



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

November 30, 2011

MORTGAGEE LETTER 2011-38

**TO: ALL APPROVED MORTGAGEES
ALL HUD-APPROVED NONPROFIT ORGANIZATIONS**

SUBJECT: Secondary Financing Eligibility Requirements for IRC Section 115 Nonprofits

Rescission of Mortgagee Letter 2009-38

Mortgagee Letter 2009-38 announced that the Department of Housing and Urban Development allowed, on a temporary basis, nonprofit instrumentalities of government eligible for approval by the Federal Housing Administration (FHA) to include entities whose income is excluded from Federal taxation under section 115 of the Internal Revenue Code of 1986 (IRC) (Section 115 nonprofit instrumentalities of government). Eligible Section 115 nonprofit instrumentalities of government were placed on the FHA Nonprofit Organization Roster (Roster) and allowed to participate in single-family housing programs as providers of secondary financing. Mortgagee Letter 2009-38 also announced that the Department waived the voluntary board requirement at 24 CFR section 203.41(a)(5)(ii) for all nonprofit instrumentalities of government whose income is exempt or excluded from taxation under IRC sections 501(c)(3) and 115, respectively. **Mortgagee Letter 2009-38 is no longer in effect and is superseded, in its entirety, by this Mortgagee Letter.**

Tax Status for Nonprofit Instrumentalities: Eligibility of Section 115 Nonprofit Instrumentalities of Government

Effective through June 16, 2012, FHA is allowing nonprofit instrumentalities of government, whose income is excluded from the gross income pursuant to IRC section 115, to participate in FHA programs as providers of secondary financing.

While nonprofit organizations and nonprofit instrumentalities of government which are described in IRC section 501(c)(3) and which are exempt from taxation under IRC section 501(a) continue to be eligible for FHA approval for placement on the Roster and participation in FHA programs, this Mortgagee Letter announces that FHA may approve, Section 115 nonprofit instrumentalities of government for placement on the FHA Roster and for participation in FHA programs as providers of secondary financing.

A nonprofit instrumentality of government seeking placement on the FHA Roster and claiming that its income is excluded from gross income under IRC section 115 must provide FHA the following: (1) A Private Letter Ruling from the Internal Revenue Service which confirms that the nonprofit instrumentality's income is excluded from gross income under IRC section 115; *or* (2) A written statement from a corporate official (*e.g.*, Board President or General Counsel) or government official (*e.g.*, Mayor or County Executive) certifying that the nonprofit instrumentality's income is excluded from gross income under IRC section 115.

The policies and submission requirements contained in this Mortgagee Letter addressing the tax status of nonprofits apply solely to nonprofit instrumentalities of government, whose income is excluded for Federal tax purposes under IRC section 115, and which meet all other FHA requirements for placement on the FHA Roster as providers of secondary financing. In addition, solely for IRC section 115 nonprofit government instrumentalities, the related policies and submission requirements contained in this Mortgagee Letter supersede the policies and submission requirements addressing the tax-exempt status of nonprofit instrumentalities of government in Mortgagee Letters 09-38, 02-01, 00-08, 94-02, and HUD Handbook 4155.1, paragraph 5.C.4. These nonprofit instrumentalities of government must, however, meet all other requirements for placement on the FHA Roster as providers of secondary financing.

Voluntary Board Requirement

HUD is currently exempting Section 115 nonprofit instrumentalities of government from the voluntary board requirement effective through June 16, 2012. These nonprofit instrumentalities of government must meet all other requirements for placement on the FHA Roster as providers of secondary financing. Exemption from the voluntary board requirement will allow an IRC section 115 nonprofit instrumentality of government to have board members who are also employees of the government that controls the nonprofit instrumentality of government. Compensation, in addition to the employee's salary from the governmental body, nonprofit instrumentality, or any other party arising from the employee's serving on the board, is prohibited.

The provisions in this Mortgagee Letter regarding the voluntary board requirement apply solely to Section 115 nonprofit instrumentalities of government which meet all other FHA requirements for placement on the FHA Roster as providers of secondary financing. In addition, solely for IRC §115 nonprofit government instrumentalities, the provisions of this Mortgagee Letter regarding the voluntary board requirement supersede the policies and clarifications regarding voluntary boards in Mortgagee Letters 09-38, 02-01, 00-08, 94-2, and HUD Handbook 4155.1, paragraph 5.C.4. All other FHA requirements remain in effect.

The information collection and recordkeeping 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.

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

Sincerely,

/s/

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