

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**
24 CFR Part 200

[Docket No. FR-4429-P-01]

RIN 2502-AH29

**Single Family Mortgage Insurance;
Appraiser Roster Placement and
Removal Procedures**

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement one aspect of HUD's Homebuyer Protection Plan, which was launched on June 1, 1998. The Homebuyer Protection Plan consists, in part, of a number of reforms to the appraisal process for the purchase of single family properties financed with mortgages insured by the Federal Housing Administration (FHA) and certain manufactured homes under the FHA Title I program. This proposed rule would establish an independent removal procedure for HUD's Appraiser Roster. The Appraiser Roster lists appraisers who are eligible to perform FHA single family appraisals. This proposed rule would also codify the current placement procedure for the Appraiser Roster.

DATES: *Comments Due Date:* August 2, 1999.

ADDRESSES: Submit your comments about this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Your comments should refer to the above docket number and title. We do not accept facsimile (FAX) comments. A copy of each comment submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) at the above address.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Home Mortgage Insurance Division, Office of Insured Single Family Housing, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-8000; telephone (202) 708-2700 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:
I. Background
a. HUD's Homebuyer Protection Plan

HUD launched the Homebuyer Protection Plan (the Plan) on June 1, 1998. Among other innovations, the Plan reforms the appraisal process for the purchase of single family properties financed with mortgages insured by the Federal Housing Administration (FHA) and certain manufactured homes under the FHA Title I program. One aspect of the appraisal process that is undergoing reform is HUD's Appraiser Roster. The Appraiser Roster lists appraisers who are eligible to perform FHA single family appraisals. Lenders must select an appraiser from this list for property appraisals involving the FHA single family mortgage insurance program. HUD maintains the Appraiser Roster because the success of the single family mortgage insurance program and HUD's ability to protect its financial interests begin with selecting qualified and knowledgeable appraisers.¹

b. Appraiser Roster Reforms

The Appraiser Roster reforms that would be implemented by the Homebuyer Protection Plan protect homebuyers by ensuring accurate and complete appraisals of homes purchased through the FHA single family insurance program. An accurate and complete appraisal protects homebuyers by informing them, before they complete the purchase of a home, about any extensive repairs that may be needed to make the home habitable. It is important to note, however, that while HUD is committed to protecting homebuyers, the purpose of an FHA property appraisal is to determine the maximum insurable mortgage and to protect the FHA insurance funds. Consequently, the inclusion of an appraiser on the Appraiser Roster does not create or imply a warranty or endorsement to the prospective homebuyer or to any other organization or individual by HUD of the listed appraiser nor does it represent a warranty of the appraisal performed by the listed appraiser. The inclusion of an appraiser on the Appraiser Roster means only that a listed appraiser has met the qualifications and conditions, prescribed by the Secretary, for placement on the Appraiser Roster.

c. Placement Procedure

This proposed rule would codify in regulations the requirements for placement on the Appraiser Roster.

¹ In the future, HUD plans that the Appraiser Roster will be administered by HUD's Real Estate Assessment Center.

These requirements are currently in place. This rule would merely codify existing practice. To be eligible for placement on the Appraiser Roster, an appraiser must be state-certified or state-licensed and must not be listed on either the General Services Administration's Suspension and Debarment List, HUD's Limited Denial of Participation List, or HUD's Credit Alert Interactive Voice Response System. In addition, the appraiser must also pass a HUD test on FHA appraisal methods and reporting.

To apply for placement on the Appraiser Roster, the appraiser must submit an application to HUD. To verify that the appraiser is eligible to perform HUD/FHA appraisals, HUD performs a detailed review of the appraiser's professional qualifications and checks for any negative information. If HUD's review of an appraiser's application demonstrates that the appraiser is qualified to be listed on the Roster, the appraiser is placed on the Roster. Appraisers that are listed on the Appraiser Roster are responsible for obtaining and complying with the HUD Appraiser Handbook (4150.2) (and any updates to the handbook) and all other instructions and standards issued by HUD.

d. Removal Procedure

An appraiser who is eligible to perform HUD/FHA appraisals is hired by the lender and, therefore, has a contractual responsibility to that lender. However, the appraiser also provides services for HUD programs and, therefore, the appraiser also has an obligation to perform appraisal services that meet HUD's standards and requirements. This dual responsibility of the appraiser is recognized in HUD's review and reporting requirements. The lender and appraiser must meet their respective obligations as prescribed by HUD. Failure to comply with appraiser obligations merits removal from the Appraiser Roster.

