

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR-4620-F-02]

RIN 2502-AH59

Appraiser Qualifications for Placement on FHA Single Family Appraiser Roster

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

ACTION: Final rule.

SUMMARY: This final rule makes several changes designed to strengthen the licensing and certification requirements for placement on the Federal Housing Administration (FHA) Appraiser Roster (Appraiser Roster or FHA Appraiser Roster). First, the final rule requires that appraisers on the Appraiser Roster must have credentials that are based on the minimum licensing/certification standards issued by the Appraiser Qualifications Board of the Appraisal Foundation. The final rule also clarifies that an appraiser may be removed from the Appraiser Roster if the appraiser loses his or her license or certification in any state due to disciplinary action, even if the appraiser continues to be licensed or certified in another state. Further, the final rule provides that an appraiser whose license or certification in any state has been revoked, suspended, or surrendered as a result of a state disciplinary action will be automatically suspended from the Appraiser Roster until HUD receives evidence demonstrating that the state imposed sanction has been lifted. An appraiser whose licensing or certification in a state has expired is automatically suspended from the Appraiser Roster in that state and may not conduct FHA appraisals in that state until HUD receives evidence that demonstrates renewal, but may continue to perform FHA appraisals in other states in which the appraiser is licensed or certified. This final rule follows publication of a November 30, 2001, proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: *Effective Date:* With the exception of § 200.202(b)(1) and (c), this final rule is effective on June 16, 2003. HUD will publish a notice in the **Federal Register** announcing the effective date of § 200.202(b)(1) and (c).

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, 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). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On November 30, 2001 (66 FR 60128), HUD published a proposed rule designed to strengthen the licensing and certification requirements for placement on the Appraiser Roster. The Appraiser Roster lists those appraisers who are eligible to perform FHA single family appraisals. HUD maintains the Appraiser Roster to provide a means by which HUD can ensure the competency of appraisers performing FHA appraisals. The Appraiser Roster regulations are located in 24 CFR part 200, subpart G (consisting of §§ 200.200-200.206).

Under the November 30, 2001, proposed rule, appraisers on the Appraiser Roster would be required to have credentials based on the minimum licensing/certification standards issued by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. Further, an appraiser would be subject to removal from the Appraiser Roster if the appraiser loses his or her license or certification in any state due to disciplinary action, even if the appraiser continues to be licensed or certified in another state. The proposed rule also provides that an appraiser who is licensed or certified in a single state and whose state license or certification has expired, or has been revoked, suspended, or surrendered as a result of a state disciplinary action would be automatically suspended from the Appraiser Roster and prohibited from conducting FHA appraisals until HUD receives evidence demonstrating license or certification renewal or that the state-imposed sanction has been lifted.

The preamble to the November 30, 2001, proposed rule provides additional details regarding the proposed amendments to the FHA Appraiser Roster licensing and certification requirements.

II. This Final Rule

This final rule follows publication of the November 30, 2001, proposed rule and takes into consideration the public comments received on the proposed rule. The most significant differences between this final rule and the November 30, 2001, proposed rule are as follows:

1. *Twelve-month phase-in of AQB requirements for appraisers listed on the*

Appraiser Roster. The final rule provides that an appraiser who is included on the Appraiser Roster on the effective date of this rule, but who does not meet the minimum AQB licensing/certification criteria in effect on that date, has until 12 months following the effective date of the final rule to fully comply with the AQB criteria and submit evidence of such compliance to HUD. Failure to submit such evidence to HUD by the deadline date constitutes cause for removal from the Appraiser Roster. The phase-in period does not restrict HUD's ability to remove an unsatisfactory appraiser from the Appraiser Roster for any other cause identified in § 200.204.

2. *Automatic suspension of appraisers licensed or certified in multiple states.* The final rule provides that an appraiser whose license or certification in any state has been revoked, suspended, or surrendered as a result of a state disciplinary action will be automatically suspended from the Appraiser Roster until HUD receives evidence demonstrating that the state-imposed sanction has been lifted. The proposed rule would have limited automatic suspension to appraisers licensed or certified in a single state.

3. *Clarification of scope of automatic suspensions not due to state disciplinary action.* The final rule clarifies that an appraiser whose licensing or certification in a state has expired is automatically suspended from the Appraiser Roster in that state and may not conduct FHA appraisals in that state until HUD receives evidence that demonstrates renewal. The appraiser may continue to perform FHA appraisals in other states in which the appraiser is licensed or certified.

III. Discussion of the Public Comments Received on the November 30, 2001, Proposed Rule

The public comment period on the proposed rule closed on January 29, 2002. HUD received fourteen public comments on the proposed rule. Comments were received from the Appraisal Foundation; realtors; appraisers; state real estate appraiser boards; and national organizations representing banking institutions, appraisers, realtors, and state appraiser regulatory agencies. This section of the preamble presents a summary of the significant issues raised by the public commenters, and HUD's responses to the comments.

