

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR-5112-F-01]

RIN 2502-A153

FHA Appraiser Roster Requirements

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

ACTION: Final rule.

SUMMARY: This final rule explicitly conforms the eligibility requirements for applicants to the Federal Housing Administration (FHA) Appraiser Roster to longstanding HUD practices, as well as to existing nationwide industry practice. Only appraisers on the roster may perform required appraisals of properties that are to serve as security for FHA-insured single-family mortgages. Among other requirements, the current regulations require that an applicant must be a state-licensed or state-certified appraiser and pass a HUD examination on FHA appraisal methods and reporting. This final rule codifies HUD's longstanding practice and the nationwide practice that such certification or licensing comply with national criteria for education, experience, and passage of a state-administered examination. This final rule also eliminates the requirement for applicants to pass a HUD test on FHA appraisal methods and reporting, because the test has become duplicative of the national examination requirements for state licensure and certification and, therefore, unnecessary.

DATES: *Effective Date:* February 7, 2008

FOR FURTHER INFORMATION CONTACT: Peter Gillispie, Home Valuation Policy Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9270, Washington, DC 20410-8000; telephone number (202) 708-2121, extension 3368 (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

A. The FHA Appraiser Roster

To qualify for FHA insurance for a single-family mortgage, a lender must obtain an appraisal of the property that is to be the security for the loan. Only an appraiser listed on HUD's FHA Appraiser Roster may perform the

appraisal. Under HUD's current regulation found in 24 CFR 200.202(b), an applicant who wishes to be included on the FHA Appraiser Roster must be a State-licensed or State-certified appraiser, must pass a HUD test on FHA appraisal methods and reporting, and must not be listed on 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. HUD's regulations for the Appraiser Roster are codified in subpart G of 24 CFR part 200.

B. National Appraiser Qualifications Board Criteria

Title XI of the Financial Institutions Recovery, Reform, and Enforcement Act of 1989 (Title XI) (12 U.S.C. 3331 *et seq.*) requires appraisals of real estate in all federally related transactions to be performed by State-certified or State-licensed appraisers. Only State-certified appraisers may perform appraisals for high-value and complex federally related transactions. Appraisals of other federally related transactions may be performed by State-licensed appraisers. To be State-certified for purposes of Title XI, an appraiser must have credentials that meet the national qualification criteria established by the Appraiser Qualification Board (AQB) of the Appraisal Foundation, a not-for-profit, private educational organization.

Title XI does not require State-licensed appraisers to meet AQB qualification criteria, and regulations promulgated under Title XI exclude federally insured transactions such as FHA-insured mortgages from the classes of transactions subject to Title XI's appraisal requirements. However, in addition to establishing the statutorily required qualification criteria for State-certified appraisers, the AQB has published model qualification criteria for State-licensed appraisers and other classifications of appraisers, and States and Federal agencies may require compliance with these criteria.

The AQB criteria for State-certified and State-licensed appraisers require candidates to have taken a minimum number of hours of coursework, to have a minimum number of hours of appraisal experience, and to pass an AQB-endorsed, State-administered examination. In addition, appraisers must comply with continuing education requirements in order to renew their credentials. The AQB has revised the criteria twice, and the most recent revision will increase coursework requirements and require completion of a new National Uniform Examination beginning on January 1, 2008. After this

revision takes effect, applicants for the State-licensed classification will be required to complete 150 hours of coursework in a required core curriculum, accumulate 2,000 hours of acceptable appraisal experience, and pass the new National Uniform Examination.

C. HUD's 2003 Rulemaking on Compliance with AQB Criteria for Placement on Appraiser Roster

On November 30, 2001, at 66 FR 60128, HUD published a proposed rule to require appraisers listed on the Appraiser Roster to be State-licensed or State-certified with credentials that meet the applicable AQB criteria in effect when the credentials were issued. The proposed rule stated that even if a State had "grandfathered in" appraisers who had been licensed before establishment of the AQB criteria, such appraisers could not be added to the Appraiser Roster if their credentials did not meet the applicable AQB criteria. HUD subsequently received public comments expressing concern about persons who were already listed on the Appraiser Roster but whose credentials had been issued by States prior to the adoption of the AQB criteria.

In response to these comments, HUD provided in the final rule published on May 16, 2003 (68 FR 26946), for a 12-month phase-in period following the effective date of the final rule, by the end of which appraisers already on the FHA Appraiser Roster would have to comply with the AQB licensing/certification criteria. In addition, HUD stated that it would later publish in the **Federal Register** the date by which the requirement to comply with AQB criteria would have to be met and on which would begin the 12-month phase-in period that would be allowed to meet this requirement.

II. This Final Rule

This final rule, which follows publication of the May 16, 2003, final rule, codifies the AQB requirements in HUD's FHA Appraiser Roster regulations. Specifically, this final rule requires that an appraiser, in order to be eligible for placement on the FHA Appraiser Roster, must have credentials that met the applicable AQB criteria in effect when the credentials were issued. Appraisers that were State-licensed and State-certified in accordance with earlier versions of the AQB criteria do not lose their eligibility to be listed on the FHA Appraiser Roster merely because the AQB subsequently establishes more stringent education, experience, or examination criteria.

