

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

[Docket No. FR-4720-F-02]

RIN 2502-AH76

FHA Inspector Roster

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

ACTION: Final rule.

SUMMARY: This rule establishes the regulations that will govern the Federal Housing Administration (FHA) Inspector Roster (Roster). The regulations provide for placement of inspectors on the Roster, recertification of Roster inspectors, and removal of inspectors from the Roster. The rule also identifies when a mortgagee must use an inspector listed on the Roster.

DATES: *Effective Date:* April 9, 2004.

FOR FURTHER INFORMATION CONTACT: Joyce Johnson, Valuation Manager, Office of Single Family Program Development, Office of Housing, Room 9266, 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 impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:**I. Background**

On October 10, 2002, HUD published a proposed rule (67 FR 63198) to govern the FHA Inspector Roster (Roster or FHA Roster) and provide eligibility standards, procedures, and requirements for applicants to be placed on the Roster. In addition to demonstrating professional experience and familiarity with HUD requirements, the proposal required an applicant for the Roster to provide verification of having passed HUD's comprehensive examination for inspectors, after such an examination becomes available. This rule adopts the proposed rule as final, with only minor editorial changes, such as the replacement of the term "lender" with the term "mortgagee" for consistency.

All inspectors currently listed by HUD must be recertified according to the new procedures and requirements in order to maintain their placement on the Roster and their eligibility to inspect properties that will secure mortgages insured by FHA. 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 continue to qualify as FHA Roster inspectors after that six-month period has ended.

This rule also identifies when mortgagees must use an FHA Roster inspector. 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 the start of construction and a certificate of occupancy or equivalent document. If an FHA appraiser appraises the newly constructed property after an FHA Roster inspector has performed two inspections and the construction is 100 percent completed, the final inspection by an FHA Roster inspector is not necessary. In the case of existing construction, FHA Roster inspectors must be used where structural repairs have been made requiring an inspection and this inspection is not performed by a licensed, bonded, and 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 FHA Roster inspector from the Roster for cause, generally for not complying with FHA requirements or procedures.

II. Summary of Public Comments

HUD received three public comments on the October 10, 2002 proposed rule, for which the public comment period closed on December 9, 2002. Of the three comments received, two were generally in favor of the certification program, and the third believed the program to be unnecessary. Of the two commenters that believed the program may be useful, both had suggestions for changes to the proposed rule. The following discussion presents HUD's responses to the issues and questions raised by the comments. The discussion of comments is organized according to the rule section that is addressed by the comment.

Section 200.170 Purpose of FHA Roster Inspector

Comment: What Will Happen in Areas Where There are Few Inspectors? The rule does not address the question of what will happen in areas, particularly rural and isolated communities, where there are not any or not enough inspectors available. Also areas where there are no building permits or local inspections may suffer from a lack of inspectors. HUD should allow FHA

Roster appraisers to make these inspections where there is an inadequate number of inspectors and if there are no appraisers or inspectors, HUD should allow state licensed or certified appraisers to perform that function.

HUD Response: Because FHA does not require the use of a Roster inspector for all inspections, FHA is confident there are sufficient numbers of Roster inspectors to support FHA activities. For new construction, FHA does not require an inspection by a Roster inspector if the local jurisdiction where the property is located performs the inspection and issues a building permit and certificate of occupancy (or equivalent). Similarly, for existing construction in which the repairs are not structural in nature, FHA permits mortgagees to choose whether to have the FHA Appraiser who completes the appraisal report to determine whether repairs were completed in compliance with HUD guidelines. Alternatively, for inspections of repaired properties that require architectural expertise (structural or basic system repairs), the final rule does require mortgagees to use an FHA Roster inspector.

Section 200.171 Placement on the Inspector Roster

Comment: HUD Needs to Advertise the Benefits of Becoming Certified. Because the new testing requirement would discourage some inspectors from completing the requirements to become certified, HUD should undertake a campaign to increase awareness of the benefits of becoming certified so that inspectors will be encouraged to complete the process.

HUD Response: The benefits of becoming certified as an FHA Roster inspector are outside the scope and focus of this rule. The rule is intended to regulate and improve the quality of certified FHA Roster inspectors. HUD will consider revision to the FHA Roster inspector web page on HUD's website www.hud.gov to provide additional program information and assistance in completing the requirements to become certified.

Comment: State Certification Requirement Is Excessive. The requirement that Roster inspectors have state certification, if certification is required by the state in which the Roster inspector will operate, is excessive and at odds with what is required for being a qualified inspector. For example, under some circumstances, a mortgagee can accept a property based on the review of an FHA appraiser, who is not required to have training or background in conducting inspections. Also,

building permits and certificates of occupancy may be used in lieu of an inspection by an FHA Roster inspector. Why is HUD proposing to test and, in some areas, require licensing of FHA Roster inspectors if such exceptions are permitted?