This proposed rule would establish an independent procedure by which an appraiser listed on HUD's Appraiser Roster may be removed from the Roster. HUD is proposing this independent removal procedure, in addition to HUD's existing debarment, suspension, and limited denial of participation remedies, in order to better safeguard the FHA insurance funds and to better protect homebuyers. The removal procedure would provide a less lengthy process that would be specifically targeted towards the Appraiser Roster and would fully protect appraisers' due process rights.

It should be noted that HUD had previously issued regulations that governed appraiser removal from the Roster at 24 CFR 267.8(d)(3). These regulations were revised during HUD's regulation streamlining in 1996. HUD had intended to retain a less formal procedure for removal from the Roster, but the procedure was not issued during the streamlining. This proposed rule would reinstate this less formal procedure. The procedure included in this proposed rule, however, would provide greater protection for appraisers than the procedure previously located at 24 CFR 267.8(d)(3).

This proposed rule would amend HUD's regulations at 24 CFR part 200 (entitled "Introduction to FHA Programs") to add a new subpart G (entitled "Appraiser Roster; Placement and Removal Procedures") covering the placement and removal of appraisers from the Roster. Subpart G (which would consist entirely of new § 200.200, entitled "Appraiser Roster; placement and removal procedures") would allow HUD to remove an appraiser from the Roster at any time for cause. Cause would include, but would not be limited to:

- Significant deficiencies in appraisals;
- Failing to maintain standing as a state-certified or state-licensed appraiser;
- Prosecution for committing, attempting to commit, or conspiring to commit fraud, misrepresentation, or any other offense that may reflect on the appraiser's character or integrity;
- Failing to perform appraisal functions in accordance with instructions and standards issued by HUD;
- Failing to comply with any agreement made between the appraiser and HUD or with any certification made by the appraiser;
- Being issued a final debarment, suspension, or limited denial of participation;
- Failure to maintain eligibility requirements for placement on the Appraiser Roster as described in new § 200.200 or any other instructions or standards issued by HUD; or
- Failure to comply with HUD-imposed education sanctions within the specified period for complying with such education sanctions.

The removal procedure proposed by this rule would be an independent removal procedure. The removal procedure would apply only to removal actions taken under § 200.200. The procedure would not apply in any way to removal actions taken under any other authority available to HUD, nor

would the procedure set forth in § 200.200(d)(2) (entitled "Procedure for removal") be available to appraisers in debarment, suspension, or limited denial of participation actions. Furthermore, the proposed rule would require the automatic removal from the Appraiser Roster of an appraiser, if the appraiser has been issued a final debarment, suspension, or limited denial of participation. Under these circumstances, the procedure set forth in § 200.200(d)(2) would not be applicable.

Except in the above case, the removal procedure proposed by this rule would require HUD to give an appraiser written notice of a proposed decision to remove the appraiser from the Roster. This notice would include the reasons for the removal and the duration of the removal. The appraiser would then be given 20 days from the date of the removal notice to submit a written response. During this period, the appraiser would also have the right to request a conference. Requests for a conference would have to be in writing and submitted along with a written response.

Within 30 days of receiving a written response, or if the appraiser requests a conference, within 30 days of the completion of the conference, a HUD official, designated by the Secretary, would review the appraiser's appeal and send the appraiser a final decision either affirming, modifying, or cancelling the removal from the Appraiser Roster. The HUD official designated by the Secretary to review the appraiser's appeal would not be someone involved in HUD's initial removal decision nor would it be someone who reports to a person involved in that initial decision.

If the appraiser does not submit a written response within 20 days, the removal would become effective 20 days after the date of HUD's initial removal notice. If the appraiser submits a written response, and the removal decision is affirmed or modified, the removal would become effective on the date of HUD's notice affirming or modifying its initial removal decision.

The proposed addition of § 200.200 would not prohibit HUD from debarment, suspending, issuing a limited denial of participation, seeking a false claims action, taking such other action against an appraiser as provided for in 24 CFR part 24 (entitled "Government Debarment and Suspension and Governmentwide Requirements for Drug-Free Workplace (Grants)"), or from seeking any other remedy against an appraiser available to HUD by statute or otherwise. In some cases, where there is

evidence that an appraiser is deficient in FHA appraisal requirements, HUD may require an appraiser to undergo professional training and retake the HUD test on FHA appraisal methods and reporting.

