

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 200

[Docket No. FR-4585-F-02]

RIN 2502-AH49

**Nonprofit Organization Participation in
Certain FHA Single Family Activities;
Placement and Removal Procedures**

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes regulatory placement and removal procedures for HUD's Nonprofit Organization Roster. The Roster lists nonprofit organizations that HUD has determined are qualified to participate in certain specified Federal Housing Administration (FHA) single family activities. These activities may include acting as a mortgagor; purchasing HUD's Real Estate Owned (REO) Properties (HUD Homes) at a discount; providing secondary financing; and imposing legal restrictions on conveyance as part of affordable housing programs. The establishment of these placement and removal procedures will better protect participants in the FHA single family programs and safeguard FHA insurance funds. This final rule follows publication of a September 17, 2001, proposed rule and takes into consideration the two public comments received on the proposed rule. After careful consideration of the comments, HUD has decided to adopt the proposed rule without change.

DATES: *Effective Date:* July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 9266, Washington, DC 20410-8000; phone (202) 708-2700 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background—HUD's September 17, 2001, Proposed Rule

On September 17, 2001 (66 FR 48080), HUD published a proposed rule to establish regulatory placement and removal procedures for the Federal Housing Administration (FHA) Nonprofit Organization Roster. The Roster lists nonprofit organizations that

HUD has determined are qualified to participate in certain specified FHA single family activities. FHA maintains the Roster to provide a means for mortgagees and the general public to verify if nonprofit organizations are qualified to participate in specified FHA activities. This Roster is an important part of the FHA Single Family Mortgage Insurance program because nonprofit organizations that are placed on the Roster are considered to be assets to FHA in increasing homeownership opportunities and protecting FHA insurance funds.

Nonprofit organizations are important participants in HUD's efforts to further affordable housing opportunities for low- and moderate-income persons through the FHA single family programs. FHA's single family regulations recognize a special role for nonprofit organizations in conjunction with the origination of new mortgages, disposition of homes by HUD, imposition of legal restrictions on conveyance as part of affordable housing programs, and provision of secondary financing.

The special role provided for nonprofit organizations in the FHA regulations is intended only for those organizations that are financially viable and actively involved in the furthering of affordable housing in their communities. However, currently there are no regulatory procedures for placing a nonprofit organization on, or for removing a poorly performing nonprofit organization from, the Roster. Accordingly, HUD issued the September 17, 2001, proposed rule to establish such policies, and to solicit public comment on the proposed regulatory changes. The establishment of these placement and removal procedures will better protect participants in the FHA single family programs and safeguard FHA insurance funds. The preamble to the September 17, 2001, proposed rule provides additional details regarding the proposed placement and removal procedures.

II. This Final Rule

This final rule follows publication of the September 17, 2001, proposed rule, and takes into consideration the two public comments received on the proposed rule. The public comment period on the rule closed on November 16, 2001. Comments were received from a State housing authority and a nonprofit housing corporation. After careful consideration of the public comments, HUD has decided to adopt the September 17, 2001, proposed rule without change.

**III. Discussion of Public Comments
Received on the September 17, 2001,
Proposed Rule**

Comment: Support for proposed rule. The State housing authority supported the proposed rule. The commenter agreed that the placement and removal procedures would better protect participants in the FHA single family programs and safeguard FHA insurance funds. The commenter wrote that the proposed rule would assist housing finance agencies in identifying qualified and financially viable nonprofit organizations for various collaborative ventures. The commenter also wrote that the proposed recertification process would help keep the Roster current, and would not impose an undue administrative burden on nonprofit organizations.

HUD Response. HUD appreciates the commenter's support. HUD agrees that the regulatory procedures will help ensure that only those nonprofit organizations that are financially viable and actively involved in furthering affordable housing are eligible to participate in FHA programs. As noted, HUD has adopted the September 17, 2001, proposed rule without change.

