

**U. S. Department of Housing and Urban Development
Washington, D.C. 20410-8000**

March 3, 2000

**OFFICE OF THE ASSISTANT SECRETARY
FOR HOUSING-FEDERAL HOUSING COMMISSIONER**

MORTGAGEE LETTER 00- 8

TO: ALL APPROVED MORTGAGEES ALL APPROVED NONPROFIT AGENCIES

SUBJECT: Nonprofit Agency Participation in Single Family FHA Activities

This Mortgagee Letter provides instructions to nonprofit agencies on obtaining approval from FHA to 1) act as a mortgagor using FHA mortgage insurance; 2) purchase the Department's Real Estate Owned Properties (HUD Homes) at a discount; and 3) provide secondary financing. In addition, it outlines the reporting and recertification requirements for the nonprofit agency to remain a participant in these activities and announces a limitation on the number of 203(k) FHA insured loans available to nonprofit agencies. This Mortgagee Letter also announces additional programmatic changes. Both current and prospective nonprofit agencies will be assessed pursuant to the standards and procedures set forth in this Mortgagee Letter. Mortgagees must assure that nonprofit agencies adhere to requirements contained under the heading "Responsibilities of the Mortgagee." The procedures described in this Mortgagee Letter and all attachments are effective 30 days from the date of this letter.

**INFORMATION FOR NONPROFIT AGENCIES REGARDING PARTICIPATION IN FHA
ACTIVITIES**

All nonprofit agencies must follow the uniform standards for participation and recertification in FHA activities. All approved nonprofit agencies must carefully read the section entitled "Recertification," because if the nonprofit agency fails to submit an acceptable recertification package within 45 days from the date of this Mortgagee Letter, they will be removed from the list of approved nonprofit agencies. Further, the approval and recertification requirements ensure that participating nonprofit agencies work to fulfill FHA's goal of creating homeownership opportunities for low and moderate income persons.

- **Application Process:** Nonprofit agencies wanting to participate with FHA as a mortgagor (#1 above) and/or purchase HUD Homes at a discount (#2 above) must apply to FHA by completing attachments I and 2 (Application Package for Nonprofit Agency Approval for FHA Activities and Affordable Housing Program-Format for Narrative, respectively) and submitting them to the appropriate Homeownership Center (HOC). The affordable housing program details the nonprofit agency's plan to develop successful homeownership opportunities for low and moderate income persons. In addition, nonprofit agencies are to refer to Mortgagee Letter 96-52 for details regarding successful elements of an affordable housing program. For those nonprofit agencies applying only for approval to provide secondary financing (#3 above), only attachment I (Application Package for Nonprofit Agency Approval for FHA Activities) is required to be submitted. Attachment 2 (Affordable Housing Program-Format for Narrative) is not required.

Information Collection Requirements

The information collection requirements referred to in this Mortgagee Letter have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The OMB number issued for this requirement is OMB 2502-0540.

Incomplete Application and Recertification Packages

Nonprofit agencies that submit incomplete application or recertification packages will receive a letter indicating the information required to cure the deficiency. This letter will give nonprofit agencies 15 days to correct any deficiencies. If the nonprofit agency does not satisfy the outstanding requirement in its entirety and within the prescribed deadline, it must wait an additional 90 days prior to re-applying. In the case of failure to comply with the deficiency letter related to recertification, the nonprofit agency's approval will be withdrawn.

Application Approval or Denial

The jurisdictional HOC approves or denies the nonprofit agency's participation in FHA activities. The approval is valid for a two year period. An approval granted by one HOC will be recognized and accepted by all other HOCS, with the exception of the affordable housing program. A nonprofit agency's affordable housing program (see Attachment 2) must be separately approved by every HOC with jurisdiction over the geographic areas in which the nonprofit agency wishes to do business. The approval of the affordable housing program assures that it serves local needs. If a nonprofit agency is found to not be in compliance with any aspect of their approval, it may be rescinded by any HOC prior to the expiration of the two year period.

Approval Letters

Nonprofit agencies that are approved for participation in the above described activities will be issued an approval letter. This letter will describe which activities the nonprofit was approved for and any conditions associated with that approval. Mortgagees should not process any loan application on behalf of the nonprofit agency without this approval letter. In addition, the mortgagee should verify that the nonprofit is approved as a participating nonprofit agency. Mortgagees can verify this by visiting the applicable HOC website. The addresses of these websites are listed below:

Philadelphia HOC: http://www.hud.gov/offices/hsg/sfh/talk/addr_phi.cfm
 Atlanta HOC: http://www.hud.gov/offices/hsg/sfh/talk/addr_atl.cfm
 Denver HOC: http://www.hud.gov/offices/hsg/sfh/talk/addr_den.cfm
 Santa Ana HOC: http://www.hud.gov/offices/hsg/sfh/talk/addr_sna.cfm

Questions concerning a nonprofit agency's approval should be directed to the appropriate HOC.

