

(8) Failure to comply with any agreement, certification, undertaking, or condition of approval listed in a MAP lender's application for approval;

(9) Noncompliance with any requirement or directive of the MAP Lender Review Board;

(10) Violation of the requirements of any contract with HUD, or violation of the requirements in any statute or regulation;

(11) Submission of false information, or a false certification, to HUD in connection with any MAP mortgage transaction;

(12) Failure of a MAP lender to respond in a timely manner to inquiries from the MAP Lender Review Board in accordance with this subpart;

(13) Indictment or conviction of a MAP lender or any of its officers, directors, principals, or employees for an offense that reflects on the responsibility, integrity, or ability of the lender to participate in the MAP initiative;

(14) Employing or retaining an officer, partner, director, or principal at the time when the person was suspended, debarred, ineligible, or subject to an LDP under 2 CFR part 2424, or otherwise prohibited from participation in HUD programs, when the MAP lender knew or should have known of the prohibition;

(15) Employing or retaining 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 that person was suspended, debarred, ineligible, or subject to an LDP under 2 CFR part 2424, or otherwise prohibited from participation in HUD programs, when the MAP lender knew or should have known of the prohibition;

(16) Failure to cooperate with an audit or investigation by the HUD Office of Inspector General or an inquiry by HUD into the conduct of the MAP lender's FHA-insured loans; and

(17) Failure to fund MAP mortgage loans or any misuse of mortgage loan proceeds.

[70 FR 43242, July 26, 2005, as amended at 72 FR 73494, Dec. 27, 2007]

§ 200.1535 MAP Lender Review Board.

(a) *Authority*—(1) *Sanctions*. The MAP Lender Review Board (or Board) is au-

thorized to impose appropriate sanctions on a MAP lender after:

(i) Conducting an impartial review of all information and documentation submitted to the Board; and

(ii) Making factual determinations that there has been a violation of MAP requirements.

(2) *Settlement agreements*. The Board is authorized to approve settlement agreements in accordance with § 200.1525 of any matter pending before the Board.

(3) *Extensions*. The Board is authorized to extend, on its own initiative or for good cause at the written request of a MAP lender, any time limit otherwise applicable under this section. Notice of any such extension shall be timely provided to a MAP lender.

(b) *Notice of violation*. Before the Board reviews a matter for consideration of a sanction, the Board's Chairman will issue written notice of violation to the MAP lender's contact person as listed on the Multifamily MAP Web site. The notice is sent by overnight delivery and must be signed for by an employee of the MAP lender upon receipt. The notice:

(1) Informs the lender that the Board is considering a specific violation;

(2) States the specific facts alleged concerning the violation, with citation to the HUD requirements that have been violated;

(3) Includes as attachments copies of all documents evidencing the violation and upon which the Board will rely in reaching a decision;

(4) Provides the lender with the opportunity to request in writing, within 15 business days after the date of the issuance of the notice, to:

(i) Meet for an informal conference with the Board in person or by video conference using HUD facilities at Headquarters or one of HUD's field offices; and

(ii) Present written evidence and any other relevant information at the conference;

(5) Requires a written response to be submitted to the Board by a date specified within the notice;

(6) Provides the street address, email address, or facsimile (FAX) number for

purposes of receiving the lender's request for an informal conference and written response; and

(7) Is made part of the administrative record of the Board's decision of the matter.

(c) *Response to notice.* (1) The MAP lender's written response required by the notice of violation may not exceed 15 double-spaced typewritten pages and must include an executive summary, a statement of the facts, an argument, and a conclusion. The response and supporting documentation must be submitted in triplicate.

(2) Failure to respond by the dates specified within the notice may result in a determination by the Board without conducting an informal conference with the MAP lender and without consideration of any written response submitted by the MAP lender.

(d) *Informal conference.* (1) The Board will schedule an informal conference and notify the lender of the time and place of the conference, if one is requested.

(2) At the conference, the Board will meet with the lender or its designees and HUD staff to review documentary evidence and presentations by both sides.

(3) Oral statements made at the informal meeting will not be considered as part of the administrative record of the Board's determination, except:

(i) The Board may note for the record and consider voluntary admissions, made by the lender or a representative of the lender, of any element of the violation charged;

(ii) Statements substantiated by any additional documents or evidence submitted in accordance with paragraphs (e)(1) or (e)(3) of this section; and

(iii) Transcripts prepared and submitted in accordance with paragraph (e)(2) of this section.

(e) *Post-conference submissions.* (1) Any additional documents, evidence, or written arguments relevant to the notice of violation and the informal conference that the lender or HUD staff wish to present to the Board, must be presented within five business days after date of the informal conference.

