

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR-4720-P-01]

RIN 2502-AH76

FHA Inspector Roster

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

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to establish the Federal Housing Administration (FHA) Inspector Roster, and to provide placement, recertification and removal procedures for Roster applicants. The rule also identifies when a mortgagee must use an inspector listed on the Roster.

DATES: *Comment Due Date:* December 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this 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 Morris, Director, Office of Single Family Program Development, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000; telephone (202) 708-2121 (this is not a toll-free number). Persons with hearing or speech disabilities may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

FHA-approved mortgagees rely upon FHA compliance inspectors to determine if the construction quality of a property is acceptable as security for an insured loan. Before 1996, FHA's 81 field offices maintained a panel of fee inspectors and they were assigned on a rotating basis to perform inspections. Since 1996, mortgagees have selected inspectors from a panel of inspectors listed on the Internet at: https://entp.hud.gov/idapp/html/insplook.cfm?in_fha=No. Although there is still a panel of inspectors, it is

a compilation of the local panels established by the FHA's field offices.

This rule would establish the FHA Inspector Roster (also referred to as the Roster) and provide eligibility requirements and procedures and requirements for applicants to follow to be placed on the Roster. In addition to demonstrating professional experience and familiarity with HUD requirements, an applicant for the Roster would be required to provide verification of passing HUD's comprehensive examination for inspectors, after such an examination becomes available.

All inspectors currently listed on the Internet by HUD must be recertified according to the new procedures and requirements to continue to be eligible to inspect properties for FHA insurance. Current inspectors will be permitted to conduct inspections for six months after this rule becomes effective, but during that six-month period they must apply and be approved for placement on the FHA Roster to qualify as inspectors after that six-month period.

The rule also identifies when mortgagees must use Roster inspectors. The FHA requires three inspections for new construction when the local jurisdiction in which the property is located does not perform inspections and has not issued both a building permit prior to construction and a certificate of occupancy or equivalent document. If an appraiser who is on FHA's Roster appraises the newly constructed property after the two inspections are performed and the construction is 100% completed, the final inspection by an inspector on the Roster is not necessary. In the case of existing construction, Roster inspectors must be used where structural repairs have been made requiring an inspection and this inspection is not performed by a licensed, bonded, registered engineer, a licensed home inspector, or other person specifically registered or licensed to conduct such inspections.

Finally, the rule also includes a procedure for removing an inspector from the Roster for cause, generally for actions detrimental to the FHA's interests.

II. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and assigned OMB control number 2502-0548. 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.

Unfunded Mandates Reform Act

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

Environmental Impact

This proposed rule does not direct, provide for assistance or loan or 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. 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 (42 U.S.C. 4321).

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would establish uniform requirements and procedures for being placed on or removed from HUD's new FHA Inspector Roster. In doing so, it does not affect the amount of HUD-related business that will continue to be available for inspectors. This rule would, however, replace the existing system under which local HUD offices periodically select inspectors competitively according to standards that vary from office to office with nation-wide, uniform requirements that open the doors of participation with HUD to all inspectors who qualify. The rule also clearly defines the terms for continued participation with HUD, and provides a uniform, expeditious and equitable procedure for removal from the Roster. As such, the rule would result in an industry-wide and governmental benefit in that it clarifies the terms of the relationship between HUD and its fee inspectors. 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.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this proposed rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410-0500.

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 discussed in this 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 a subpart F, consisting of §§ 200.170 through 200.172, under a new undesignated center heading reading "FHA Inspector Roster" to read as follows:

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

FHA Inspector Roster

Sec.

200.170 Purpose of FHA Inspector Roster.
200.171 Placement on the Inspector Roster.
200.172 Removal from the Inspector Roster.

§ 200.170 Purpose of FHA Inspector Roster.

(a) *General.* HUD maintains the FHA Inspector Roster (Roster), a list of the inspectors eligible to determine if the construction quality of a property is acceptable as security for an FHA insured loan.

(b) *Mortgagee requirement.* Only an inspector included on the Roster may be selected by a lender to determine if the construction quality of a property is acceptable as security for an FHA insured loan, as follows:

(1) For new construction, the FHA requires three inspections by Roster inspectors; and

(2) For existing construction, the FHA requires an inspection by a Roster inspector where structural repairs have been made requiring an inspection and this inspection is not performed by a licensed, bonded, registered engineer, or a licensed home inspector, or other person specifically registered or licensed to conduct such inspections.

