shall notify the Director of the Participation and Compliance Division in the Office of Housing of the scope of the limited denial of participation.

[60 FR 33051, June 26, 1995]

PART 25—MORTGAGEE REVIEW BOARD

§ 25.3 Definitions.

Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

Board. The Mortgagee Review Board. Hearing officer. An Administrative Law Judge or Board of Contract Appeals judge authorized by the Secretary, or by the Secretary’s designee, to issue findings of fact or other appropriate findings under §25.8(d)(2).

Hearing official. An official designated by the Board to conduct hearings under §25.8.

Lender. A financial institution as defined in paragraphs (a) and (b) of the definition of lender in §202.2 of this title.

Loan correspondent. A financial institution as defined in paragraph (c) of the definition of lender in §202.2 of this title.

Mortgagee. For purposes of the regulations in this part, the term “mortgagee” includes:

(1) The original lender under the mortgage, as that term is defined at sections 201(a) and 207(a)(1) of the National Housing Act (12 U.S.C. 1701(a), 1713(a)(1));
§ 25.4 Operation of the Mortgagee Review Board.

(a) Members. The Board consists of the following voting members: The Assistant Secretary for Housing—Federal Housing Commissioner who serves as chairperson; the General Counsel; the President of the Government National Mortgage Association (GNMA); the Assistant Secretary for Administration; the Chief Financial Officer of the Department; and, in cases involving violations of nondiscrimination requirements, the Assistant Secretary for Fair Housing and Equal Opportunity; or their designees.

(b) Advisors. The Inspector General or his or her designee, and the Director of the Office of Lender Activities and Land Sales Registration (or such other position as may be assigned such duties), and such other persons as the Board may appoint, shall serve as nonvoting advisors to the Board.

(c) Quorum. Four members of the Board or their designees shall constitute a quorum.

(d) Determination by the Board. Any administrative action taken by the Board shall be determined by a majority vote of the quorum.

§ 25.5 Administrative actions.

(a) General. The Board is authorized to take the following administrative actions: letter of reprimand, probation, suspension, withdrawal, or settlement agreement. These actions are described at 12 U.S.C. 1708(c)(3), and as further set out in this section.

(b) Letter of reprimand. A letter of reprimand shall be effective upon receipt of the letter by the mortgagee. Failure to comply with a directive in the letter of reprimand may result in any other administrative action under this part that the Board finds appropriate.

(c) Probation. Probation shall be effective upon receipt of the notice of probation by the mortgagee. Failure to comply with the terms of probation may result in any other administrative action under this part that the Board finds appropriate.

(d) Suspension. (1) Cause for suspension. The Board may issue a suspension if there is adequate evidence of violation(s) under §25.9, and if continuation of the mortgagee's HUD/FHA approval pending the completion of any audit, investigation, or other review, or other administrative or legal proceedings as may ensue, would not be in the public interest or in the best interests of HUD.

(ii) During the period of suspension, a lender or loan correspondent may not originate new Title I loans under its Title I Contract of Insurance or apply for a new Contract of Insurance.

(e) Withdrawal. (1) Effect of withdrawal. (i) During the period of withdrawal, HUD will not endorse any mortgage originated by the suspended mortgagee under the Title II program unless prior to the date of suspension:

(A) A firm commitment has been issued relating to any such mortgage; or

(B) A Direct Endorsement underwriter has approved the mortgagee for any such mortgage.

(ii) During the period of suspension, a lender or loan correspondent may not originate new Title I loans under its Title I Contract of Insurance or apply for a new Contract of Insurance.

(3) Effective date of suspension. A suspension issued pursuant to §25.6(c) is effective upon issuance. Any other suspension is effective upon receipt of the notice of suspension by the mortgagee.

(4) Withdrawal. (1) Effect of withdrawal. (i) During the period of withdrawal, HUD will not endorse any mortgage originated by the withdrawn mortgagee under the Title II program unless prior to the date of withdrawal:
(A) A firm commitment has been issued relating to any such mortgage; or
(B) A Direct Endorsement underwriter has approved the mortgagor for any such mortgage.

