

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Secretary****24 CFR Parts 25, 26, and 202**

[Docket No. FR-3065-F-04]

RIN 2501-AB24

Mortgagee Review Board; Proceedings Before a Hearing Officer; Approval of Lending Institutions and Mortgagees; Technical Amendments**AGENCY:** Office of the Secretary, HUD.**ACTION:** Final rule; technical amendments.

SUMMARY: This rule changes the Department's regulations governing sanctions imposed by the Mortgagee Review Board. The rule also makes conforming changes to the regulations concerning HUD's hearing officers and approval of Title I lenders, consistent with the revisions herein and in the recent revisions to 24 CFR part 24. The changes to the Mortgagee Review Board actions are intended to follow more closely the statutory provisions set forth at 12 U.S.C. 1708(c). These revisions are necessary to comply with the President's directive to streamline agency operations throughout the executive branch. The revisions are also an element in the Government reinvention process at the Department.

EFFECTIVE DATE: August 31, 1995.

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SUPPLEMENTARY INFORMATION: Section 202(c) of the National Housing Act (12 U.S.C. 1708(c)) established the Mortgagee Review Board (the Board). Section 202(c)(4) directs the Board to "hold a hearing on the record" concerning certain sanctions it has taken against a mortgagee, if the mortgagee so requests within 30 days notice of the Board's action. However, the Department's regulations have delegated the Board's authority to hold hearings to hearing officers (administrative law judges and Board of Contract Appeals judges). These proceedings have proven extremely time-consuming and expensive. Accordingly, this rule provides for the Board to delegate its hearing authority

to a hearing official who will conduct informal hearings under stated time limitations, thereby streamlining the hearing process. The rule further provides that the hearing official may, at his or her discretion, refer matters to an administrative law judge or Board of Contract Appeals judge, or to another "independent" official for findings of fact. The term "independent" means that the other official will not be a member of the Board or employed within an office acting as an advisor to the Board as that term is described at § 25.4(b).

The rule also implements the 1992 amendments to section 202 (Pub. L. 102-550, approved October 28, 1992). These amendments limited the duration of a suspension issued by the Board to one year, unless extended for a period not longer than six months to protect the public interest, or unless extended with the mortgagee's agreement. The amendments also clarified that the term "mortgagee" includes a lender or loan correspondent approved under Title I of the National Housing Act.

In addition, the final rule reinstates a provision of 24 CFR 25.9 that the Department inadvertently deleted by a September 9, 1993 revision to the rule (58 FR 47379). This section (former § 25.9(x)) cited as grounds for an administrative action the failure by a mortgagee to remit, or timely remit, mortgage insurance premiums, loan insurance charges, late charges, or interest penalties to the Department. The final rule revises the current § 25.9(x) and moves the miscellaneous offense provision at § 25.9(w) to a more logical position at the end of § 25.9. The rule also restores provisions limiting discovery in § 25.8 that the Department inadvertently deleted in the proposed rule.

The rule also makes conforming changes to the Department's regulations at 24 CFR parts 26 and 202, governing hearing officers and Title I lenders, respectively, consistent with these revisions to the Board's regulations and revisions to 24 CFR part 24, published in the **Federal Register** June 26, 1995 (60 FR 33037, 33046).

Discussion of Public Comment

On December 20, 1994 (59 FR 65700) the Department published a proposed rule amending 24 CFR parts 25 and 26 of the Code of Federal Regulations. One comment was received, from the Administrative Conference of the United States (ACUS).

Comment: The commenter urged the Department to follow procedures similar to those proposed in Recommendation 95-2, "Debarment and Suspension from

Federal Programs," adopted by ACUS on January 18, 1995. ACUS Recommendation item II recommends that cases involving disputed issues of material fact be referred to administrative law judges, military judges, administrative judges of boards of contract appeals, or similarly independent hearing officers for hearings and preparation of (1) findings of fact, (2) a recommended decision, or (3) an initial decision, subject to agency appeal. Item II of the ACUS Recommendations also recommends that debarring officials be senior agency officials who are guaranteed sufficient independence to provide due process, and that such officials ensure that information used as the basis for a sanction appear in the administrative record of the decision.

Response: It should be noted that Board sanctions are substantially different from suspensions and debarments. Unlike those sanctions, which have Government-wide effect, the most severe Board sanction involves withdrawal of a mortgagee's license, previously granted by the Department, to participate in the insured mortgage programs of the Federal Housing Administration (FHA). Board sanctions are imposed only after the subject mortgagees have received advance notice of the allegations against them and an opportunity to respond to those allegations. A majority of the Board, composed of several of the Department's highest officials, must vote to impose a sanction. Considerable independence is thus statutorily guaranteed with respect to every Board action.

Furthermore, the governing statute provides, at section 202(c)(4)(B), that upon receipt of a request for a hearing "the Board shall hold a hearing on the record * * *." Accordingly, a hearing official must be designated by the Board, and all hearings must be recorded.

However, in response to this comment and to reflect comparable revisions to the Department's final rule on suspensions and debarments, published in the **Federal Register** on June 26, 1995, this rule was revised to adopt procedures similar to the first suggested hearing method in ACUS Recommendation Item II. Thus, a hearing official designated by the Board shall conduct hearings on Board sanctions, and may, at his or her discretion, refer factual disputes to an administrative law judge, member of the Department's Board of Contract Appeals, or other independent official for findings of fact.