With respect to removing an appraiser from the Appraiser Roster, or taking other appropriate enforcement action against an appraiser, HUD is cognizant that section 222 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121, 110 Stat. 847) ("SBREFA") requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to "work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel." To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices that are provided to small businesses concerns at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], call 1-888-REG-FAIR (1-888-734-3247).

As HUD stated in its notice describing HUD's actions on the implementation of SBREFA, which was published on May 21, 1998 (63 FR 28214), HUD intends to work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

II. Justification for 30-Day Public Comment Period

In accordance with HUD's regulations concerning rulemaking at 24 CFR part 10 (entitled "Rulemaking: Policy and Procedures"), it is HUD's policy that the public comment period for notices of proposed rulemaking should be 60 days. In the case of this proposed rule,

however, we have determined that there is good cause to reduce the public comment period to 30 days.

This proposed rule would implement part of the Homebuyer Protection Plan, which was launched on June 1, 1998. This Plan reforms FHA's single family home appraisal process and will benefit 800,000 families who obtain FHA-insured mortgage financing each year. One goal of the Plan is to provide these families with the best protection against bad appraisals ever available in the public or private sector.

In light of this important goal, HUD has previously made the public and members of affected industries, including appraisers, aware of the reforms outlined in the Homebuyer Protection Plan. For example, we provided, through HUD Press Release No. 98-206, a thorough overview of the Homebuyer Protection Plan on June 1, 1998. We also met routinely with industry representatives to discuss the details of the Plan and to seek comment and opinion regarding the Plan. While these meetings were held for discussion purposes only, and were not held to reach agreement on HUD policy, they served to make a significant number of affected parties aware of the changes HUD is proposing.

Finally, HUD has made a handbook available that describes the Plan in detail. This handbook has been widely available through the HUD Web Page (<http://www.hud.gov/reac/reasfappr.html>). Through these means, HUD has alerted appraisers of the changes that would be brought about by the Homebuyer Protection Plan, including the processes by which appraisers may be removed from HUD's Appraiser Roster.

Given the broad exposure of the reforms contained in the Homebuyer Protection Plan, and considering the importance of the Plan's efficient implementation, HUD has determined that a 30-day comment period for this proposed rule should provide sufficient notice and opportunity for interested parties to comment.

III. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and are pending OMB approval. The information collection requirements were previously published for comment in a separate notice in the **Federal Register** on May 26, 1999 (64 FR 28502). 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 proposed rule would establish placement and removal procedures for HUD's Appraiser Roster. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (Pub. L. 91-190, 83 Stat. 852, codified as amended at 42 U.S.C. 4321-4347).

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would establish the procedure by which an appraiser, who has violated FHA single family mortgage insurance program requirements, may be removed from HUD's Appraiser Roster. Accordingly, to the extent that this proposed rule would impact 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.

Generally, HUD expects that the number of removal proceedings initiated under this proposed rule would be relatively low. For example, in fiscal year 1998, of the over 30,000 appraisers listed on the Appraiser Roster, HUD initiated enforcement proceedings against only 36 appraisers (most of these enforcement proceedings were Limited Denial of Participation proceedings).

Further, the proposed rule would provide several procedural safeguards designed to minimize any potential impact on small entities. For example, the rule grants appraisers, selected for removal from the Appraiser Roster, with 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.

While HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes any comments regarding alternatives to this rule that would meet HUD's objectives, as described in this

preamble, and would be less burdensome to small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48, 64, codified at 2 U.S.C. 1531-1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612 (entitled "Federalism"), has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, 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.

For the reasons stated in the preamble, HUD proposes to amend 24 part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

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

Authority: 12 U.S.C. 1701-1715z-18; 42 U.S.C. 3535(d).

2. Add subpart G, consisting of § 200.200, to read as follows:

Subpart G—Appraiser Roster; Placement and Removal Procedures

Sec.

200.200 Appraiser Roster; placement and removal procedures.

Subpart G—Appraiser Roster; Placement and Removal Procedures**§ 200.200 Appraiser Roster; placement and removal procedures.**

(a) *Appraiser Roster.* HUD maintains a roster of appraisers, and a mortgagee must select an appraiser from this list for the appraisal of properties involving the FHA single family mortgage insurance program.

