 of the Federal Rules of Civil Procedure (“FRCP”). 24 C.F.R. § 26.40(f)(2).

Under 24 C.F.R. § 26.40(f), a party may timely move for summary judgment on all or part of the claim. Although Part 26 does not set forth a standard for the granting of a motion for summary judgment, the FRCP and case law interpreting the rules provide useful guidance. See, e.g., In re Salvador Alvarez, HUDALJ 04-25-PF, at 4 (June 23, 2005) (using FRCP, Rule 56 states that summary judgment shall be granted if the moving party “shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law”). A “genuine” issue exists when “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Additionally, a fact is not “material” unless it affects the outcome of the suit. Id.

## II. **Material Facts not in Dispute**

In the *Hearing Request*, Respondent admitted to the two violations alleged in HUD’s *Complaint*.<sup>1</sup> Moreover, Respondent did not respond to HUD’s *Motion for Summary Judgment*. Accordingly, the below material facts are not in dispute. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986) (noting that the nonmoving party may not rest upon mere allegations or denials, but must come forward with specific facts showing that there is a *genuine* issue for trial).

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<sup>1</sup> The Mortgagee Review Board issued a Notice of Withdrawal dated February 6, 2023, to Respondent. That Notice of Withdrawal constitutes the *Complaint* in this matter.

A. Respondent's failure to maintain the net worth requirements for Fiscal Year Ended December 31, 2021.

FHA required Respondent to maintain a minimum adjusted net worth of \$1 million throughout Respondent's fiscal year 2021. In its fiscal year 2021, Respondent failed to meet FHA's adjusted net worth requirement. Based on the documentation provided to FHA, FHA concluded that Respondent had an adjusted net worth of negative \$89,470. Compared to the required adjusted net worth of \$1 million, Respondent's adjusted net worth was deficient of the regulatory minimum by \$1,089,470.

Respondent admitted that both it and its CPA had overlooked the designation of certain real estate assets as "unacceptable assets" and, thereafter, submitted to FHA a hand-annotated version of its fiscal year 2021 audited balance sheet, less real estate assets. Respondent acknowledged that, after complying with the unacceptable asset designation for its real estate assets, Respondent's adjusted net worth was below the FHA required amount of \$1 million once the unacceptable assets were removed.

Respondent stated that its adjusted net worth deficit was \$45,000, and Respondent offered to deposit an amount equal to its deficiency into a business account to bring Respondent into regulatory compliance. FHA determined that the \$45,000 contribution offer was insufficient to remedy Respondent's adjusted net worth deficiency.

FHA reviewed Respondent's annotated consolidating balance sheet and found that Respondent erroneously removed a \$1,294,445 liability that was annotated as a real estate debt. Respondent's audited financial statements for fiscal year 2021 indicated that this liability was notes payable from individuals to use in the operations of the single member LLC, Accelerated Equity, LLC, and thus was not a real estate debt and should not have been removed from Respondent's adjusted net worth computation.

Respondent also stated that it had purchased a single-family home in California to use as its home office, and asked FHA if this asset could be included in its adjusted net worth calculation. FHA had requested details about Respondent's various real estate assets, which Respondent provided in a list. In that list, Respondent included a single California property valued at \$250,000 and located at 62300 20<sup>th</sup> Avenue, Desert Hot Springs, CA 92262. None of the properties listed were registered with FHA as Respondent's home office; therefore, none of Respondent's known properties were acceptable real estate assets.

Respondent has not been in compliance with FHA's minimum adjusted net worth requirements for at least three consecutive fiscal years 2021, 2022, and 2023.

B. Respondent failed to timely notify the FHA of its Net Worth Deficiency

Respondent did not timely notify FHA of the net worth deficiency for fiscal year 2021. Respondent explained that neither Respondent nor its CPA was aware of the changes regarding assets. Instead, Respondent was initially notified by FHA of Respondent's failure to maintain

the minimum net worth in the October 3, 2022 Notice of Violation and Notice of Intent to Seek Civil Money Penalty (“NOV”).

