

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 25 and 30**

[Docket No. FR-4308-I-01]

RIN 2501-AC44

Amendments to HUD's Mortgagee Review Board and Civil Money Penalty Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule makes conforming changes to HUD regulations to reflect statutory changes made by the Multifamily Assisted Housing Reform and Affordability Act of 1997 (the Multifamily Reform Act). Among other amendments, the Multifamily Reform Act provides that a suspension issued by the HUD Mortgagee Review Board is effective, without previous 30-day written notice of violation to the mortgagee, if there is sufficient evidence that immediate action is required to protect the financial interests of HUD or the public. The Multifamily Reform Act also expanded the list of persons and types of violations subject to a civil money penalty under HUD's insured housing programs. The interim rule also makes three clarifying, non-substantive amendments to these regulations. The first clarifies under what conditions HUD's Mortgagee Review Board may issue a suspension. The second amendment clarifies the effect of a suspension or withdrawal issued by the Board. The third clarifies that the Assistant Secretary for Public and Indian Housing may initiate a civil money penalty under the section 184 Indian housing loan guarantee program.

DATES: *Effective Date:* March 24, 2000. *Comments Due Date:* April 24, 2000.

FOR FURTHER INFORMATION CONTACT:

Dane Narode, Deputy Chief Counsel for Administrative Proceedings, Departmental Enforcement Center, Room B-133, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708-2350 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:**I. The Multifamily Assisted Housing Reform and Affordability Act of 1997**

On October 27, 1997, President Clinton signed into law the Multifamily Assisted Housing Reform and Affordability Act of 1997 (Title V of the

Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998) (Public Law 105-65) (the "Multifamily Reform Act" or "Act"). The Multifamily Reform Act made several amendments to strengthen HUD's enforcement authority under the National Housing Act (12 U.S.C. 1701 *et seq.*), which establishes the statutory framework for HUD's insured housing programs. These programs are administered by HUD's Office of Housing-Federal Housing Administration (FHA).

Among other amendments, the Multifamily Reform Act provides that suspensions issued by the HUD Mortgagee Review Board are effective, without previous 30-day written notice of violation to the mortgagee, if there is sufficient evidence that immediate action is required to protect the financial interests of HUD or the public. The Multifamily Reform Act also expanded the list of persons and types of violations subject to a civil money penalty under HUD's FHA programs.

II. This Interim Rule—Implementing the Multifamily Reform Act**A. General**

This interim rule updates HUD's FHA enforcement regulations to reflect the statutory amendments described above. Specifically, the interim rule amends the regulations at 24 CFR part 25 (which establishes the procedures governing HUD's Mortgagee Review Board) and 24 CFR part 30 (which implements HUD's civil money penalty provisions). The statutory amendments were effective upon enactment of the Multifamily Reform Act. This interim rule merely conforms HUD's FHA enforcement regulations to reflect the amended provisions of the National Housing Act. Nonetheless, HUD is issuing these amendments on an interim basis, and invites public comment on the regulatory amendments made by this interim rule. These regulatory amendments are described below:

B. Section 551 of the Multifamily Reform Act—Amendment to HUD's Mortgagee Review Board Regulations

Section 202(c) of the National Housing Act (12 U.S.C. 1708) establishes the HUD Mortgagee Review Board, which "is empowered to initiate the issuance of a letter of reprimand, the probation, suspension or withdrawal of any mortgagee found to be engaging in activities in violation of [FHA] requirements or the nondiscrimination requirements of the Equal Credit Opportunity Act, the Fair Housing Act,

or Executive Order 11063." Section 202(c)(4)(A) of the National Housing Act, however, requires that the Mortgagee Review Board provide a mortgagee with 30 days written notice before taking any such action. HUD's regulations implementing section 202(c) are located in 24 CFR part 25 (entitled "Mortgagee Review Board").

Section 551 of the Multifamily Reform Act amended section 202(c) of the National Housing Act to provide that a suspension is effective upon issuance, without the prior 30-day written notice, "if the Board determines that there exists adequate evidence that immediate action is required to protect the financial interests of [HUD] or the public." This rule updates 24 CFR 25.5 (entitled "Administrative actions") and 25.6 (entitled "Notice of violation") to reflect the amendment made by section 551 of the Multifamily Reform Act.

C. Section 553 of the Multifamily Reform Act—Amendment to HUD's Civil Money Penalty Regulations

Section 536 of the National Housing Act (12 U.S.C. 1735f-14) governs the imposition of a civil money penalty against certain participants in FHA programs who knowingly and materially violate specified program requirements. Before enactment of the Multifamily Reform Act, civil money penalties under section 536 were limited to mortgagees approved under the National Housing Act and lenders holding a contract of insurance under title I of the National Housing Act.

Section 553 of the Multifamily Reform Act expanded the list of persons against whom HUD may impose a civil money penalty to include any principal, officer, or employee of such mortgagee or lender, or other participants in either a mortgage insured under the National Housing Act or any loan that is covered by a contract of insurance under title I of the National Housing Act, or a provider of assistance to the borrower in connection with any such mortgage or loan. Section 553 list examples of individuals who may be subject to such a penalty, including sellers, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents, and dealers. This interim rule expands the list to include consultants, contractors, subcontractors, and inspectors.