HUD Response: HUD disagrees that adoption of a state certification requirement, if the state has mandated certifications, is an excessive requirement. HUD believes that local problems require local solutions and that if the state has made a conscious effort to establish criteria for inspectors, HUD should not adopt a lesser standard.

This rule recognizes but does not otherwise address the exceptions, which allow the mortgagee to use FHA appraisers to determine if certain repairs were completed in compliance with HUD's guidelines, as well as the use of local government building and certificate of occupancy inspectors. Rather, this rule is limited to those instances in which the mortgagee must choose an FHA Roster inspector due to the nature and complexity of the inspections. This rule would require appraisers to be listed on the FHA Roster when inspecting new construction that is less than 100 percent complete, or where complex repairs and improvements require inspectors with architectural expertise (structural or basic system repairs), or where the applicant is located in a state that requires such licensing. Since FHA Roster inspectors are primarily used when new construction is involved, the requirement for state licensure acts to ensure that participants are familiar with state and local building codes.

Comment: Rule Should Grandfather in All Inspectors Currently on FHA Roster Inspector List. The rule should use a grandfather clause to recognize all the currently listed inspectors as having met the recertification requirements. In states or areas where engineers or architects have had to meet certification and board requirements, HUD should allow them also to be grandfathered onto the Roster. If a person is allowed to utilize the grandfather clause, HUD should exempt that person from the examination, if that person completes a HUD-provided continuing education program on HUD's handbooks.

HUD Response: FHA's goal is to ensure that inspectors on FHA's Roster have detailed FHA program knowledge and are aware of recent program changes. As FHA's single family programs are continuously revised, updated, and enhanced, keeping up with the latest program revisions is one of the key responsibilities of FHA Roster inspectors. The recertification of all

HUD inspectors currently listed is intended to ensure that all FHA Roster inspectors are up to date on FHA program guidelines and current with state and local building codes, ordinances, and restrictions.

Section 200.172 Removal From the Inspector Roster

Comment: Procedures Are Already in Place for Removal of Inspectors. New Procedures Not Needed. There are procedures in effect already that are meant to remove inspectors who are not performing their duties. These rules and regulations need to be enforced rather than creating new ones.

HUD Response: This final rule will provide FHA clear authority to remove FHA Roster inspectors from the Roster and prevent their further participation in FHA programs. The final rule will also ensure closer monitoring of participating FHA Roster inspectors and help HUD maintain experienced and knowledgeable inspectors on its Roster.

III. 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.

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 rule establishes 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 does, however, replace the existing system under which local HUD offices periodically select inspectors competitively according to standards that vary from office to office with nationwide, 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 results in an industry-wide and governmental benefit in that it clarifies the terms of the relationship between HUD and its fee inspectors.

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 rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of the UMRA.

Environmental Impact

This final 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 final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

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 rule under Executive Order 12866 (entitled "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 economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB

are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of the General Counsel, 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, 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. In subpart F, add §§ 200.170 through 200.172, under a new undesignated center heading “FHA Inspector Roster” to read as follows:

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

FHA Inspector Roster

Sec.

200.170 FHA Inspector Roster; Mortgagee and inspector requirements.

200.171 Placement on the Inspector Roster.

200.172 Removal from the Inspector Roster.

§ 200.170 FHA Inspector Roster; Mortgagee and inspector requirements.

(a) *General.* The FHA Inspector Roster (Roster) is a list of the inspectors selected by FHA as eligible to determine if the construction quality of a one- to four-unit 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 mortgagee 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, and registered engineer; 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-unit property is located performs the inspections and issues a building permit prior to construction and a certificate of occupancy or equivalent document; or

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

(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 April 9, 2004, may conduct inspections until October 12, 2004, 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 any mortgagee will select an inspector. Use of an inspector placed on the Roster also does not create or imply any warranty or endorsement 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 one or more 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 in which the inspector will operate;

(3) Certification that the applicant inspector has read and fully understands the inspection requirements, including any update 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 4930.3G (Permanent Foundations Guide for Manufactured Housing);

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

(vii) The HUD requirements at 24 CFR 200.926; and

(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 date when the requirement for the examination becomes effective have until six months following that 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, 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, 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 after the date of the notice (or longer, if provided in the notice) to submit a written response appealing the proposed removal and requesting a conference. A request for a conference must be in writing and must be submitted 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 after 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 who 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 inspector'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: February 24, 2004.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

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