C. Issuance of Notice of Violation and Notice of Administrative Action.

FHA issued the October 3, 2022, NOV alleging that Respondent failed to maintain the required adjusted net worth during the fiscal year ended December 31, 2021. Respondent responded to the NOV on October 27, 2022, admitting that it had a deficient adjusted net worth.

FHA sent the Notice of Administrative Action: Withdrawal (“NOAA”) dated February 6, 2023, to Respondent reflecting the allegations contained in the NOV. The NOAA specifically detailed that Respondent (1) failed to maintain the minimum required net worth during fiscal year end December 31, 2021; and, (2) failed to timely notify FHA of the adjusted net worth deficiency. Respondent was also informed in the NOAA that the Board voted to impose a one-year withdrawal of Respondent from the FHA program in order to protect public interest.

On March 10, 2023, Respondent filed an appeal of its withdrawal from the FHA program. In that appeal, Respondent admitted to the assertions in the NOAA, that it had failed to maintain the minimum net worth for 2021, and that it failed to notify FHA of the net worth deficiency, because Respondent claimed that neither Respondent nor its CPA was aware that real estate assets could no longer be part of the net worth calculations. Respondent also requested the opportunity to remedy any deficiencies to its net worth.

Although not charged in the NOAA, in Respondent’s March 10, 2023 appeal, it included information regarding its net worth for 2022. Respondent submitted an unaudited balance sheet for its fiscal year 2022, and other information regarding a new California real estate asset that Respondent used as a home office, and offered to prove its adjusted net worth compliance. On March 16, 2023, in response to Respondent’s appeal, and its submission of the unaudited balance sheet for fiscal year 2022, FHA contacted Respondent to confirm that its newly acquired California home office did not comply with FHA’s home office requirements.

FHA considered Respondent’s 2022 unaudited balance sheet, after removing the unacceptable asset from Respondent’s 2022 balance sheet, and based on information known to FHA, Respondent had an adjusted net worth deficiency of nearly \$200,000 for that fiscal year. Respondent stated that it would deposit \$200,000 into its business account to remedy the adjusted net worth deficiency. On April 21, 2023, for the first quarter of 2023, Respondent sent to FHA its unaudited consolidating balance sheets for that year, and its bank statements evidencing the deposit of \$200,000 into Respondent’s business account. Thereafter, on April 28, 2023, Respondent submitted to FHA its audited financial statements for its fiscal year ending December 31, 2022.

Respondent’s failure to maintain the required minimum adjusted net worth during fiscal year 2021 created the basis for FHA to take administrative action. Also, such failure to maintain the required minimum adjusted net worth for 2021, triggered the non-waivable eligibility provision on behalf of the FHA Board.

### III. HUD is entitled to judgment as a matter of law.

HUD claims the undisputed material facts demonstrate that Respondent failed to meet the conditions of its continued approval to participate in the mortgage insurance programs administered by HUD's FHA by failing to maintain an adjusted net worth that satisfied 24 C.F.R. § 202.5(n). HUD claims failing to meet the adjusted net worth requirement is a serious and non-waivable violation of a prerequisite for continued participation in FHA's program, and therefore the administrative action is warranted under 24 C.F.R. § 25.6.

#### 1. Net worth deficiency for 2021.

HUD requires mortgagees to maintain at least the minimum required adjusted net worth at all times. 24 C.F.R. §§ 202.5(n) and 202.7(b)(1); HANDBOOK 4000.1, at § I.A.3.c.vii. The applicable minimum net worth requirement is \$1 million plus an additional net worth of one percent of the total volume in excess of \$25 million of FHA single family insured mortgages originated, underwritten, purchased, or serviced during the prior fiscal year, up to a maximum required net worth of \$2.5 million. 24 C.F.R. §202.5(n)(3)(i); see also A1 Mort. Group ("A1 Mortgage"), HUDOHA 19-AF-0168-MR-004, 6-7 (June 4, 2020), Secretarial appeal filed July 2, 2020. Therefore, every lender approved to participate in FHA's single family mortgage insurance programs must maintain an adjusted net worth of at least \$1 million. The minimum net worth requirement is important to FHA as it ensures that approved lenders are sufficiently capitalized for the fiscal transactions occurring and risks present in today's economy. A1 Mort. Group, supra at 6-7; see also Vinson Mort. Servs, Inc., HUDOHA 16-JM-0076-MR-008 ("Vinson I"), 2 (Aug. 14, 2017), aff'd, Vinson Mort. Servs., Inc., Order on Secretarial Review ("Vinson II"), 4 (Jan. 9, 2018).

