

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 200

[Docket No. FR-4585-P-01]

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:** Proposed rule.

**SUMMARY:** This proposed rule would establish 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. Presently, there are no regulatory procedures for placing a nonprofit organization on, nor for removing a poorly performing nonprofit organization from, the Roster. HUD believes that the establishment of these placement and removal procedures will better protect participants in the FHA single family programs and safeguard FHA insurance funds.

**DATES:** *Comments Due Date:* November 16, 2001.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**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

Nonprofit organizations are important partners in HUD's efforts to further affordable housing opportunities for low and moderate income persons through the Federal Housing Administration (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, imposing legal restrictions on conveyance as part of affordable housing programs, and providing secondary financing.

The special role provided for nonprofit organizations in these regulations is intended only for those organizations that are financially viable and actively involved in the furthering of affordable housing in their communities. To this end, HUD has established the 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 an asset to FHA in increasing homeownership opportunities and protecting FHA insurance funds.

##### II. This Proposed Rule

This proposed rule would establish regulatory placement and removal procedures for the FHA Nonprofit Organization Roster. The proposed rule would establish subpart F to part 200 of the FHA regulations. Two regulatory sections would be established by this proposed rule—§ 200.194 (which would prescribe the procedures for placement of a nonprofit organization on the Roster) and § 200.195 (which would set forth the removal process for a poorly performing nonprofit organization).

###### A. Placement Procedures

Section 200.194 would state the requirement that a nonprofit organization must be on the FHA Nonprofit Organization Roster in order to be recognized as a nonprofit organization under the regulations. The section would also require the nonprofit

organization to complete an application for placement on the Roster in a form (or materials) prescribed by HUD (which may require an affordable housing program narrative for the activities the nonprofit organization proposes to carry out). The nonprofit organization would be required to specify in its application those FHA activities which it proposes to carry out.

HUD may approve the nonprofit organization to participate in all, or only some, of the FHA activities specified in its application. If the application is incomplete, HUD will provide the applicant with a period of time to correct the deficiencies. HUD will reject an application if the nonprofit organization fails to submit a program that complies with applicable regulations, Mortgagee Letters, or other standards or instructions issued by HUD. The placement of the nonprofit organization on the Roster would expire in two years. The nonprofit organization would be required to re-apply for placement on the Roster before the expiration of the two year period.

The proposed rule would not include substantive requirements to be met by a nonprofit organization. It would be in addition to, and not a substitute for, any substantive requirements stated in a specific applicable provision of the FHA regulations. For example, § 203.18(f)(3)(ii) requires a nonprofit mortgagor to meet the statutory requirements of section 203(g)(2)(B)(ii) of the National Housing Act (12 U.S.C. 1701 *et seq.*)—i.e., to be tax-exempt under section 501(c)(3) of the Internal Revenue Code and to intend to sell the mortgaged property to low- or moderate-income persons. Section 203.41(a)(5) (which is also referenced in § 203.32(b) for purposes of secondary financing) requires section 501(c)(3) status for a nonprofit organization, and also requires “two years experience as a provider of low- or moderate-income housing; \* \* \* a voluntary board; and \* \* \* [that] no part of its net earnings inure[e] to the benefit of any member, founder, contributor or individual.” This rule does not propose to alter those substantive requirements for nonprofit organizations that appear in current regulations.

###### B. Removal Procedures

Proposed § 200.195 would establish regulatory procedures for the removal of a poorly performing nonprofit organization from the Roster. The proposed removal procedures would supplement HUD's existing debarment, suspension and limited denial of participation remedies.

The proposed rule provides that HUD may remove a nonprofit organization from the Roster for any cause that it determines to be detrimental to FHA or its programs. Cause for removal includes, but is not limited to:

1. Failure to comply with applicable regulations, Mortgagee Letters or other written instructions and 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). HUD intends to develop additional guidance on how it will determine what constitutes a "significant" number of defaults, foreclosures, or claims for purposes of possible removal from the Roster. HUD specifically invites public comment on what number should be considered "significant," and on what additional information should be provided in this guidance.

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.

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

HUD will provide the nonprofit organization with written notice of the proposed removal. This notice would state the reasons and the duration of the proposed removal. The nonprofit organization would be given not less than 20 days from the date of the removal notice to submit a written response appealing the proposed removal. The nonprofit organization would also have the right to submit a written request for a conference along with the written response. This procedure would not be applicable, however, if the nonprofit organization has been debarred or suspended, subject to a limited denial of participation, or otherwise sanctioned by HUD.

A HUD official, designated by the Secretary, would review the nonprofit organization's appeal and send the nonprofit organization a final decision either affirming, modifying, or cancelling the removal from the Roster.

The HUD official designated by the Secretary to review the appeal would not be someone involved in HUD's initial removal decision. HUD would respond with a decision within 30 days of receiving the appeal 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.

If the nonprofit organization does not submit a timely written response, the removal would become effective 20 days after the date of HUD's initial removal notice (or after a longer period provided in the notice). If the nonprofit organization 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 § 200.195 would not prohibit HUD from debarring, suspending, issuing a limited denial of participation, seeking a false claims action, or taking such other action against a nonprofit organization 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 a nonprofit organization available to HUD by statute or otherwise.

A nonprofit organization that has been removed from the Roster may apply for placement on the Roster after the period for the removal of the nonprofit organization from the Roster has expired.

### III. 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 Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

#### *Paperwork Reduction Act*

The information collection requirements described in proposed § 200.194 have been approved by the Office of Management and Budget

(OMB) in connection with Mortgagee Letter 00-8, and assigned OMB Control Number 2502-0540. HUD invites public comment on the information collections contained in this proposed rule and Mortgagee Letter 00-8. All public comments will be considered in the development of the final rule and may result in revisions to the information collection requirements for the FHA Nonprofit Organizations Roster contained in the Mortgagee Letter. 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 proposed rule would establish placement and removal procedures for HUD's Nonprofit Organization Roster. The proposed rule would 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 proposed rule is categorically excluded from the requirements of 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 proposed rule would establish 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 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. Further, the proposed rule would provide 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.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

#### *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 proposed rule would 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 proposed rule would 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, 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.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 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:

#### **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 Organizations**

#### **§ 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 regulations.

(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 regulations, Mortgagee Letters, or other standards or instructions issued by HUD.

(d) *Re-application after two years.* The placement of a nonprofit organization on the Roster expires after two years. The nonprofit organization must re-apply 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 regulations, Mortgagee 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 cancelling 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: July 2, 2001.

**John C. Weicher,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

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