- **Recertification:** Nonprofit agencies must be recertified by FHA every two years, as the approval granted is only valid for a two year period. However, in an attempt to verify that all nonprofit agencies are meeting and furthering the goals of the Department, within 45 days from the date of this Mortgagee Letter, **all approved nonprofit agencies** are to submit a complete recertification package (refer to Attachment 1, page 4, for more information) to the applicable HOC. A complete list of the HOC mailing addresses can be found in attachment 1 as part of the application package. Nonprofit agencies that fail to submit an acceptable recertification package within 45 days from the date of this Mortgagee Letter will have their approval withdrawn. Attachment 4 provides additional information on about FHA's recertification procedures.
- **Monitoring and Reporting Process:** Periodically, FHA will perform field reviews of nonprofit agencies that participate in FHA activities. The purpose to this review is to ensure compliance with FHA requirements and to ascertain the management and financial capacity of the nonprofit agency. These reviews may include, without limitation, a review of projects under development, the agency's internal control procedures, adherence to the goals of the approved affordable housing program, and verification that HUD Homes purchased at the 30 percent discount level are sold to persons at or below the applicable median income.

Nonprofit agencies that purchase HUD Homes at the 30 percent discount level must submit an annual report to the applicable HOC Director providing information about their program accomplishments over the previous calendar year by February 1 of the following year. The HOC will review these accomplishments and supporting documentation to determine, among other things, that substantial benefits are passed on to the homeowner as a result of the nonprofit agency receiving a 30 percent discount on the property. Failure to pass on adequate savings to the ultimate homeowner

may result in removal from the approved list of nonprofit agencies. For additional information about this requirement, nonprofit agencies should review Mortgagee Letter 97-5. Although nonprofit agencies that purchase properties at the 10 percent discount level are not required to submit a report, the Department reserves the right to monitor the nonprofit agency's activities relating to these transactions.

If the nonprofit agency has not already submitted this report, it should be submitted with the recertification package as described above. Failure to submit this report to the HOC may result in FHA's rescinding the nonprofit agency's approval. Nonprofit agencies approved to purchase HUD Homes at less than a 30 percent discount level, or only to act as a mortgagor, or to provide secondary financing to homebuyers are not required to submit an annual report. Further information about monitoring and reporting is found in Attachment 3.

- **Removal:** FHA may remove a nonprofit agency from the list of approved nonprofit agencies for reasons including, but not limited to, excessive defaults, foreclosure or claim status associated with the nonprofit agency acting as a mortgagor on FHA insured loans, failure to comply with the goals established by the nonprofit agency as outlined in its approved affordable housing program, violations of the conditions of FHA's approval, noncompliance with reporting requirements or for any action detrimental to the Department. Attachment 4 provides additional information about FHA's removal procedures.

RESPONSIBILITIES OF THE MORTGAGEE

Mortgagees may not process any loan application on behalf of the nonprofit agency without an approval letter and without verifying that it is a participating nonprofit agency. In addition the Department has developed additional controls for nonprofit agencies and requirements for mortgagees. The mortgagee is responsible for ensuring that the participating nonprofit agency meets and adheres to the requirements described below.

- **Limitation on the Number of 203(k) FHA Insured Mortgages:** In order to ensure that nonprofit agencies will not overextend their financial and management capabilities, a nonprofit agency will now be prohibited from borrowing under the 203(k) program if the agency has 10 or more incomplete 203(k) developments at that time. FHA defines completed 203(k) developments as those that have completed all rehabilitation/construction work *in a timely manner*, received all appropriate certificates of occupancy, and EITHER the property has been sold and the nonprofit has successfully repaid the 203(k) loan in full, OR the property is occupied by a renter and the rental receipts exceed all property expenses, including mortgage payments, generating a positive cash flow. In the case of a rental property, the nonprofit agency must provide evidence that the property has been occupied by a renter for at least three months and that rental receipts exceed expenses.

Nonprofit agencies already having more than 10 incomplete developments may not obtain additional 203(k) financing until they reduce the number of incomplete 203(k) developments to less than ten. Therefore, in the future, nonprofit agencies shall not have more than ten incomplete 203(k) developments at any time unless they qualify for the exceptional performance waiver described

below. For those nonprofit agencies with limited housing experience, FHA may further restrict the number of **203(k)** mortgages it will insure to less than 10.

Mortgagees must verify that nonprofit agencies do not exceed this 10 (or less as stated above) 203(k) FHA insured mortgages limit. In all cases, the mortgagee must review the nonprofit agency's approval letter from FHA. This letter will clearly outline the amount of 203(k) financing available to the nonprofit agency. Questions concerning the nonprofit agency should be directed to the approving HOC.