FHA required that Respondent compute its adjusted net worth in compliance with the HUD OIG Handbook 2000.04, Consolidated Audit Guide for Audits of HUD Programs ("OIG Audit Guide"). 24 C.F.R. § 5.801(b)(1); Section I.A.3.c.vii.(A)(1); see also (OIG Audit Guide's provision on Lender Annual Recertification, Adjusted Net Worth, Liquidity, Licensing).

To calculate a lender's adjusted net worth, the value of any "unacceptable assets" is deducted from a lender's balance sheet entry for member's equity. Among the categories of unacceptable assets is "Any asset that is real property, including all land and any buildings attached to it; other than home office registered with HUD in accordance with Handbook 4000.1, Section I.A.3.c.iii." The designation of such real property as unacceptable for inclusion in the adjusted net worth computation was disseminated in June 2021 through an update to the OIG Audit Guide. In September 2021, FHA issued a Mortgagee Letter to Respondent and all other approved lenders further detailing the incorporation of this designation and providing Respondent until December 31, 2021, to come into compliance.

HUD claims Respondent had a net worth deficiency for fiscal year 2021 and, therefore, has failed to satisfy the adjusted net worth requirement of the FHA program. FHA reviewed Respondent's financial statements and removed the unacceptable real estate assets from the adjusted net worth computation for fiscal year 2021. As a result, FHA established that Respondent ended the 2021 fiscal year with a net worth of negative \$89,470, so a deficiency of \$1,089,470 existed.

Respondent admitted that it failed to maintain the minimum net worth requirement for the fiscal year ended December 31, 2021. Also, Respondent acknowledged that it included impermissible real estate assets as part of its net worth calculations; therefore, Respondent did not inform FHA of the net worth deficiency.

The Court finds that Respondent did not meet the net worth requirements for fiscal year that ended December 31, 2021; therefore, Respondent violated the FHA rules requiring a lender to meet the FHA's minimum requirements of \$1 million. 24 C.F.R. §202.5(n) and 202.7(b)(1); HANDBOOK 4000.1, at § I.A.3.c.vii. And, the Court finds that Respondent did not inform FHA of its net worth deficiency for 2021, and admitted to failing to do so. This failure to inform FHA was an added violation of the rules pertaining to mortgagees. See, 24 C.F.R. 25.6(e).

2. Respondent's violation was serious and non-waivable thus warranting Respondent's withdrawal from the FHA program.

The net worth requirement and the requirement to notify the FHA regarding the failure to maintain its net worth are important requirements that Respondent fell short of in 2021. An administrative action imposed under 12 U.S.C. § 1708(c) must be based upon one or more of the violations enumerated by 24 C.F.R. § 25.6. Respondent violated more than one rule set forth in 24 C.F.R. § 25.6, and initiating an administrative action was proper.

As stated prior, the minimum net worth requirement is important to FHA, because it ensures that mortgagees are sufficiently capitalized for the fiscal transactions occurring and risks present in today's economy. See A1 Mortg., *supra* at 9; see also Vinson Mortg. Servs. Inc., *supra*, at 2. The failure of an approved mortgagee to meet or maintain the applicable net worth requirements set forth by the FHA constitutes one of the violations for which an administrative action may be imposed. 24 C.F.R. § 25.6(h). Respondent's net worth deficiency is an issue that has been ongoing since fiscal year 2021, and involves an FHA requirement for approving a lender or mortgagee. See 24 C.F.R. § 202.5 (setting forth the net worth requirement for lenders and mortgagees as a requirement to receive and maintain approval by the FHA).