A. Comments Regarding AQB Criteria

Comment: How will HUD determine whether state requirements conform to AQB criteria? Several commenters asked

how HUD would determine whether state licensing/certification requirements comply with AQB criteria, since both the state requirements and the AQB standards are subject to periodic change. Accordingly, states that comply with the current AQB criteria may later fall out of compliance due to changes adopted by the AQB or the state legislature. To address these concerns, one of the commenters suggested that an appraiser be eligible for inclusion on the Appraiser Roster if the state requirements conformed to the AQB criteria in effect at the time the appraiser obtained the license or certification. Two other commenters recommended that the final rule focus on whether individual appraisers comply with the AQB criteria, rather than on whether state requirements are in compliance with these standards.

HUD response. HUD will periodically monitor the compliance of the states with the minimum AQB requirements to ensure that all appraisers included on the Appraiser Roster meet these standards.

Comment: How will HUD treat appraisers who received their AQB license or certification through "grandfathering?" Several commenters questioned the impact of the proposed rule on "grandfathered" appraisers who received their licensing or certification prior to the state's adoption of AQB criteria. Two of the commenters recommended that HUD immediately remove such appraisers from the Appraiser Roster and require them to re-apply and demonstrate compliance with the AQB requirements. However, other commenters cautioned against such removals. One of these commenters suggested that "grandfathered" appraisers should instead be allowed to remain on the Appraiser Roster if they can provide a letter from the state appraiser licensing agency attesting that the appraiser satisfies the AQB criteria.

HUD Response. The final rule provides that appraisers, including the "grandfathered" appraisers mentioned by the commenters, who are included on the Appraiser Roster on the effective date of this rule, but who do not meet the minimum AQB licensing/certification criteria in effect on that date, have 12 months following the effective date of the final rule to fully comply with the AQB criteria and submit evidence of such compliance to HUD. Failure to submit such evidence to HUD by the deadline date constitutes cause for removal from the Appraiser Roster. The phase-in period does not restrict HUD's ability to remove unsatisfactory appraisers from the

Appraiser Roster for any other cause identified in § 200.204.

Comment: Will HUD remove appraisers licensed or certified in states that do not currently meet the AQB criteria? One commenter posed this question.

HUD Response. As noted in the response to the preceding comment, HUD will allow such an appraiser to remain on the Appraiser Roster for 12 months following the effective date of the final rule, at which time the appraiser must be in full compliance with the AQB criteria.

Comments: AQB requirements should be "phased-in." One commenter wrote that the proposed AQB requirements should be "phased-in" to provide appraisers with sufficient time to satisfy these criteria.

HUD Response. HUD agrees with the commenter. As noted, an appraiser currently included on the Appraiser Roster, but who does not meet the minimum AQB licensing/certification criteria in effect on that date, has 12 months following the effective date of the final rule to fully comply with the AQB criteria and submit evidence of such compliance to HUD. Failure of the appraiser to submit such evidence to HUD by the deadline date constitutes cause for removal from the Appraiser Roster. The phase-in period does not restrict HUD's ability to remove an unsatisfactory appraiser from the Appraiser Roster for any other cause identified in § 200.204.

Comment: HUD should identify those states whose licensing and certification requirements do not meet AQB criteria. One commenter made this suggestion.

HUD Response. The Appraisal Subcommittee is the official authority for determining and identifying each state's compliance with the AQB criteria.

Comment: HUD's use of the phrase "professional credentials" may be inappropriate. One commenter wrote that the proposed rule's use of the phrase "professional credentials" when referring to the AQB criteria is inappropriate. According to the commenter, the term "professional credentials" is commonly understood by appraisers to refer to designations earned within professional membership organizations. The commenter wrote that reference in the proposed rule to this phrase is misapplied if used to apply to the gap between a state's licensing and certification criteria and the minimum AQB criteria. The commenter recommended that HUD create a more appropriate phrase to identify this concept.

HUD Response. HUD has revised the proposed rule to be more sensitive to the issues raised by the commenter. The final rule refers to "credentials," rather than "professional credentials."

B. Other Comments Regarding Qualifications for Placement on the Appraiser Roster

Comment: Appraisers should be required to have at least two years experience as licensed or certified appraisers for placement on the Appraiser Roster. One commenter made this suggestion. According to the commenter, FHA appraisals are often more complicated than those for conventional mortgage loans, and thus require additional experience. The commenter wrote that in comparison to conventional appraisals, FHA appraisals require a higher degree of skill and more knowledge of construction, depreciation, cost estimating for repairs, and estimating the useful and remaining life of residential improvements and equipment.

