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General Counsel shall so advise the employee and no further action on the employee's request shall be taken.

(g) In all instances except those where the Department of Justice has non-concurred in the request, the General Counsel shall forward for decision to the Secretary or his or her designee the employee's request, the recommendation of the head of the employee's principal operating component, the views of the Department of Justice, and the General Counsel's recommendation.

(h) Any payment under this part, either to indemnify a Department employee or to settle a personal damage claim, is contingent upon the availability of appropriated funds of the Department that are permitted by law to be utilized for this purpose.

PART 20—OFFICE OF HEARINGS AND APPEALS

Sec.

20.1 Establishment of the Office of Hearings and Appeals.

20.3 Location, organization, and officer qualifications.

20.5 Jurisdiction of Office of Appeals.

AUTHORITY: 42 U.S.C. 3535(d).

SOURCE: 72 FR 53878, Sept. 20, 2007, unless otherwise noted.

§ 20.1 Establishment of the Office of Hearings and Appeals.

There is established in the Office of the Secretary the Office of Hearings and Appeals.

§ 20.3 Location, organization, and officer qualifications.

(a) *Location.* The Office of Hearings and Appeals is located at 1707 H Street, NW, Eleventh Floor, Washington, DC 20006. The telephone number of the Office of Hearings and Appeals is (202) 254-0000. Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339. The facsimile number is (202) 254-0011.

(b) *Organization.* The Office of Hearings and Appeals consists of two divisions: the Office of Administrative Law Judges and the Office of Appeals. Its administrative activities are super-

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vised by the Director of the Office of Hearings and Appeals.

(c) *Officer qualifications.* The Director, Administrative Judges, and Administrative Law Judges of the Office of Hearings and Appeals shall be attorneys at law duly licensed by any state, commonwealth, territory, or the District of Columbia.

§ 20.5 Jurisdiction of Office of Appeals.

The Office of Appeals shall, consistent with statute and regulation, have jurisdiction over matters assigned to it by the Secretary or designee. Determinations shall have the finality provided by the applicable statute, regulation, or agreement.

PART 21—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Subpart A—Purpose and Coverage

Sec.

21.100 What does this part do?

21.105 Does this part apply to me?

21.110 Are any of my federal assistance awards exempt from this part?

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Subpart C—Requirements for Recipients Who Are Individuals

21.300 What must I do to comply with this part if I am an individual recipient?

21.301 [Reserved]

Office of the Secretary, HUD

§ 21.200

Subpart D—Responsibilities of HUD Awarding Officials

21.400 What are my responsibilities as a HUD awarding official?

Subpart E—Violations of This Part and Consequences

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21.670 Suspension.

AUTHORITY: 41 U.S.C. 701; 42 U.S.C. 3535(d).

SOURCE: 68 FR 66557, 66594, Nov. 26, 2003, unless otherwise noted.

Subpart A—Purpose and Coverage

§ 21.100 What does this part do?

This part carries out the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq., as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

§ 21.105 Does this part apply to me?

(a) Portions of this part apply to you if you are either—

- (1) A recipient of an assistance award from the Department of Housing and Urban Development; or
(2) A(n) HUD awarding official. (See definitions of award and recipient in §§ 21.605 and 21.660, respectively.)

(b) The following table shows the subparts that apply to you:

Table with 2 columns: 'If you are . . .' and 'see subparts . . .'. Rows include: (1) A recipient who is not an individual (A, B and E), (2) A recipient who is an individual (A, C and E), (3) A(n) HUD awarding official (A, D and E).

§ 21.110 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award that the Secretary or designee determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

§ 21.115 Does this part affect the Federal contracts that I receive?

It will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 21.510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

Subpart B—Requirements for Recipients Other Than Individuals

§ 21.200 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to—

- (1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 21.205 through 21.220); and

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(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § 21.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § 21.230).

§ 21.205 What must I include in my drug-free workplace statement?

You must publish a statement that—

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, he or she:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

§ 21.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in § 21.205 be given to each employee who will be engaged in the performance of any Federal award.

§ 21.215 What must I include in my drug-free awareness program?

You must establish an ongoing drug-free awareness program to inform employees about—

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

§ 21.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as

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described in § 21.205 and an ongoing awareness program as described in § 21.215, you must publish the statement and establish the program by the time given in the following table:

If . . .	then you . . .
(a) The performance period of the award is less than 30 days.	must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.
(b) The performance period of the award is 30 days or more.	must have the policy statement and program in place within 30 days after award.
(c) You believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program.	may ask the HUD awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the awarding official.

§ 21.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § 21.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must—

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either—

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

§ 21.230 How and when must I identify workplaces?

(a) You must identify all known workplaces under each HUD award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces—

(1) To the HUD official that is making the award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by HUD officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (*e.g.*, all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the HUD awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the award, you must inform the HUD awarding official.

Subpart C—Requirements for Recipients Who Are Individuals

§ 21.300 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving a(n) HUD award, if you are an individual recipient, you must agree that—

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity, you will report the conviction:

(1) In writing.

(2) Within 10 calendar days of the conviction.

(3) To the HUD awarding official or other designee for each award that you currently have, unless § 21.301 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must include the identification number(s) of each affected award.

§ 21.301 [Reserved]

Subpart D—Responsibilities of HUD Awarding Officials

§ 21.400 What are my responsibilities as a(n) HUD awarding official?

As a(n) HUD awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in—

(a) Subpart B of this part, if the recipient is not an individual; or

(b) Subpart C of this part, if the recipient is an individual.