(3) The requirements of paragraph (b)(1) of this section do not apply if:

(i) The local jurisdiction where the newly constructed one- to four-family property is located performs the inspection(s) and issues a building permit prior to construction and a certificate of occupancy or equivalent document; or

(ii) When the new construction is 100% complete, an appraiser who is on FHA's Appraiser Roster appraises the property and two inspections have already been performed by an FHA Roster inspector.

(c) *Inspector requirement.* To be eligible to conduct inspections as required by paragraph (b) of this section, an inspector must be listed on the Roster, except that any inspector already

otherwise listed by HUD as eligible to conduct inspections as of [effective date of final rule for this section] may conduct inspections until [date that is six months after effective date of final rule for this section] without being listed on the Roster.

(d) *Effect of placement on the Roster.* Placement of an inspector on the Roster only qualifies an inspector to be selected by a mortgagee to determine if the construction quality of a property is acceptable as security for an FHA insured loan. Placement on the Roster does not guarantee that an inspector will be selected by any mortgagee. Use of an inspector placed on the Roster also does not create or imply any warranties or endorsements concerning the inspected property by HUD to a prospective homebuyer or any other party.

§ 200.171 Placement on the Inspector Roster.

(a) *Application.* To be considered for placement on the Roster, an inspector must apply to HUD using an application (or materials) in a form prescribed by HUD.

(b) *Eligibility.* To be eligible for placement on the Roster, an inspector must demonstrate the following to HUD:

(1) A minimum of three years experience in construction-related fields;

(2) Possession of an inspector's State or local license or certification if licensing or certification is required by the State or local jurisdiction where the inspector will operate;

(3) That the applicant inspector certifies that he/she has read and fully understands the inspection requirements, and any updates to those requirements, of:

(i) HUD Handbook 4905.1 REV–1 (Requirements for Existing Housing, One to Four Family Units);

(ii) HUD Handbook 4910.1 (Minimum Property Standards for Housing);

(iii) HUD Handbook 4145.1 REV–2 (Architectural Processing and Inspections for Home Mortgage Insurance);

(iv) HUD Handbooks 4150.1 and 4150.2 (Valuation Analysis for Home Mortgage Insurance);

(v) HUD Handbook 4930.3 (Permanent Foundations Guide for Manufactured Housing);

(vi) The applicable local, State or Council of American Building Officials (CABO) code; and

(viii) The HUD requirements at 24 CFR 200.926;

(4) Verification that the inspector has taken and passed HUD's comprehensive examination for inspectors, after such

an examination becomes available. Inspectors who are included on the Roster on [the effective date of the final rule] have until [6 months following the effective date] to pass the comprehensive exam. Failure to pass the examination by the deadline date constitutes cause for removal under § 200.172.

§ 200.172 Removal from the Inspector Roster.

(a) *Cause for removal.* HUD may remove an inspector from the Roster for any cause that HUD determines to be detrimental to HUD or its programs. Cause for removal includes, but is not limited to:

(1) Poor performance on a HUD quality control field review;

(2) Failure to comply with applicable regulations or other written instructions or standards issued by HUD;

(3) Failure to comply with applicable civil rights requirements;

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

(5) Misrepresentation or fraudulent statements;

(6) Failure to retain standing as a State or local government licensed or certified inspector, where such a license or certificate is required;

(7) Failure to respond within a reasonable time to HUD inquiries or requests for documentation; or

(8) Being listed on HUD's Credit Alert Interactive Voice Response System (CAIVRS).

(b) *Procedure for removal.* An inspector that is debarred or suspended, or subject to a limited denial of participation will be *automatically* removed from the Roster. In all other cases, the following procedure for removal will be followed:

(1) HUD will give the inspector written notice of the proposed removal. The notice will state the reasons for, and the duration of, the proposed removal.

(2) The inspector 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 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 appeal or, if the inspector 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 inspector.

(4) If the inspector 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 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 list after removal.* An inspector that has been removed from the Roster may apply for placement on the Roster (in accordance with § 200.171) after the period of the inspector's removal from the Roster has expired. An application will be rejected if the period for the consultant's removal from the list has not expired.

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

Dated: August 6, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

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