Comment: Reapplication process would be unduly burdensome. The nonprofit housing corporation wrote that the proposed two-year reapplication process for placement on the Roster would be unduly burdensome to nonprofit organizations. Under HUD's proposal, the placement of the nonprofit organization on the Roster would expire in two years. The nonprofit organization would be required to reapply for placement on the Roster before the expiration of the two-year period. The commenter wrote that nonprofit organizations typically have limited administrative funds, and may not have the resources to handle a reapplication process every two years.

The public commenter recommended that the reapplication process should be structured to only require the submission of any information that has changed since the submission of the nonprofit organization's original application. The commenter suggested that HUD notify nonprofit organizations 45 to 60 days in advance of the two-year expiration date, and provide the nonprofit with a reapplication form. Nonprofit organizations would be required to return the form within a time period specified by HUD. The reapplication form would only require that nonprofit organizations detail any significant changes to the nature and scope of their work, or to the relevant homeownership programs they operate

(or to indicate that no such changes have occurred).

HUD Response. HUD has not revised the proposed rule in response to the commenter's suggestion. The recertification process helps to ensure that participating nonprofit organizations remain in compliance with FHA requirements and are actually conducting the activities described in their affordable housing plans. As part of the recertification process, nonprofit organizations must submit a detailed description of the activities they have performed (see Attachment 5 to HUD Mortgagee Letter 00-8, "Nonprofit Agency Participation in Single Family FHA Activities").¹ This property listing format allows FHA to conduct a comprehensive review of nonprofit performance, and to evaluate such important factors as net development cost and the sales price of resold properties. Relying on the nonprofit agency to advise FHA of any significant changes, as the public commenter suggests, would not permit FHA to conduct these detailed reviews. Accordingly, HUD believes that the commenter's recommendation would be an insufficient method for identifying deficiencies in the nonprofit's program. Further, HUD notes that nonprofit organizations that are recipients of HUD grants, or participate in other HUD activities, are required to submit regular performance reports. The recertification requirement, therefore, is a familiar process for these nonprofit organizations, and does not impose a new administrative requirement.

IV. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the Department's Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

Paperwork Reduction Act

The information collection requirements described in § 200.194 have been approved by OMB in connection with Mortgagee Letter 00-8, and assigned OMB Control Number

2502-0540. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

This final rule establishes placement and removal procedures for HUD's Nonprofit Organization Roster. The final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, in accordance with 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although many nonprofit organizations affected by this rule are small entities, compliance with the rule is not expected to have a substantive economic impact. The rule does not discriminate against small entities or disadvantage them competitively.

The final rule establishes the procedure by which a nonprofit organization, who has violated FHA single family mortgage insurance program requirements, may be removed from HUD's Nonprofit Organization Roster. Accordingly, to the extent that the final rule has an impact on small entities, it will be as a result of actions taken by small entities themselves—that is, violation of single family program regulations and requirements. Further, the final rule provides several procedural safeguards designed to minimize any potential impact on small entities. For example, the rule grants a nonprofit organization, selected for removal from the Roster, the opportunity to provide a written response and to request a conference regarding a proposed removal. The rule also specifies that the official designated by HUD to review an appeal may not be the same HUD official involved in the initial removal decision.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance numbers for the principal FHA single family programs are 14.117 and 14.133.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702-1715z-21; 42 U.S.C. 3535(d).

2. Add subpart F to read as follows:

¹ A copy of Mortgage Letter 00-8 may be obtained via the HUD Web site at <http://www.hud.gov>.

Subpart F—Placement and Removal Procedures for Participation in FHA Programs

Nonprofit Organizations

Sec.

200.194 Placement of nonprofit organization on Nonprofit Organization Roster.

200.195 Removal of nonprofit organization from Nonprofit Organization Roster.

Subpart F—Placement and Removal Procedures for Participation in FHA Programs

Nonprofit Organization

§ 200.194 Placement of nonprofit organization on Nonprofit Organization Roster.

(a) *Nonprofit Organization Roster.* HUD maintains a roster of nonprofit organizations that are qualified to participate in certain specified FHA activities. In order to be recognized as a nonprofit organization for purposes of single family regulations in this chapter, an organization must:

(1) Be included in the Roster; and
(2) Comply with any requirements stated in a specific applicable provision of the single family regulations in this chapter.