HUD Response. At this time, HUD does not plan additional changes to the experience requirements for placement on the Appraiser Roster. Rather, HUD will rely on the AQB experience criteria. HUD believes that the AQB standard is sufficient to ensure that appraisers included on the Appraiser Roster have the necessary experience to perform FHA appraisals.

Comment: HUD should determine whether an appraiser has been subject to state disciplinary action before approving the appraiser for placement on the Appraiser Roster. Two commenters made this recommendation. The commenters wrote that HUD might consider using the National Registry of Appraisers maintained by the Appraisal Subcommittee for this purpose. However, one of the commenters cautioned that the National Registry may be inadequate and suggested that HUD should consider establishing its own independent verification methods.

HUD Response. The change requested by the commenters is outside the scope of the November 30, 2001, proposed rule and would require additional notice and comment prior to implementation. At this time, HUD does not plan additional changes to the requirements for placement on the Appraiser Roster. HUD believes the current placement procedures are adequate to ensure that appraisers included on the Appraiser Roster are competent to perform FHA appraisals.

C. Comment Regarding Automatic Suspension From the Appraiser Roster

Comment: Appraisers who are licensed or certified in multiple states should also be subject to automatic suspension. Under the November 30, 2001, proposed rule, only those appraisers licensed or certified in a single state would be subject to automatic suspension from the Appraiser Roster due to state disciplinary action. Three commenters recommended that the scope of automatic suspensions be expanded to include appraisers licensed or certified in multiple states. The commenters suggested that such appraisers should be automatically suspended from the Appraiser Roster if they lose their license or certification due to disciplinary action in any state.

HUD Response. HUD agrees with the commenters and has revised the proposed rule accordingly.

Comment: HUD should clarify that voluntarily electing not to renew a state license or certification does not constitute "disciplinary action" for purposes of automatic suspension from the Appraiser Roster. One commenter made this suggestion. The commenter wrote that depending on state law, if an appraiser willingly allows his or her license to expire, it might appear that the license expired due to disciplinary action. The commenter suggested that the final rule clarify that the voluntary expiration of a state appraisal license or certification does not constitute a disciplinary action.

HUD Response. HUD has revised the regulatory text to be more sensitive to the issue raised by the commenter.

Specifically, the final rule clarifies that an appraiser whose licensing or certification in a state has expired is automatically suspended from the Appraiser Roster in that state and may not conduct FHA appraisals in that state until HUD receives evidence that demonstrates renewal. The appraiser may continue to perform FHA appraisals in other states in which the appraiser is licensed or certified.

Comment: HUD should report appraisers who have been removed from the Appraiser Roster to the appropriate state appraisal licensing authorities. Three commenters made this suggestion.

HUD Response. HUD will provide this information to states as appropriate.

Comment: Appraisers should not be removed from Appraiser Roster prior to state review of case. One commenter wrote that anytime HUD's review process determines that an appraiser is performing unethical or substandard work, the appraiser should be suspended from the Appraiser Roster and referred by HUD to the appropriate state agency for disciplinary action. The commenter wrote that an appraiser should not be removed from the Appraiser Roster until the state agency has had the opportunity to review the case and determine whether disciplinary action is appropriate. According to the commenter, this method will protect appraisers from the administrative burden of reapplying for placement on the Appraiser Roster.

HUD Response. The suggestion made by the commenter is outside the scope of the November 30, 2001, proposed rule. At this time, HUD does not anticipate making any changes to the

Appraiser Roster removal procedures. HUD believes that the existing removal procedures are sufficient to safeguard the interests of FHA homebuyers, HUD, and appraisers included on the Appraiser Roster.

IV. 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 proposed 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 office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

Paperwork Reduction Act

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and are pending OMB approval. 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.

The burden of the information collections in this rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
§ 200.202(b)(1) and (c) (submission of evidence of compliance with AQB standards).	1,800	1 × .33	.50	900

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the final rule by name and docket number (FR-4620) and must be sent to:

Lauren Wittenberg, HUD Desk Officer,
Office of Management and Budget,
New Executive Office Building,

Washington, DC 20503-0001,
Lauren Wittenberg@omb.eop.gov
 and

Gloria Diggs, Reports Liaison Officer,
 Office of the Assistant Secretary for
 Housing-Federal Housing
 Commissioner, Department of
 Housing and Urban Development, 451
 7th Street, SW, Room 9116,
 Washington, DC 20410-0001.

Environmental Impact

This final rule does 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. 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. 4332 *et seq.*).

Regulatory Flexibility Act

The Secretary has reviewed this final rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows.