(b) *Disclaimer.* Since an appraisal is performed to determine the maximum insurable mortgage and to protect the FHA insurance funds, the inclusion of an appraiser on the Appraiser Roster does not create or imply a warranty or endorsement to a prospective homebuyer or to any other organization or individual by HUD of the listed appraiser nor does it represent a warranty of any appraisal performed by the listed appraiser. The inclusion of an appraiser on the Appraiser Roster means only that a listed appraiser has met the qualifications and conditions, prescribed by the Secretary, for inclusion on the Appraiser Roster.

(c) *Placement on the Appraiser Roster—(1) Application.* To apply for placement on the Appraiser Roster, you must submit an application to HUD.

(2) *Eligibility.* To be eligible for placement on the Appraiser Roster you must be a state-licensed or state-certified appraiser, pass a HUD test on FHA appraisal methods and reporting, and you must not be listed on:

- (i) The General Services Administration's Suspension and Debarment List;
- (ii) HUD's Limited Denial of Participation List; or
- (iii) HUD's Credit Alert Interactive Voice Response System.

(d) *Removal from the Appraiser Roster.* HUD officials, as designated by the Secretary, may at any time remove a listed appraiser from the Appraiser Roster for cause under the provisions of this section. The provisions of this section apply only to removal actions taken under this section. These provisions do not apply to removal actions taken under any section in 24 CFR part 24 nor to any other remedy against an appraiser available to HUD by statute or otherwise.

(1) *Cause for removal.* Cause for removal under the provisions of this section include, but are not limited to:

- (i) Significant deficiencies in appraisals;
- (ii) Failure to maintain standing as a state-certified or state-licensed appraiser;
- (iii) Prosecution for committing, attempting to commit, or conspiring to commit fraud, misrepresentation, or any other offense that may reflect on the appraiser's character or integrity;
- (iv) Failure to perform appraisal functions in accordance with instructions and standards issued by HUD;
- (v) Failure to comply with any agreement made between the appraiser and HUD or with any certification made by the appraiser;
- (vi) Being issued a final debarment, suspension, or limited denial of participation;
- (vii) Failure to maintain eligibility requirements for placement on the Appraiser Roster as set forth under this section or any other instructions or standards issued by HUD; or
- (viii) Failure to comply with HUD-imposed education sanctions within the specified period for complying with such education sanctions.

(2) *Procedure for removal.* If you are a listed appraiser and HUD decides to remove you for cause from the Appraiser Roster under the provisions of this section, the following procedure applies to you unless you have been issued a final debarment, suspension, or limited denial of participation:

(i) You will be given written notice of your proposed removal. The notice will include the reasons for your proposed removal and the duration of your proposed removal.

(ii) You will have 20 days from the date of your notice of proposed removal 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 a written response.

(iii) Within 30 days of receiving your written response, or if you have requested a conference, within 30 days after the completion of your conference, a HUD official, designated by the Secretary, will review your appeal and will send you a final decision either affirming, modifying, or canceling your removal from the Appraiser Roster. HUD may extend this time upon giving

you notice. The HUD official designated by the Secretary to review your appeal will not be someone involved in HUD's initial removal decision nor will it be someone who reports to a person involved in that initial decision.

(iv) If you do not submit a written response, your removal will be effective 20 days after the date of HUD's initial removal notice. If you submit a written response, and the removal decision is affirmed or modified, your removal or modification will be effective on the date of HUD's notice affirming or modifying the initial removal decision.

(3) *Automatic removal for issuance of final debarment, suspension, or limited denial of participation.* If you are a listed appraiser and you have been issued either a final debarment, suspension, or limited denial of participation, you will be automatically removed from the Appraiser Roster. The provisions of this section do not apply to you, and you may not appeal the removal action under the provisions of this section.

(e) *Compliance with HUD-issued instructions and standards.* All appraisers listed on the Appraiser Roster are responsible for obtaining and complying with the HUD Appraiser Handbook (4150.2) (and any updates to the handbook) and all other instructions and standards issued by HUD. The handbook can be obtained through the HUD Web Page (<http://www.hud.gov/reac/reasappr.html>).

(f) *Education sanctions.* Where there is evidence that an appraiser is deficient in FHA appraisal requirements, HUD may require an appraiser to undergo professional training and retake the HUD test on FHA appraisal methods and reporting.

(g) *Re-application.* Appraisers removed from the Roster must re-apply to HUD in accordance with instructions provided by HUD.

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

Dated: June 10, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

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