(b) *Application.* To be included in the Roster, a nonprofit organization must apply to HUD using an application (or materials) in a form prescribed by HUD (which may require an affordable housing program narrative for the activities the nonprofit organization proposes to carry out). The nonprofit organization must specify in its application the FHA activities it proposes to carry out.

(c) *HUD response to application.* HUD's review of the application will result in one of the following:

(1) Approval of the nonprofit organization to participate in all, or some, of the FHA activities specified in its application and the addition of the nonprofit organization to the Roster.

(2) Rejection due to deficiencies in the application. HUD will provide the nonprofit organization with a period to correct these deficiencies.

(3) Rejection due to the nonprofit organization's failure to submit a program that complies with applicable single family regulations in this chapter, Mortgage Letters, or other standards or instructions issued by HUD.

(d) *Reapplication after two years.* The placement of a nonprofit organization

on the Roster expires after two years. The nonprofit organization must reapply for placement on the Roster, in accordance with paragraph (b) of this section, before expiration of the two-year period.

§ 200.195 Removal of nonprofit organization from Nonprofit Organization Roster.

(a) *Cause for removal.* HUD may remove a nonprofit organization from the FHA Nonprofit Organization Roster established under § 200.194. Removal may be for any cause that HUD determines to be detrimental to FHA or any of its programs, including but not limited to:

(1) Failure to comply with applicable single family regulations in this chapter, Mortgage Letters or other written instructions or standards issued by HUD;

(2) Failure to comply with applicable Civil Rights requirements;

(3) Holding a significant number of FHA-insured mortgages that are in default, foreclosure, or claim status (in determining the number considered "significant," HUD may compare the number of insured mortgages held by the nonprofit organization against the similar holdings of other nonprofit organizations);

(4) Being debarred or suspended, subject to a limited denial of participation, or otherwise sanctioned by HUD;

(5) Failure to further all objectives described in the affordable housing program narrative;

(6) Misrepresentation or fraudulent statements; or

(7) Failure to respond within a reasonable time to HUD inquiries, including recertification requests or other requests for further documentation.

(b) *Procedure for removal.* A nonprofit organization that is debarred or suspended or subject to a limited denial of participation will be automatically removed from the FHA Nonprofit Organization Roster. In all other cases, the following procedure for removal applies:

(1) HUD will give the nonprofit organization written notice of the proposed removal. The notice will include the reasons for the proposed removal and the duration of the proposed removal.

(2) The nonprofit organization will have 20 days from the date of the notice (or longer, if provided in the notice) to submit a written response appealing the proposed removal and to request a conference. A request for a conference must be in writing and must be submitted along with the written response.

(3) A HUD official will review the appeal and provide an informal conference if requested. The HUD official will send a response either affirming, modifying, or canceling the removal. The HUD official will not be someone who was involved in HUD's initial removal decision. HUD will respond with a decision within 30 days of receiving the response, or, if the nonprofit organization has requested a conference, within 30 days after the completion of the conference. HUD may extend the 30-day period by providing written notice to the nonprofit organization.

(4) If the nonprofit organization does not submit a timely written response, the removal will be effective 20 days after the date of HUD's initial removal notice (or after a longer period provided in the notice). If a written response is submitted, and the initial removal decision is affirmed or modified, the removal will be effective on the date of HUD's notice affirming or modifying the initial removal decision.

(c) *Placement on the Roster after removal.* A nonprofit organization that has been removed from the FHA Nonprofit Organization Roster may apply for placement on the Roster (in accordance with § 200.194) after the nonprofit organization's removal from the Roster has expired. An application will be rejected if the period for the nonprofit organization's removal from the Roster has not expired.

(d) *Other action.* Nothing in this section prohibits HUD from taking such other action against a nonprofit organization, as provided in 24 CFR part 24, or from seeking any other remedy against a nonprofit organization available to HUD by statute or otherwise.

Dated: May 22, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

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