

shall impair or limit the right to impose any sanction provided for by contract, including guaranty agreements with the Government National Mortgage Association.

(2) *Other Departmental sanctions.* Where an office of the Department is required by statute, regulation, or Executive Order to follow administrative sanction procedures that may differ from the requirements of this part, the requirements of the statute, regulation, or Executive Order shall take precedence. These alternative procedures include, but are not limited to: 24 CFR part 200 Previous Participation Review and Clearance procedures, 24 CFR part 25 Mortgage Review Board administrative actions, and 24 CFR part 570 Community Development Block Grant corrective and remedial actions.

10. In § 24.305, paragraph (d) is revised to read as follows:

§ 24.305 Causes for debarment.

* * * * *

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

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11. Section 24.313 is revised to read as follows:

§ 24.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(1) The information and argument should be addressed to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

(2) If the respondent does not contest the proposed debarment within the 30 day period, the proposed debarment shall become final.

(3) If the respondent desires a hearing, it shall submit a written request to the Debarment Docket Clerk within the 30-day period following receipt of the notice of proposed debarment.

(4) The parties may agree to engage in an alternative dispute resolution, including informal conference, mediation, conciliation, summary trial with binding decision, minitrial, or use of a settlement judge.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over

facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(i) Upon the agreement of the parties, the additional proceedings may be recorded using audiotape without transcription. The audiotape shall be made available at cost to the respondent.

(ii) [Reserved].

12. Section 24.314 is revised to read as follows:

§ 24.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(1) The debarring official may, in his or her discretion, refer actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, to a hearing officer or other official for review of the administrative record and appropriate findings. The hearing officer or other official shall issue such findings within 45 days after the referral, and the debarring official shall issue a decision within 15 days after the date of the findings, unless such periods are extended for good cause.

(2) [Reserved].

(b) *Additional proceedings necessary.*

(1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after

specifically determining them to be arbitrary and capricious or clearly erroneous.

(i) The debarring official may refer disputed material facts and issues of law to a hearing officer for findings of fact and conclusions of law.

(A) No appeal to the Secretary may be taken under §§ 26.24 through 26.26 of this title with respect to any order or decision by a hearing officer or other official.

(B) The debarring official shall provide the hearing officer or other official with all the information in the administrative record, including any information and argument submitted by the respondent. The administrative record and any documents admitted at the hearing shall constitute the exhibits in evidence.

(ii) Unless the parties mutually agree to extend this period, a proceeding before a hearing officer or other official shall commence within 45 days after referral of the case by the debarring official. The hearing officer or other official shall issue findings of fact within 30 days after the conclusion of such additional proceedings. The time limitations of this subparagraph may be extended upon issuance, by the debarring official, hearing officer or other official, of a written notice describing good cause for such extension.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to the disputed facts.

(i) Such decision shall be made within 15 days after the hearing officer or other official issues findings of fact.

(ii) [Reserved].

(c)(1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the