(ii) During the period of withdrawal, a lender or loan correspondent may not originate new Title I loans under its Title I Contract of insurance or apply for a new Contract of Insurance. The Board may limit the geographical extent of the withdrawal, or limit its scope (e.g., to either the single family or multifamily activities of a withdrawn mortgagee). Upon the expiration of the period of withdrawal, the mortgagee may file a new application for approval under 24 CFR part 202.

(2) Effective date of withdrawal. (i) If the Board determines that immediate action is in the public interest or in the best interests of the Department, then withdrawal shall be effective upon receipt of the Board's notice of withdrawal.

(ii) If the Board does not determine that immediate action is necessary according to paragraph (e)(2)(i) of this section, then withdrawal shall be effective either:
(A) Upon the expiration of the 30-day period specified in § 25.8, if the mortgagee has not requested a hearing; or
(B) Upon receipt of the Board’s decision under § 25.8, if the mortgagee requests a hearing.

§ 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.

§ 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
§ 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 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 30038, Aug. 1, 1995]
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 services as may be approved by the Assistant Secretary for Housing—Federal Housing Commissioner;
(g) Failure to comply with any agreement, certification, undertaking, or condition of approval listed on either a mortgagee’s application for approval or on an approved mortgagee’s branch office notification;
(h) Failure of an approved mortgagee to meet or maintain the applicable net worth, liquidity or warehouse line of credit requirements of 24 CFR part 202 pertaining to net worth, liquid assets, and warehouse line of credit or other acceptable funding plan;
(i) Failure or refusal of an approved mortgagee to comply with an order of the Board, the Secretary, the hearing official, hearing officer or other independent official to whom matters are referred under §25.8(d)(2).
(j) Violation of the requirements of any contract with the Department, or violation of the requirements set forth in any statute, regulation, handbook, mortgagee letter, or other written rule or instruction;
(k) Submission of false information to HUD in connection with any HUD/FHA insured mortgage transaction;
(l) Failure of a mortgagee to respond to inquiries from the Board;
(m) Indictment or conviction of a mortgagee or any of its officers, directors, principals or employees for an offense which reflects upon the responsibility, integrity, or ability of the mortgagee to participate in HUD/FHA programs as an approved mortgagee;
(n) Employing or retaining:
   (1) An officer, partner, director or principal at such time when such person was suspended, debarred, ineligible, or subject to a limited denial of participation under 24 CFR part 24 or otherwise prohibited from participation in HUD programs, where the mortgagee knew or should have known of the prohibition;
   (2) An employee who is not an officer, partner, director, or principal and who is or will be working on HUD/FHA program matters at a time when such person was suspended, debarred, ineligible, or subject to a limited denial of participation under 24 CFR part 24 or otherwise prohibited from participation in
§ 25.10

HUD programs, where the mortgagee knew or should have known of the prohibition;

(o) Violation by an approved mortgagee of the nondiscrimination requirements of the Equal Credit Opportunity Act (15 U.S.C. 1691-1691f), Fair Housing Act (42 U.S.C. 3601-3619), Executive Order 11063 (27 FR 11527), and all regulations issued pursuant thereto;

(p) Business practices which do not conform to generally accepted practices of prudent mortgagees or which demonstrate irresponsibility;

(q) Failure to cooperate with an audit or investigation by the Department's Office of Inspector General or an inquiry by HUD/FHA into the conduct of the mortgagee's HUD/FHA insured business or any other failure to provide information to the Secretary or a representative related to the conduct of the mortgagee's HUD/FHA business;

(r) Violation by an approved mortgagee of the requirements or prohibitions of the Real Estate Settlement Procedures Act (12 U.S.C. 2601-2617);

(s) Without regard to the date of the insurance of the mortgage, failure to service an insured mortgage in accordance with the regulations and any other requirements of the Secretary which are in effect at the time the act or omission occurs;

(t) Failure to administer properly an assistance payment contract under section 235 of the National Housing Act (12 U.S.C. 1715z);

(u) Failure to pay the application and annual fees required by 24 CFR part 202;

(v) The failure of a coinsuring mortgagee:

(1) To properly perform underwriting, servicing or property disposition functions in accordance with instructions and standards issued by the Commissioner;

(2) To make full payment to an investing mortgagee as required by 24 CFR part 204;

(3) To discharge responsibilities under a contract for coinsurance;

(4) To comply with restrictions concerning the transfer of a coinsured mortgage to an agency not approved under 24 CFR part 250;

(5) To maintain additional net worth requirements, as applicable;

(w) Failure to remit, or timely remit, mortgage insurance premiums, loan insurance charges, late charges, or interest penalties to the Department;

(x) Failure to submit a report required under 24 CFR 202.12(c) within the time determined by the Commissioner, or to commence or complete a plan for corrective action under that section within the time agreed upon by the Commissioner.

