

service of the appeal, then the initial determination shall be the final agency action.

(2) *Exception for cases brought under the Program Fraud Civil Remedies Act.* Where a Secretarial appeal has been timely made in a case brought under the Program Fraud Civil Remedies Act, the Secretary, or designee, shall issue a written determination within 30 days after receipt of appeal and shall serve it upon the parties to the hearing. The written decision of the Secretary shall be the final agency action. If the Secretary, or designee, does not act upon the appeal of an initial decision within 30 days of service of the appeal, the initial decision shall become final and the Respondent will be served with a statement describing the right to seek judicial review, if any.

§ 26.53 Exhaustion of administrative remedies.

In order to fulfill the requirement of exhausting administrative remedies, a party must seek Secretarial review under § 26.52 prior to seeking judicial review of any initial decision issued under subpart B of this part.

§ 26.54 Judicial review.

Judicial review shall be available in accordance with applicable statutory procedures and the procedures of the appropriate federal court.

§ 26.55 Collection of civil penalties and assessments.

Collection of civil penalties and assessments shall be in accordance with applicable statutory provisions.

§ 26.56 Right to administrative offset.

The amount of any penalty or assessment that has become final under § 26.50 or § 26.52, or for which a judgment has been entered after action under § 26.54 or § 26.55, or agreed upon in a compromise or settlement among the parties, may be collected by administrative offset under 31 U.S.C. 3716 or other applicable law. In Program Fraud Civil Remedies Act matters, an administrative offset may not be collected against a refund of an overpayment of federal taxes then or later owing by the United States to the Respondent.

PART 27—NONJUDICIAL FORECLOSURE OF MULTIFAMILY AND SINGLE FAMILY MORTGAGES

Subpart A—Nonjudicial Foreclosure of Multifamily Mortgages

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- 27.100 Purpose, scope and applicability.
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AUTHORITY: 12 U.S.C. 1715b, 3701–3717, 3751–3768; 42 U.S.C. 1452b, 3535(d).

SOURCE: 61 FR 48548, Sept. 13, 1996, unless otherwise noted.

Subpart A—Nonjudicial Foreclosure of Multifamily Mortgages

§ 27.1 Purpose.

The purpose of this subpart is to implement requirements for the administration of the Multifamily Mortgage Foreclosure Act of 1981 (the Act) (12 U.S.C. 3701–3717), that clarify, or are in addition to, the requirements contained in the Act, which are not republished here and must be consulted in conjunction with the requirements of

§ 27.2

this subpart. The Act creates a uniform Federal remedy for foreclosure of multifamily mortgages. Under a delegation of authority published on February 5, 1982 (47 FR 5468), the Secretary has delegated to the HUD General Counsel his powers under the Act to appoint a foreclosure commissioner or commissioners and to substitute therefor, to fix the compensation of commissioners, and to promulgate implementing regulations.

§ 27.2 Scope and applicability.

(a) Under the Act and this subpart, the Secretary may foreclose on any defaulted Secretary-held multifamily mortgage encumbering real estate in any State. The Secretary may use the provisions of these regulations to foreclose on any multifamily mortgage regardless of when the mortgage was executed.

(b) The Secretary may, at the Secretary's option, use other procedures to foreclose defaulted multifamily mortgages, including judicial foreclosure in Federal court and nonjudicial foreclosure under State law. This subpart applies only to foreclosure procedures authorized by the Act and not to any other foreclosure procedures the Secretary may use.

§ 27.3 Definitions.

The definitions contained in the Act (at 12 U.S.C. 3702) shall apply to this subpart, in addition to and as further clarified by the following definitions. As used in this subpart:

General Counsel means the General Counsel of the Department of Housing and Urban Development;

Multifamily mortgage does not include a mortgage covering a property on which there is located a one- to four-family residence, except when the one- to four-family residence is subject to a mortgage pursuant to section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), or section 811 (42 U.S.C. 8013) of the National Affordable Housing Act. The definition of multifamily mortgage also includes a mortgage taken by the Secretary in connection with the previous sale of the project by the Secretary (purchase money mortgage).

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§ 27.5 Prerequisites to foreclosure.

Before commencement of a foreclosure under the Act and this subpart, HUD will provide to the mortgagor an opportunity informally to present reasons why the mortgage should not be foreclosed. Such opportunity may be provided before or after the designation of the foreclosure commissioner but before service of the notice of default and foreclosure.

§ 27.10 Designation of a foreclosure commissioner.

(a) When the Secretary determines that a multifamily mortgage should be foreclosed under the Act and this subpart, the General Counsel will select and designate one or more foreclosure commissioners to conduct the foreclosure and sale. The method of selection and determination of the qualifications of the foreclosure commissioner shall be at the discretion of the General Counsel, and the execution of a designation pursuant to paragraph (b) of this section shall be conclusive evidence that the commissioner selected has been determined to be qualified by the General Counsel.

(b) After selection of a foreclosure commissioner, the General Counsel shall designate the commissioner in writing to conduct the foreclosure and sale of the particular multifamily mortgage. The written designation shall be duly acknowledged and shall state the name and business or residential address of the commissioner and any other information the General Counsel deems necessary. The designation shall be effective upon execution by the General Counsel or his designate. Upon receipt of the designation, the commissioner shall demonstrate acceptance by signing the designation and returning a signed copy to the General Counsel.

(c) The General Counsel may at any time, with or without cause, designate a substitute commissioner to replace a previously designated commissioner. Designation of a substitute commissioner shall be in writing and shall contain the same information and be made effective in the same manner as the designation of the original commissioner. Upon designation of a substitute commissioner, the substitute