The final rule requires that appraisers on the Appraiser Roster have credentials that are based on the minimum licensing/certification standards issued by the AQB of the Appraisal Foundation. An analysis of the FHA Appraiser Roster indicates that of the approximately 22,163 appraisers currently on the Appraiser Roster, only approximately 330 do not have licensing in conformance with the standards issued by the AQB. In most instances, these appraisers already have some of the hours of education or experience required to meet the AQB criteria, thus further minimizing the impacts of the final rule. For example, most appraisers on the Appraiser Roster have been listed for some time, and thus few of these appraisers will have difficulty providing evidence to their state board demonstrating acceptable experience levels. With regard to the education requirements, the AQB standards only require 90 hours of education for Licensed Real Property Appraiser and 120 hours of education for Certified Residential Real Property Appraiser certification. Given the few number of appraisers currently on the Appraiser Roster who do not have a

state designation based on AQB criteria and the relatively little time and expense that would be required for most of these appraisers to meet AQB criteria, HUD has determined that the final rule will not have a significant economic impact on small entities.

In addition to the new AQB standards, the final rule also clarifies that an appraiser may be removed from the Appraiser Roster if the appraiser loses his or her license or certification in any state due to disciplinary action, even if the appraiser continues to be licensed or certified in another state. The final rule also provides that an appraiser whose state license or certification in any state has been revoked, suspended, or surrendered as a result of a state disciplinary action, will be automatically suspended from the Appraiser Roster and prohibited from conducting FHA appraisals until HUD receives evidence demonstrating that the state imposed sanction has been lifted. An appraiser whose licensing or certification in a state has expired is automatically suspended from the Appraiser Roster in that state and may not conduct FHA appraisals in that state until HUD receives evidence that demonstrates renewal. An appraiser whose licensing or certification in a state has expired is automatically suspended from the Appraiser Roster in that state and may not conduct FHA appraisals in that state until HUD receives evidence that demonstrates renewal, but may continue to perform FHA appraisals in other states in which the appraiser is licensed or certified. To the extent that these changes have an impact on small entities it will be as a result of actions taken by the appraisers themselves (*i.e.*, violation of applicable standards resulting in disciplinary action or otherwise failing to maintain their professional state licensing or certification).

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 final rule will not have federalism implications and will 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 final rule will 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.

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 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).

Subpart G—Appraiser Roster

■ 2. In § 200.202 revise paragraph (b)(1) and add paragraph (c) to read as follows:

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

* * * * *

(b) * * *

(1) You must be a state-licensed or state-certified appraiser with credentials based on the minimum licensing/certification criteria issued by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. For purposes of this section, an appraiser is not deemed to have credentials based on AQB standards if the state licensing/certification requirements did not conform to AQB criteria at the time the appraiser obtained the license or certification. This is true even if the state has subsequently adopted AQB criteria and has "grandfathered" previously licensed or certified appraisers.

* * * * *

(c) *Delayed effective date of AQB requirements for appraisers currently*

listed on the Appraiser Roster. An appraiser who is included on the Appraiser Roster on June 16, 2003, but does not meet the minimum AQB licensing/certification criteria in effect on this date, has until 12 months following this date to comply with the AQB criteria and submit evidence of compliance to HUD. Failure to submit such evidence to HUD by the deadline date constitutes cause for removal under § 200.204.

- 3. Amend § 200.204 as follows:
 - a. Revise paragraph (a)(1);
 - b. Redesignate paragraphs (c) and (d) as paragraphs (d) and (e) respectively; and,
 - c. Add new paragraph (c):
- The addition and revision read as follows:

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

* * * * *

- (a) * * *
- (1) *Cause for removal.* Cause for removal includes, but is not limited to:
- (i) Significant deficiencies in appraisals, including non-compliance with Civil Rights requirements regarding appraisals;

- (ii) Losing standing as a state-certified or state-licensed appraiser due to disciplinary action in any state in which the appraiser is certified or licensed;
- (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 subpart or any other instructions or standards issued by HUD; or,
- (viii) Failure to comply with HUD-imposed education requirements under paragraph (d) of this section within the specified period for complying with such education requirements.

* * * * *

- (c) *Automatic suspension from Appraiser Roster.*—(1) *Appraisers subject to state disciplinary action.* An appraiser whose state licensing or certification in any state has been revoked, suspended, or surrendered as a result of a state disciplinary action is automatically suspended from the Appraiser Roster and prohibited from conducting FHA appraisals in any state until HUD receives evidence demonstrating that the state imposed sanction has been lifted.
- (2) *Expirations not due to state disciplinary action.* An appraiser whose licensing or certification in a state has expired is automatically suspended from the Appraiser Roster in that state and may not conduct FHA appraisals in that state until HUD receives evidence that demonstrates renewal, but may continue to perform FHA appraisals in other states in which the appraiser is licensed or certified.

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Dated: May 9, 2003.

John C. Weicher,
Assistant Secretary for Housing-Federal Housing Commissioner.
[FR Doc. 03–12205 Filed 5–15–03; 8:45 am]

BILLING CODE 4210–27–P