Subpart E—Violations of this Part and Consequences

§ 21.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the Secretary or designee determines, in writing, that—

(a) The recipient has violated the requirements of subpart B of this part; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

§ 21.505 How are violations of this part determined for recipients who are individuals?

An individual recipient is in violation of the requirements of this part if

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the Secretary or designee determines, in writing, that—

- (a) The recipient has violated the requirements of subpart C of this part; or
- (b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

§21.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in §21.500 or §21.505, the Department of Housing and Urban Development may take one or more of the following actions—

- (a) Suspension of payments under the award;
- (b) Suspension or termination of the award; and
- (c) Suspension or debarment of the recipient under 2 CFR part 2424, for a period not to exceed five years.

[68 FR 66557, 66594, Nov. 26, 2003; 69 FR 11314, Mar. 10, 2004, as amended at 72 FR 73491, Dec. 27, 2007]

§21.515 Are there any exceptions to those actions?

The Secretary may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the Secretary determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

Subpart F—Definitions

§21.605 Award.

Award means an award of financial assistance by the Department of Housing and Urban Development or other Federal agency directly to a recipient.

(a) The term award includes:

- (1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.
- (2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the governmentwide rule 24 CFR part 85 that implements OMB Circular A-102

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and specifies uniform administrative requirements.

(b) The term award does not include:

- (1) Technical assistance that provides services instead of money.
- (2) Loans.
- (3) Loan guarantees.
- (4) Interest subsidies.
- (5) Insurance.
- (6) Direct appropriations.
- (7) Veterans' benefits to individuals (*i.e.*, any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

[68 FR 66557, 66594, Nov. 26, 2003; 69 FR 11314, Mar. 10, 2004, as amended at 72 FR 73491, Dec. 27, 2007]

§21.610 Controlled substance.

Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

§21.615 Conviction.

Conviction means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

§21.620 Cooperative agreement.

Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in §21.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

§21.625 Criminal drug statute.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

§ 21.630 Debarment.

Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Non-procurement), that implements Executive Order 12549 and Executive Order 12689.

§ 21.635 Drug-free workplace.

Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

§ 21.640 Employee.

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including—

- (1) All direct charge employees;
- (2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and
- (3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (*e.g.*, volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).

§ 21.645 Federal agency or agency.

Federal agency or agency means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Ex-

ecutive Office of the President), or any independent regulatory agency.

§ 21.650 Grant.

Grant means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship—

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

§ 21.655 Individual.

Individual means a natural person.

§ 21.660 Recipient.

Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

§ 21.665 State.

State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 21.670 Suspension.

Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Non-procurement), that implements Executive Order 12549 and Executive Order

12689. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

PART 24—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

AUTHORITY: 42 U.S.C. 3535(d).

§ 24.1 Debarment and Suspension (Nonprocurement).

The policies, procedures, and requirements for debarment, suspension, and limited denial of participation are set forth in 2 CFR part 2424.

[72 FR 73491, Dec. 27, 2007]

PART 25—MORTGAGEE REVIEW BOARD

Sec.

- 25.1 Scope of rules in this part.
- 25.2 Establishment of Board.
- 25.3 Definitions.
- 25.4 Operation of the Mortgagee Review Board.
- 25.5 Administrative actions.
- 25.6 Notice of violation.
- 25.7 Notice of administrative action.
- 25.8 Hearings and hearing request.
- 25.9 Grounds for an administrative action.
- 25.10 Publication in FEDERAL REGISTER of actions.
- 25.11 Notification to other agencies.
- 25.12 Civil money penalties.
- 25.13 Notifying GNMA of withdrawal actions.
- 25.14 Prohibition against modification of Board orders.
- 25.15 Retroactive application of Board regulations.
- 25.17 [Reserved]

AUTHORITY: 12 U.S.C. 1708(c), 1708(d), 1709(s), 1715b and 1735(f)-14; 42 U.S.C. 3535(d).

SOURCE: 57 FR 31051, July 13, 1992, unless otherwise noted.

§ 25.1 Scope of rules in this part.

The rules in this part are applicable to the operation of the Mortgagee Review Board and to proceedings arising from administrative actions of the Mortgagee Review Board.

§ 25.2 Establishment of Board.

The Mortgagee Review Board (the Board) was established in the Federal

Housing Administration, which is in the Office of the Assistant Secretary for Housing—Federal Housing Commissioner, by section 202(c)(1) of the National Housing Act (12 U.S.C. 1708(c)(1)), as added by section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989). Except as limited by this part, the Board shall exercise all of the functions of the Secretary with respect to administrative actions against mortgagees and lenders and such other functions as are provided in this part. The Board may, in its discretion, approve the initiation of a suspension or debarment action against a mortgagee or lender by any Suspending or Debarring Official under 24 CFR part 2424. The Board shall have all powers necessary and incident to the performance of these functions. The Board may redelegate its authority to review submissions and conduct hearings under § 25.8. The Board may also redelegate its authority to impose administrative sanctions on the grounds specified in §§ 25.9 (e), (h), and (u), and to take all other nondiscretionary acts. With respect to actions taken against Title I lenders and loan correspondents, the Board may redelegate its authority to take administrative actions for failure to remain in compliance with the requirements for approval in 24 CFR 202.5(i), 202.5(n), 202.7(b)(4), 202.8(b)(1) and 202.8(b)(3).

[60 FR 39237, Aug. 1, 1995, as amended at 62 FR 20081, Apr. 24, 1997; 72 FR 73492, Dec. 27, 2007]

§ 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 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