HUD recently undertook a review of the appraisers listed on the FHA Appraiser Roster and determined that the credentials of all currently listed appraisers comply with the applicable AQB criteria. As a result, the provisions in the May 16, 2003, final rule for a 12-month phase-in period are no longer necessary. HUD has also determined that no State in fact "grandfathered in" appraisers who had been licensed prior to establishment of the AQB criteria, a concern at the time of the publication of the May 16, 2003, final rule. Consequently, today's final rule does not contain these unnecessary provisions.

This final rule also eliminates the requirement for applicants to pass a HUD test on FHA appraisal methods and reporting. FHA has undertaken a series of initiatives to align its practices with those of the conventional lending industry, including streamlining and updating its appraisal reporting procedures and policies. By adopting and requiring the use of updated appraisal reporting forms and relaxing its repair and inspection requirements for existing properties, FHA has ensured that an appraisal of a property that is to be the security for FHA-insured financing is not materially different from an appraisal of the same property performed for conventional financing. As a result, the knowledge and skills needed to perform an FHA appraisal do not differ from those needed to perform an appraisal for a conventional mortgage. Therefore, HUD has determined that a separate test on FHA-specific appraisal methods and reporting is no longer necessary.

Furthermore, HUD has concluded that passage of the State-administered examination required under the AQB qualification criteria is an acceptable indicator of an applicant's competence in and knowledge of real estate appraisal methodology. Under the current AQB criteria, applicants must pass the AQB-endorsed uniform examination, or its equivalent, for the level of credentials they are seeking. Examinations for all credentials are comprehensive and cover 15 topics, including economic, legal, and ethical principles and various approaches to property valuation. Practice questions test applicants' ability to apply the knowledge and competency they gained through required coursework and experience to appraise representative properties based on available data. In light of the rigorous and comprehensive nature of the AQB-required examination, HUD has determined that the FHA test provides no additional assurance that appraisers listed on the

FHA Appraiser Roster are able to provide accurate appraisals of properties that are to be the security for FHA-insured mortgages.

III. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's regulations on rulemaking at 24 CFR part 10. Part 10, however, provides in § 10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest."

HUD finds that good cause exists to publish this rule for effect without soliciting further public comment, on the basis that additional public procedure is unnecessary. The purpose of this final rule is to formally codify the requirement that appraisers who are listed on the FHA Appraiser Roster have credentials that comply with AQB criteria, a practice already in place. On November 30, 2001, HUD published for public comment a proposed rule that included compliance with the AQB criteria. On May 16, 2003, HUD published this requirement in a final rule that considered the public comments on the earlier proposed rule.

This final rule updates the May 16, 2003, final rule by removing provisions that have since become unnecessary or are inapplicable. HUD has determined that because the credentials of all appraisers presently listed on the FHA Appraiser Roster comply with the applicable AQB criteria, the 12-month phase-in period is unnecessary for any currently listed person on the roster. HUD has also determined that no states have "grandfathered in" any previously certified or licensed appraisers from having to comply with the AQB criteria when the criteria were first established. As a result, the provision that clarified that such appraisers would nonetheless have to comply with the AQB criteria is also inapplicable to any prospective applicant to the FHA Appraiser Roster. Further, since FHA appraisal requirements now conform to those of conventional mortgages, it is no longer necessary to test FHA Appraiser Roster applicants for knowledge of FHA-specific requirements. HUD has also concluded that the examinations required by the AQB criteria are acceptable indicators of applicants' knowledge and competency to perform accurate appraisals, including those for FHA-insured transactions.

Since HUD has already received and responded to public comments on the requirement for compliance with AQB criteria, and since elimination of inapplicable provisions does not affect the rights or interests of any members of the public, HUD finds that additional public procedure is unnecessary.

IV. Findings and Certifications

Information Collection Requirements

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0538. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Environmental Impact

This final rule does not direct, provide for assistance, or direct or provide loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, nor does it establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Although this rule establishes qualifications for persons who may perform required appraisals for insured mortgages, it does not have any impact on when insurance may or may not be provided. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because through this rule, the Department only explicitly conforms its requirements to existing nationwide industry practice, the Department does not anticipate that this change will result in any, much less a significant, economic impact on a substantial number of small agencies. The requirements stated in the rule are already being followed. Accordingly, the undersigned certifies that this rule

will not have a significant economic impact on a substantial number of small entities.

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 rule will 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) (UMRA) 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 rule will not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

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 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. 1701–1715z–18; 42 U.S.C. 3535(d).

■ 2. Revise § 200.202 to read as follows:

§ 200.202 How do I apply for placement on the Appraiser Roster?

(a) Application. To apply for placement on the Appraiser Roster, you must submit an application to HUD.

(b) Eligibility. To be eligible for placement on the Appraiser Roster:

(1) You must be a state-licensed or state-certified appraiser with credentials

that complied with the applicable licensing or certification criteria established by the Appraiser Qualification Board (AQB) of the Appraisal Foundation and in effect at the time the license or certification was awarded by the issuing jurisdiction; and

(2) 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.

■ 3. Revise § 200.204(d) to read as follows:

§ 200.204 What actions may HUD take against unsatisfactory appraisers on the Appraiser Roster?

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(d) *Education requirements.* Where there is evidence that an appraiser is deficient in FHA appraisal requirements, HUD may require an appraiser to undergo professional training.

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Dated: December 20, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 08–8 Filed 1–7–08; 8:45 am]

BILLING CODE 4210–67–P