As an FHA approval standard, the minimum adjusted net worth requirement is non-waivable. A1 Mortg., *supra* at 7. R&G Mortg., HUDALJ 07-052-MR, 13 (HUDALJ Nov. 20, 2007); see also 24 C.F.R. § 26.50(a). (citing 57 Fed. Reg. 31048 (July 13, 1992)). If violations of mortgagee requirements deal with a non-waivable lender approval requirement, implementing a withdrawal action is nondiscretionary. Id. Respondent's serious violations of these FHA requirements regarding fiscal year 2021 creates the basis for FHA to take administrative action. See 24 C.F.R. §§ 25.6(e) and (h); see also A1 Mortgage, *supra* at 7.

Additionally, Respondent did not notify the FHA of its failure to maintain the required net worth. The provisions of FHA's regulations and program requirements include the requirement that a program participant must submit the required annual audit report of its financial condition within 90 days of the close of the fiscal year. See 24 C.F.R. §§ 25.6(e). Respondent did not submit an audited report that properly categorized its real estate assets. As a result, Respondent did not properly report its net worth, which was in fact deficient. Respondent's failure to do so for fiscal



year 2021 was an added serious violation of the rules governing a mortgagees participation in FHA's programs and adds to the appropriateness of the administrative action.

In its appeal to the NOAA, Respondent requested that HUD provide it with the opportunity to remedy any deficiencies to its net worth, after admitting to the violations being charged by the Board. Because Respondent admitted to the violations of FHA's rules pertaining to mortgagees, and these are non-waivable requirements, the Board's withdrawal action is non-discretionary. Therefore, Respondent's request to correct the deficiencies has no effect on the one-year withdrawal of approval.

The Board's administrative action withdrawing FHA approval of Respondent for one year is appropriate and warranted.

### CONCLUSION

The Court finds that HUD has met its burden to demonstrate that no genuine issue of material fact exists in this matter. The material facts support the findings that Respondent failed to maintain the required net worth in fiscal year ended December 31, 2021, and Respondent did not notify the FHA of its failure to maintain the required net worth for 2021. Respondent's failure to maintain the adjusted net worth is a serious violation of FHA requirements warranting its withdrawal from the FHA program. HUD is therefore entitled to judgment as a matter of law and its Motion for Summary Judgment is **GRANTED**.

So **ORDERED**,  
ALEXANDER  
FERNANDEZ-PONS

Digitally signed by: ALEXANDER FERNANDEZ-PONS  
DN: CN = ALEXANDER FERNANDEZ-PONS C = US  
O = U.S. Government OU = Department of Housing  
and Urban Development, Office of the Secretary  
Date: 2023.06.07 09:38:12 -04'00'

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Alexander Fernández  
Administrative Law Judge

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**Notice of appeal rights.** The appeal procedure is set forth in detail in 24 C.F.R. § 26.52. This order may be appealed to the Secretary of HUD by either party within 30 days after the date of this decision. The Secretary (or designee) may extend this 30-day period for good cause. If the Secretary (or designee) does not act upon the appeal within 30 days, this decision becomes final.

**Service of appeal documents.** Any petition for review or statement in opposition must be served upon the Secretary by mail, facsimile, or electronic means at the following:

U.S. Department of Housing and Urban Development  
Attention: Secretarial Review Clerk  
451 7th Street, S.W., Room 2130  
Washington, DC 20410  
Facsimile: (202) 708-0019  
Scanned electronic document: [secretarialreview@hud.gov](mailto:secretarialreview@hud.gov)

**Copies of appeal documents.** Copies of any Petition for Review or statement in opposition shall also be served on the opposing party(s), and on the HUD Office of Administrative Law Judges.

**Judicial review of final decision.** Judicial review of the final agency decision in this matter may be available, as appropriate, under 5 U.S.C. §702.