



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Date: November 21, 2012

To: All FHA-Approved Mortgagees

Mortgagee Letter 2012-24

Subject **Secondary Financing Eligibility Requirements for Internal Revenue Code (IRC) Section 115 Entities**

Purpose The purpose of this Mortgagee Letter (ML) is to clarify that HUD deems Section 115 entities to be “instrumentalities of government” for the purpose of providing secondary financing under single family FHA programs. Entities providing proof of Section 115 status, as described below, need not meet the instrumentality of government test otherwise required by ML 1994-02, and need not be included on HUD’s Nonprofit Organization Roster, as originally provided in ML 2009-38, which was later superseded by ML 2011-38.

This ML supersedes guidance on Section 115 entities stated in ML 2011-38, except for the waiver of the voluntary board requirements as described in the ML, which waiver remains in place.

Effective Date All provisions of this ML are effective immediately.

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Instrumentality of Government Status for Section 115 Entities

Given the requirements imposed on entities to qualify under Section 115 of the Internal Revenue Code, HUD has determined that Section 115 entities should be treated as instrumentalities of government for purposes of FHA's secondary financing program. Furthermore, HUD also considers entities with the dual distinction of 501(c)(3) **and** Section 115 status to be instrumentalities of government. As such, Section 115 entities must follow all FHA guidance in HUD handbooks, regulations, Mortgagee Letters, and Housing Notices, to which instrumentalities of government are subject regarding the operations of secondary financing programs.

Section 115 Entities – Secondary Financing Programs

As instrumentalities of government, Section 115 entities are not required to have HUD approval or placement on HUD's Nonprofit Organization Roster to operate a secondary financing program. Section 115 entities implementing secondary financing programs are held to the same program eligibility standards applicable to all other government agencies and instrumentalities of government operating secondary financing programs as described in 24 CFR §203.32(b).

However, Section 115 entities are not considered instrumentalities of government for participation in other FHA programs. Therefore, they must meet eligibility and participation requirements for those FHA programs. If participation in other FHA programs requires approval and placement on HUD's Nonprofit Organization Roster, Section 115 entities must remain on HUD's Nonprofit Organization Roster. In such cases, Section 115 entities will still be considered to be instrumentalities of government for purposes of secondary financing, even though they are also on HUD's Nonprofit Organization Roster.

Documentation Requirements for Section 115 Status

When operating a secondary financing program, organizations claiming Section 115 status must present proof of that status as requested by the lender:

- 1) a letter from the organization's auditor; or
 - 2) a written statement from the organization's General Counsel, as an official of the organization; or
 - 3) a Letter Ruling issued by the Internal Revenue Service; or
 - 4) an equivalent document evidencing Section 115 status.
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**Documentation
Requirements
for Section 115
Status**
(continued)

The document used as evidence of Section 115 status must state that the organization's income is excluded from federal taxation through Section 115 of the Internal Revenue Code. Documentation evidencing Section 115 status must be placed on the right side of the case binder directly after "Request for Late Endorsement" in the attached, FHA Case Binder – Documentation Order.

**Paperwork
Reduction Act**

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 2502-0540. 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.

Questions

If you have any questions regarding this Mortgagee Letter, please call the FHA Resource Center at 1-800-CALLFHA (1-800-225-5342). Persons with hearing or speech impairments may reach this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

Signature

Carol J. Galante
Acting Assistant Secretary for Housing-
Federal Housing Commissioner

[Attachment](#)