

(2) Rent Supplement payments under section 101 of the Housing and Urban Development Act of 1965;

(3) Housing assistance payments under section 8 of the United States Housing Act of 1937 (with the exception of the programs described in 24 CFR part 882, subparts A, B, C and F, and in 24 CFR part 887, which are tenant-based programs);

(d) Sales of projects by the Secretary, including "all cash" sales.

[45 FR 54199, Aug. 14, 1980, as amended at 56 FR 50820, Oct. 9, 1991; 59 FR 31522, June 20, 1994]

§ 200.215 Definitions.

(a) *Affiliate*. Any person or business concern that directly or indirectly controls policy of a principal or has the power to do so is an affiliate. Persons and business concerns controlled by the same third party are also affiliates.

(b) *Felony*. A felony is any offense punishable by imprisonment for a term exceeding one year, but does not include any offense classified as a misdemeanor under the laws of a State and punishable by a term of imprisonment of two years or less.

(c) *Packager or Consultant*. A person or firm that furnishes or proposes to furnish advisory services in connection with the financing or construction of a project and the related HUD requirements. Such services may include, but are not limited to, the selection and negotiation of contracts with a general contractor, architect, attorney or management agent.

(d) *Participation Control Officer*. (See § 200.224)

(e) *Principal*. (1) An individual, joint venture, partnership, corporation, trust, nonprofit association, or any other public or private entity proposing to participate, or participating, in a project as sponsor, owner, prime contractor, Turnkey Developer, management agent, nursing home administrator or operator, packager, or consultant; and architects and attorneys who have any interest in the project other than an arms-length fee arrangement for professional services.

(2) The term principal also includes: (i) Any affiliates of a principal; (ii) if the principal is a partnership, all general partners, and each limited partner

having a 25 percent or more interest in the partnership; (iii) if the principal is a public or private corporation or governmental entity; the President, Vice-President, Secretary and Treasurer and any other executive officers who are directly responsible to the Board of Directors, or the equivalent thereof; all the directors; and each stockholder having a 10 percent or more interest.

(3) Specifically excepted from this definition of a principal are: (i) Parties whose sole interest is that of purchaser or owner of less than five individual unit(s) in the same condominium or cooperative development; (ii) parties whose sole interest is that of a tenant; and (iii) Public Housing Agencies.

(f) *Project*. A project is: (1) Five or more residential units covered by a single mortgage, loan or contract of assistance; (2) a hospital, group practice facility or nursing home; (3) cooperative and condominium developments; and (4) a subdivision being developed and financed with a mortgage under title X of the National Housing Act.

(g) *Review Committee*. (See §§ 200.224 and 200.93).

(h) *Risk*. In order to determine whether a participant's participation in a project would constitute an unacceptable risk, the following factors must be considered: Financial stability; previous performance in accordance with HUD statutes, regulations, and program requirements; general business practices; or other factors which indicate to the MPRC that the principal could not be expected to operate the project in a manner consistent with furthering the Department's purpose of supporting and providing decent, safe and affordable housing for the public.

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§ 200.217 Filing of previous participation certificate on prescribed form.

(a) A previous participation certificate on a form prescribed by the Assistant Secretary of Housing-Federal Housing Commissioner shall be completed by every principal in each of the following transactions and shall be filed with HUD at the times specified herein:

(1) Projects to be financed with mortgages insured under the National Housing Act (FHA)—With an Application for a Site Appraisal and Market Analysis Letter, Feasibility Letter, Conditional Commitment for Mortgage Insurance, or Firm Commitment for Mortgage Insurance, whichever Application is first filed;

(2) Projects to be financed pursuant to section 202 of the Housing Act of 1959 (Elderly and Handicapped)—With the Application for a Fund Reservation;

(3) Projects in which 20% or more of the units are to receive a subsidy as described under § 200.213(c)—With the first request for a reservation of funds for assistance payments;

(4) Purchase of a project subject to a mortgage insured or held by the Secretary—With the Application for Transfer of Physical Assets;

(5) Purchase of a Secretary-owned project—With the Bid to Purchase;

(6) Proposed substitution or addition of a principal, such as management agents or partners or proposed participation in a different capacity from that previously approved for the same project—Prior to the date that the proposed action or transfer is to become final; and

(7) Proposed acquisition by existing limited partner or stockholder of additional interest resulting in a total interest of at least 25 percent or 10 percent, respectively—Prior to the proposed acquisition.

(b) Certificates are not required for interests acquired by inheritance or by Court decree.

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§ 200.218 Who must certify and sign.

All principals must certify and sign the certificate personally as to their individual record and are responsible for its timely filing with the HUD Area Office in whose jurisdiction the project or proposal is located except:

(a) When a corporation is a principal all its officers, directors and principal stockholders need not individually sign, certify nor file the certificate when they all have the same record. When their previous participation records are the same the officer authorized to sign for the corporation

will list on the certificate the full names for all such principals connected with the corporation who do not elect to sign. Those principals who have a separate participation record outside that of their corporation must certify, sign and file. The objective is full disclosure.

(b) The Participation Control Officer is authorized to waive the requirement for signatures for good cause in cases where he finds that adequate provision has been made for full disclosure, and the signature is thereafter provided.

§ 200.219 Content of certification.

(a) Each principal who executes the certificate certifies that:

(1) The certificate contains a listing of every assisted or insured project of HUD, Farmers Home Administration and State or local government housing finance agencies in which the principal has been or is now a principal;

(2) For a period beginning 10 years prior to the date of the certificate under review and except as shown on the certificate:

(i) No mortgage on a project listed has ever been in default nor has mortgage relief been given;

(ii) There have been no defaults or noncompliances under any conventional construction contract or Turn-key contract of sale in connection with a public housing project;

(iii) There are no known unresolved findings raised as a result of HUD audits, management reviews or other governmental investigations;

(iv) There has been no suspension or termination of payments under any HUD assistance contract attributable to the fault or negligence of principal;

(v) The principal has not been convicted of a felony (See definitions § 200.215(b)) and is not presently the subject of a complaint or indictment charging a felony;

(vi) The principal has not been suspended, debarred, or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency;

(vii) The principal has not defaulted on an obligation covered by a surety or performance bond, and has not been