- **Exceptional Performance Waiver:** Nonprofit agencies with an exceptional performance record of successfully completing 203(k) developments (defined as those agencies that have successfully completed 20 or more 203(k) developments) may apply to the HOC for a waiver of the limitation on 203(k) loans. This waiver request should contain a narrative describing the nonprofit agency's homeownership or long term rental program, audited financial statements with an unqualified opinion from a Certified Public Accountant for the prior three years, a listing of all properties currently owned by the nonprofit agency (both conventional and government financed), a record of performance on **all** 203(k) loans (current as well as previous loans) as well as the evidence to support the sale or rental of these properties. Nonprofit agencies that are approved for this waiver for financing for more than 10 203(k) mortgages at one time will have it stated in their approval letter from the HOC.
- **Requirement for Federal Tax Identification Number:** Lenders must obtain the tax identification number *of the nonprofit agency* when a) the nonprofit agency is acting as a mortgagor or b) when the nonprofit agency provides downpayment assistance in the form of a gift.

If the nonprofit agency is acting as a mortgagor, lenders are to enter the Federal Tax identification number of the nonprofit agency into the social security number field in the Computerized Homes Underwriting Management System (CHUMS). Failure to do this will result in the loan not being insured by FHA. If the nonprofit agency is providing downpayment assistance in the form of a gift, lenders are to enter into the CHUMS system the Federal Tax identification number of the nonprofit agency in the field designated for a charitable organization's tax identification number. Failure to do this will result in the loan not being insured by FHA.

- **Approval of Downpayment Assistance Programs in the Form of Gifts:** There has been widespread confusion regarding the Department's role in approving downpayment assistance programs in the form of gifts. FHA does not "approve" downpayment assistance programs in the form of gifts administered by charitable organizations. Mortgage lenders are responsible for assuring that the gift to the homebuyer from the charitable organization meets the instructions described in HUD Handbook 4155.1, REV-4, Change 1 (e.g., no repayment implied, etc.). Thus,

while FHA will issue approval letters to nonprofit agencies for their participation as mortgagors, providers of secondary financing, and as purchasers of HUD Homes at a discount, such letters **are not** to be construed as approval of the nonprofit agency's downpayment assistance gift programs. FHA will not issue approval letters for downpayment assistance gift programs.

- **Mortgagee's Responsibility for Credit Approval:** Mortgagees are required to follow sound underwriting judgment in approving a nonprofit agency as mortgagor. This includes performing a credit evaluation, a financial analysis and assessing the nonprofit agency's development and management capacity. In addition, mortgagees are responsible for reviewing the nonprofit agency's approval letter, as described in the "approval letter" section of this Mortgagee Letter, provided by FHA to determine if any conditions or restrictions apply. Mortgagees should also inquire/verify that the nonprofit organization remains eligible under Section 501(c)(3) as exempt from taxation under Section 501 (a) of the Internal Revenue Code of 1986, as amended. Loans that are processed that do not meet the requirements of the approval letter may be ineligible for FHA insurance. Attachment 6 to this Mortgagee Letter and Mortgagee Letter 96-52 provide additional information regarding the responsibility of the mortgagee in determining the management ability and financial capacity of the nonprofit agency acting as a mortgagor.
- **Continued Requirement for Compliance with the Seven Unit Limitation:** Mortgagees are reminded that any borrower, including nonprofit agencies that act as a borrower, is restricted from obtaining FHA-insured financing for a property that may be rented if it has or will have a financial interest in more than seven rental units (regardless of financing type) in a contiguous area, generally defined as within a two-block radius. This regulation is designed to limit FHA's insurance exposure on multiple mortgages to any one borrower in any one area.

The restrictions discussed above do not apply if (1) the neighborhood has been targeted by a State or local government for redevelopment or revitalization; and (2) the State or local government has submitted a plan to HUD that defines the area, extent, and type of commitment to revitalize the area.

Mortgagees seeking a waiver of the seven unit limitation must submit written requests to the appropriate HOC, stating the basis for the requested waiver. Waiver of this limitation will be granted only if the waivers pose no significant risk to HUD, and where the properties are in an area that is economically viable and with a demonstrated need for additional rental housing for families of low and moderate income.

- **Continued Requirement for Credit Alert and Limited Denial of Participation Screening:** Mortgagees are reminded that they must also screen nonprofit agencies acting as a mortgagor through the Credit Alert Interactive Voice Response System (CAIVRS) and against the Department's Limited Denial of Participation Lists. This is used to determine if the nonprofit agency has any Federal delinquencies or defaults or has been barred from participation in FHA programs.

Questions regarding this Mortgagee Letter should be directed to the FHA Homeownership in Atlanta (1-888-696-4687), Denver (1-800-543-9378), Philadelphia (1-800-440-8647) and Santa Ana (1-888-827-5605).

Sincerely,

William C. Apgar
Assistant Secretary for Housing-
Federal Housing Commissioner

Attachments:

- Attachment 1: Application Package for Nonprofit Agency Approval for FHA Activities
- Attachment 2: Affordable Housing Program-Format for Narrative
- Attachment 3: Nonprofit Agency Reporting Requirements and FHA Monitoring Activities
- Attachment 4: Nonprofit Agency Recertification Requirements and Reasons for Removal
- Attachment 5: Recertification for Nonprofit Agencies-Property Listing Format
- Attachment 6: Mortgagee Responsibility in the Credit Evaluation of the Nonprofit Borrower