(y) Failure to properly perform underwriting functions in accordance with instructions and standards issued by the Department;

(z) Failure to fund mortgage loans or any other misuse of mortgage loan proceeds;

(aa) Permitting the use of strawbuyer mortgagors in an insured mortgage transaction where the mortgagee knew or should have known of such use of strawbuyers;

(bb) Breach by the mortgagee of a fiduciary duty owed by it to any person as defined in § 25.3, including GNMA and the holder of any mortgage-backed security guaranteed by GNMA, with respect to an insured loan or mortgage transaction.

(cc) Violation by a Title I lender or loan correspondent of any of the applicable provisions of this section or 24 CFR 202.11(a)(2).

(dd) Failure to pay any civil money penalty, but only after all administrative appeals requested by the mortgagee have been exhausted.

(ee) Any other reason the Board or the Secretary determines to be so serious as to justify an administrative sanction.

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


§ 25.10 Publication in Federal Register of actions.

The Secretary shall publish, in the Federal Register, a description of and the cause for each administrative action taken by the Board against a mortgagee. Such publication shall be
made quarterly or more frequently in the discretion of the Secretary.

§ 25.11 Notification to other agencies.
Whenever the Board has taken any discretionary action to suspend and/or withdraw the approval of a mortgagee, the Secretary shall provide prompt notice of the action and a statement of the reasons for the action to the Secretary of Veterans Affairs; the chief executive officer of the Federal National Mortgage Association; the chief executive officer of the Federal Home Loan Mortgage Corporation; the Administrator of the Farmers Home Administration; the Comptroller of the Currency, if the mortgagee is a National Bank or District Bank or subsidiary or affiliate of such a bank; the Board of Governors of the Federal Reserve System, if the mortgagee is a State bank that is a member of the Federal Reserve System or a subsidiary or affiliate of such a bank, or a bank holding company or a subsidiary or affiliate of such a company; the Board of Directors of the Federal Deposit Insurance Corporation if the mortgagee is a State bank that is not a member of the Federal Reserve System, or is a subsidiary or affiliate of such a bank; and the Director of the Office of Thrift Supervision, if the mortgagee is a Federal or State savings association or a subsidiary or affiliate of a savings association.

§ 25.12 Civil money penalties.
The Board is authorized pursuant to section 536 of the National Housing Act (12 U.S.C. 1735(f)-14) to impose civil money penalties on mortgagees and Title I lenders, as set forth in 24 CFR part 30. The violations for which a civil money penalty may be imposed are listed at 24 CFR 30.320. Hearings to challenge the imposition of civil money penalties shall be conducted according to the applicable rules of 24 CFR part 30.

§ 25.13 Notifying GNMA of withdrawal actions.
When the Board issues a notice of violation that could lead to withdrawal of a mortgagee's approval, or is notified by GNMA of an action that could lead to withdrawal of GNMA approval, the Board shall proceed in accordance with 12 U.S.C. 1708(d).

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

[61 FR 685, Jan. 9, 1996]

§ 25.14 Prohibition against modification of Board orders.
No hearing official, hearing officer, or other independent official before whom proceedings are conducted under § 25.8 shall modify or otherwise disturb in any way an order or notice by the Board.


§ 25.15 Retroactive application of Board regulations.
Limitations on participation in HUD mortgage insurance programs proposed or imposed prior to August 12, 1992, under an ancillary procedure shall not be affected by this part. This part shall apply to sanctions initiated after the effective date of the Department of Housing and Urban Development Reform Act of 1989 (December 15, 1989) regardless of the date of the cause giving rise to the sanction.


§ 25.17 [Reserved]