

## § 25.7

address to which the response shall be sent. If the mortgagee fails to reply during such time period, the Board may make a determination without considering any comments of the mortgagee.

(b) *Mortgagee's response.* The mortgagee's response to the Board shall be in a format prescribed by the Secretary and shall not exceed 15 double-spaced typewritten pages. The response shall include an executive summary, a statement of the facts surrounding the matter, an argument and a conclusion. A more lengthy submission, including documents and other exhibits, may be simultaneously submitted to Board staff for review.

(Approved by the Office of Management and Budget under Control Number 2502-0450)

### § 25.7 Notice of administrative action.

Whenever the Board takes an action to issue a letter of reprimand, to place a mortgagee on probation, or to suspend or withdraw a mortgagee's approval, the Board shall promptly notify the mortgagee in writing of the determination. Except for a letter of reprimand, the notice shall describe the nature and duration of the administrative action, shall specifically state the violations, and shall set forth the findings of the Board. The notice shall inform the mortgagee of its right to a hearing, pursuant to § 25.8, regarding the administrative action (except for a letter of reprimand) and of the manner and time in which to request a hearing. A supplemental notice may be issued in the discretion of the Board to add or modify the reasons for the action.

[60 FR 39237, Aug. 1, 1995]

### § 25.8 Hearings and hearing request.

(a) *Hearing request.* A mortgagee that is issued a probation, suspension, or withdrawal action is entitled to a hearing on the record. The mortgagee shall submit its request for a hearing within 30 days of receiving the Board's notice of administrative action. The request shall be addressed to the Board Docket Clerk, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. The request shall specifically respond to the violations set forth in the notice of adminis-

## 24 CFR Subtitle A (4-1-98 Edition)

trative action. If the mortgagee fails to request a hearing within 30 days after receiving the notice of administrative action, the Board's action shall become final.

(b) *Procedural rules.* The hearing official shall hold a de novo hearing within 30 days of HUD's receipt of the mortgagee's request, unless the mortgagee requests a later hearing date. The mortgagee or its representative shall be afforded an opportunity to appear, submit documentary evidence, present witnesses, and confront any witness the agency presents. The parties shall not be allowed to present members of the Board as witnesses. At the mortgagee's request, a transcribed record of the hearing shall be made available at cost to the mortgagee.

(c) *Hearing location.* The hearing shall generally be held in Washington, DC. However, upon a showing of undue hardship or other cause, the hearing official may, in his or her discretion, order the hearing to be held in a location other than Washington, DC.

(d) *Hearing official's recommendation.* (1) The hearing official shall issue written findings and a recommended decision to the Board within 45 days after the conclusion of the hearing, unless the hearing official extends this period for good cause or refers a matter for findings of fact or other appropriate findings pursuant to paragraph (d)(2)(i) of this section. The findings and recommendation shall be based upon the facts as found, together with any information and argument submitted by the parties and any other information in the administrative record.

(2) *Referral to a hearing officer or other independent official.* (i) The hearing official may, at his or her discretion, refer disputed material facts to a hearing officer or other independent official for findings of fact. The hearing official may also, at his or her discretion, refer other issues to a hearing officer or other independent official for appropriate findings. The hearing official shall provide the parties with notice of the referral. The hearing official may reject the findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(ii) The provisions of part 26 of this subtitle A shall be applicable to proceedings before a hearing officer, with the following limitations:

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

(B) Discovery shall be limited to exclude requests for answers to interrogatories, requests for admissions, and production of documents that either do not pertain to the appealing mortgagee, or pertain to reviews or audits by the Department or administrative actions by the Board against mortgagees other than the appealing mortgagee. Members of the Board shall not be subject to deposition, nor shall they be required to testify at any hearing.

(iii) Proceedings before a hearing officer or other independent official shall commence within 45 days after referral by the hearing official, unless the parties agree to an extension of time. The hearing officer or other independent official shall issue the requested findings of fact or other appropriate findings to the hearing official within 30 days after the conclusion of such proceedings. The time limitations of this paragraph may be extended upon issuance of a written notice describing good cause for such extension.

(iv) The hearing official shall provide a recommended decision to the Board within 15 days after the findings are issued.

(v) [Reserved]

(e) *Decision by the Board.* The Board shall issue its decision within 15 days after the hearing official issues the recommended decision. The Board's decision shall be mailed to the mortgagee, and shall serve as the final agency action concerning the mortgagee.

[60 FR 39238, Aug. 1, 1995]

**§25.9 Grounds for an administrative action.**

One or more of the following violations by a mortgagee may result in an administrative action by the Board under §25.5. Except in cases where the Board's authority has been delegated in accordance with §25.2, the Board will consider, among other factors, the seriousness and extent of the violations, the degree of mortgagee responsibility

for the occurrences and any mitigating factors, in determining which administrative action, if any, is appropriate. Any administrative action imposed under §25.5 shall be based upon one or more of the following grounds:

(a) The transfer of an insured mortgage to non-approved mortgagee, except pursuant to 24 CFR 203.433 or 203.435;

(b) The failure of a mortgagee to segregate all escrow funds received from mortgagors on account of ground rents, taxes, assessments and insurance premiums, or failure to deposit these funds with one or more financial institutions in a special account or accounts that are fully insured by the Federal Deposit Insurance Corporation or by the National Credit Union Administration except as otherwise provided in writing by the Assistant Secretary for Housing—Federal Housing Commissioner;

(c) The use of escrow funds for any purpose other than that for which they are received;

(d) The termination of a mortgagee's supervision by a governmental agency;

(e) The failure of a nonsupervised mortgagee to submit the required annual audit report of its financial condition prepared in accordance with instructions issued by the Secretary within 90 days of the close of its fiscal year, or such longer period as the Assistant Secretary of Housing—Federal Housing Commissioner may authorize in writing prior to the expiration of 90 days;

(f) The payment by a mortgagee of a referral fee to any person or organization; or payment of any thing of value, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person, including but not limited to an attorney, escrow agent, title company, consultant, mortgage broker, seller, builder or real estate agent, if that person has received any other compensation from the mortgagor, the seller, the builder or any other person for services related to such transactions or from or related to the purchase or sale of the mortgaged property, except compensation paid for the actual performance of such