(2) No transcript of the informal conference will be made, unless the lender elects to have a transcript made by a

certified court reporter at its own expense. If the lender elects to have a transcript made, the lender must provide three copies of the transcript to HUD within five business days after the date of the informal conference. The transcript will not become a part of the administrative record of the Board's decision unless it is submitted within the required five-day period frame.

(3) Following the receipt of any post-conference submissions, the Board may request or permit additional documents or evidence to be submitted within a period set by the Board for inclusion in the administrative record.

(f) *Board action.* (1) The Board will confer to consider the evidence included in the administrative record and make a final decision concerning the matter. Any record of confidential communications between and among Board members at this stage of the proceedings is privileged from disclosure and will not be regarded as a part of the administrative record of any matter.

(2) In determining what action is appropriate concerning the matter, the Board considers, among other factors:

(i) The seriousness and the extent of the violation;

(ii) Any history of prior offenses;

(iii) Deterrence of future violations;

(iv) Any inappropriate benefits received by the MAP lender;

(v) Potential inappropriate benefit to other persons; and

(vi) Any mitigating factors.

(3) Board decisions will be determined by majority vote.

(g) *Notice of action.* (1) The Board will issue its final decision within 10 business days after the date of the informal conference or the expiration of any period allowed for the submission of documents and evidence, whichever is later.

(2) The Board will notify the MAP lender of its final decision by overnight delivery of a written notice of the final decision to the MAP lender's contact person as listed on the Multifamily MAP Web site. The Board will also notify HUD field offices of its final decision.

(3) The final decision finds that a violation either does, or does not, exist. If

a violation is found to exist, the final decision:

- (i) States the violation and any factual findings of the Board;
- (ii) States the nature and duration of the sanction;
- (iii) Informs the MAP lender of its right to an appeal conference and identifies the appeals official to be contacted; and
- (iv) May add to or modify the violation as stated in the initial notice of violation.

§ 200.1540 Imminent harm notice of action.

The Board may issue an imminent harm notice of action to terminate a MAP lender, or to place a MAP lender on probation or suspension without advance notice to the MAP lender in those instances where the Board determines there exists a need to protect the financial interest of HUD from imminent harm. In all such instances, the Board shall notify the lender of the Board's decision promptly and give the reasons for the decision in accordance with § 200.1535(g)(2) and (3). The lender shall have the right to submit materials to the Board and to appear before the Board to seek prompt reconsideration of the Board's decision in accordance with the procedures of § 200.1535.

§ 200.1545 Appeals of MAP Lender Review Board decisions.

(a) *Request for appeal.* Whenever the Board imposes a sanction of probation, suspension, or termination against a MAP lender, the lender may request, in writing, an appeal conference before the appeals official. The MAP lender must deliver the written request for an appeal to the appeals official within 10 business days after the date noted on the notice of action or the right to an appeal is deemed waived. Participation in the appeal process under this section is not a prerequisite to filing an action for judicial review under the Administrative Procedure Act.

(b) *Appeals Official.* The appeals official must be an individual who has not been previously involved with the proceedings or settlement discussions at issue.

(c) *Notice of action in effect.* The notice of action issued by the Board re-

mains in effect while the appeal is pending.

(d) *Scheduling of appeal.* (1) Upon receipt of the request for an appeal, the appeals official will promptly notify the MAP lender of the time and place of the appeal conference. The appeal conference will be held within 10 business days after receipt of the MAP lender's appeal request, except as provided in paragraph (d)(2) of this section.

(2) A MAP lender may request, and the appeals official may agree, to have an appeal conference held more than 10, but not more than 30 business days after the date of the lender's request for an appeal.

(e) *Scope of appeal.* The appeals official may consider information included in the administrative record and any new information presented at the appeal conference that is substantiated in accordance with paragraph (f) of this section. In addition, the appeals official may consider voluntary admissions by the lender or a representative of the lender of any element of the violation charged.

(f) *Additional documents—(1) Transcript.* No transcript of the appeal conference will be made, unless the MAP lender elects to have a transcript made by a certified court reporter at its own expense. If the lender elects to have a transcript made, it must provide three copies of the transcript to the appeals official within five business days after the date of the appeal conference.

(2) *Other documents.* Any additional, relevant documents or written arguments that the MAP lender wishes to present to the appeals official must be presented within five business days after the date of the appeal conference.

(g) *Determination of appeal.* Within 10 business days after the date of the appeal conference or the expiration of the period allowed for the submission of documents and written arguments, whichever is later, the appeals official will make a written determination to confirm, modify, or overturn the Board's decision and notice of action. If the appeals official overturns the Board's decision, the lender shall immediately return to an active status as