

§ 200.228

Officer is the Executive Secretary to the Committee and is empowered to issue and sign all notices, orders, letters and directives on behalf of the committee, to keep minutes, and to perform other duties assigned by the Chairman or directed by the Committee.

(b) *Functions.* The Committee will act for the Assistant Secretary for Housing-Federal Housing Commissioner and for the Assistant Secretary for Public and Indian Housing to determine the acceptability of participants in multi-family proposals under subpart H of this part.

[50 FR 37520, Sept. 16, 1985, as amended at 56 FR 41791, Aug. 23, 1991; 59 FR 31522, June 20, 1994. Redesignated at 61 FR 7943, Feb. 29, 1996]

§ 200.228 Determination by the Review Committee.

(a) The Review Committee shall make one of the following determinations in connection with every case referred to it by the Participation Control Officer:

(1) Approve the principal after consideration of the entire record in the light of the standards in §200.230. All mitigating or extenuating factors will be considered. In each case, the decision shall be within the discretion of the Review Committee and rendered in the best interest of the Government and the public;

(2) Conditionally approve the principal's participation with such conditions or limitations which in the Review Committee's judgment are necessary to make the principal approvable;

(3) Withhold approval of the principal in accordance with §200.229; or

(4) Disapprove the principal when approval is not justified and withholding approval is not appropriate.

(b) All determinations by the Review Committee shall be made by majority vote of those members present and entitled to vote.

§ 200.229 Withholding approval.

Approval of a principal may be withheld for:

(a) A period not to exceed 120 days when such action is deemed necessary to secure additional information upon

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which to base a final action including a determination as to whether a suspension or debarment action will be taken; or

(b) For a longer period pending the resolution of a criminal complaint or indictment.

§ 200.230 Standards for disapproval.

The standards for disapproval shall be as follows:

(a) Suspension, debarment or other restriction of the principal under part 24 of this title;

(b) Suspension, debarment or other restriction of the principal by any other Department or Agency of the Federal Government from doing business with such Department or Agency;

(c) Unless the Review Committee finds mitigating or extenuating circumstances that enable it to make a risk determination for approval, any of the following occurrences attributable or legally imputable to a principal may be the basis for disapproval, whether or not the principal was actively involved in the project:

(1) Mortgage defaults, assignments or foreclosures, unless the Review Committee determines that the default, assignment or foreclosure was caused by circumstances beyond the principal's control;

(2) Defaults or noncompliance under any conventional construction contract or turnkey contract of sale in connection with a public housing project;

(3) Violation of the regulatory agreement or noncompliance with any other obligation to HUD that has not been corrected to the satisfaction of the Review Committee at the time of its consideration;

(4) Suspension or termination of payments under any HUD assistance contract;

(5) Defaults under an obligation covered by a surety or performance bond and/or claims under an employee fidelity bond;

(6) Unresolved findings as a result of HUD or other governmental audits or investigations; or

(7) A criminal record or other evidence that the principal's previous conduct or method of doing business has been such that his participation in the

project would make it an unacceptable risk from the underwriting standpoint of an insurer, lender or governmental agency;

(d) With respect to any HUD insured or assisted projects, work stoppage for a period in excess of 20 days, or in the case of an insured project, failure to achieve final endorsement of the mortgage where the project has been substantially completed for more than 90 days but documents for closing, including cost certification have not been filed with HUD and such is chargeable to the fault or neglect of the principal;

(e) Any serious and significant violation by a management agent of a project management contract, where the contract required HUD or other Governmental agency approval at its inception;

(f) Submission of a false or materially incomplete form 2530 certification application.

(g) Any other significant violation of or noncompliance with regulations, or programs or contract requirements of HUD, Farmers Home Administration or a State or local government's Housing Finance Agency in connection with any insured or assisted project.

[45 FR 54199, Aug. 14, 1980, as amended at 56 FR 50820, Oct. 9, 1991]

§ 200.233 Effect and requirement of approval.

Approval is required as a precondition for participation and constitutes clearance of the principal under this part for participation only for a specific project in a specific role. Approval of a principal does not obligate the Department to approve the principal's applications or contracts for program participation.

§ 200.236 Modification or withdrawal of certain approvals.

Approvals will not be modified or withdrawn except in cases where the principal is subsequently suspended or debarred from further participation in any HUD programs under part 24 of this title, or is found by the Review Committee to have obtained approval based upon submission of a false, fraudulent or incomplete report or certificate submitted to HUD. In such cases the Review Committee may take such

action, including modification or withdrawal of approval, as it determines to be in the best interest of the Department and the public. For the purpose of this section, the term approval includes conditional approval.

§ 200.239 Notice of determination.

The Participation Control Officer shall give written notice to the principal and to the field office concerned of disapproval under § 200.226, and conditional approval, withholding of approval or disapproval by the Review Committee under § 200.228. In the case of any such adverse notice:

(a) The notice shall contain a general statement of the reasons for the determination; and

(b) The notice to the principal shall be sent by certified mail to the address shown on the certificate with a return receipt requested.

§ 200.241 Request for reconsideration of an adverse determination and request for a hearing.

(a) Where approval has been withheld, denied, or conditionally granted, the principal may request reconsideration by the Review Committee. Such request shall be made in writing, within 30 days of receipt of the notice of such action, addressed to the Review Committee. It may contain such supporting material as principal desires; or

(b) The principal may file a request for a hearing before a Hearing Officer as provided in § 200.243. Such request for a hearing shall be made in writing within 30 days from the date of receipt of the determination.

§ 200.243 Hearing rules—How and when to apply.

(a) A principal who has been disapproved, conditionally approved, or who has had approval withheld by the Review Committee, either initially or after reconsideration, or who is disapproved by the Participation Control Officer, may request a hearing before a Hearing Officer. The hearing will be conducted in accordance with the provisions of 24 CFR part 26, subpart A, except as modified by this section. Requests for hearing must be made within