Section 553 of the Multifamily Reform Act also specifies the types of violations for which these individuals and entities may be subject to a civil money penalty. These violations are:

(1) Submission to the Secretary of information that was false, in connection with any mortgage insured

under the National Housing Act, or any loan that is covered by a contract of insurance under title I of the National Housing Act;

(2) Falsely certifying to the Secretary or submitting to the Secretary a false certification by another person or entity in connection with any mortgage insured under the National Housing Act, or any loan that is covered by a contract of insurance under title I of the National Housing Act; and

(3) Failure by a loan correspondent or dealer to submit to the Secretary information which is required by regulation or directives in connection with any loan that is covered by a contract of insurance under title I of the National Housing Act.

HUD's regulations at 24 CFR part 30 (entitled "Civil Money Penalties: Certain Prohibited Conduct") implement HUD's civil money penalty provisions. This interim rule creates a new § 30.36 to implement the statutory amendments made by section 553 of the Multifamily Reform Act.

III. This Interim Rule—Clarifying Amendments

A. Mortgagee Review Board's Ability To Issue Suspensions

In addition to implementing sections 551 and 553 of the Multifamily Reform Act, this interim rule makes a clarifying amendment to HUD's Mortgagee Review Board regulations at 24 CFR part 25. The regulation at § 25.5(d) describes the conditions under which the Mortgagee Review Board may issue a suspension. Currently, this regulation provides that the Board may issue a suspension "based upon adequate evidence," but does not specify what the adequate evidence must consist of or how long the suspension may last. This interim rule clarifies that a suspension must be based on adequate evidence of violation(s) under § 25.9 (which lists the causes for an administrative action), "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." This is the longstanding standard that HUD has consistently used to govern the issuance of suspensions under § 25.5. The rule would, therefore, not establish a new requirement or standard, but would merely conform HUD's regulations to existing agency practice.

This standard was formerly codified at 25.5(d) (see the April 1, 1995 edition of title 24 of the Code of Federal Regulations) and was removed as part of

HUD's January 9, 1996 (60 FR 684) final rule, which made various streamlining and clarifying amendments to 24 CFR part 25. HUD has determined that recodification of this standard will enhance the clarity of its Mortgagee Review Board regulations.

Although this amendment would not substantively alter the substance or meaning of § 25.5(d), HUD welcomes public comment on the amendment. All public comments will be considered in the development of the final rule.

B. Effect of Suspension or Withdrawal Issued by Mortgagee Review Board.

This interim rule revises § 25.5 to clarify the effects of a suspension or withdrawal issued by the Mortgagee Review Board. These amendments are not substantive, but are designed to make the part 25 regulations easier to understand. Among other such changes, the rule clarifies that the prohibition on the origination of new loans by suspended or withdrawn mortgagees covers both title I and title II loans under the National Housing Act.

C. Civil Money Penalties for Indian Housing Loan Guarantee Program

This interim rule also makes a clarifying, non-substantive change to § 30.40, which describes civil money penalties under the Indian housing loan guarantee program. The amendment clarifies that the Assistant Secretary for Public and Indian Housing has been delegated the authority to initiate civil money penalties under this program.

III. Other Amendments Made by the Multifamily Reform Act Not Implemented by This Interim Rule

In addition to the statutory amendments described above, the Multifamily Reform Act made several other revisions to HUD's FHA and public and assisted housing programs. For example, section 561 of the Multifamily Reform Act expands the list of persons and types of violations subject to a civil money penalty under section 537 of the National Housing Act. Further, section 563 of the Multifamily Reform Act amends the United States Housing Act of 1937 (the statutory authority for HUD's public and assisted housing programs) to provide for the imposition of civil money penalties for noncompliance with Section 8 Housing Assistance Payment contracts. The Multifamily Reform Act directs that HUD implement these statutory amendments using notice and comment rulemaking procedures. Accordingly, the amendments made by sections 561 and 563 of the Multifamily Reform Act

will be the subject of a separate HUD proposed rule.

IV. Small Entities and HUD Enforcement Actions

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub.L. 104-121, 110 Stat. 847, approved March 29, 1996) ("SBREFA") provides, among other things, for agencies to establish specific policies or programs to assist small entities. Small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. On May 21, 1998 (63 FR 28214), HUD published a **Federal Register** notice describing HUD's actions on implementation of SBREFA.

Section 223 of SBREFA requires agencies that regulate the activities of small entities to establish a policy or program to reduce or, under appropriate circumstances, waive civil penalties when a small entity violates a statute or regulation. Where penalties are determined appropriate, HUD's policy is to consider: (1) The nature of the violation (the violation must not be one that is repeated or multiple, willful, criminal or poses health or safety risks), (2) whether the entity has shown a good faith effort to comply with the regulations; and (3) the resources of the regulated entity.

With respect to the imposition of civil money penalties, HUD is cognizant that section 222 of the SBREFA requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to "work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel." To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices which are provided to small businesses concerns at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of

[insert agency name], call 1-888-REG-FAIR (1-888-734-3247).

As HUD stated in its May 21, 1998 **Federal Register** notice, HUD intends to work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

V. Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. Part 10 provides for exceptions to the general rule if HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). For the following reasons, HUD finds that good cause exists to publish this rule for effect without first soliciting public comment because prior public comment is unnecessary.

This interim rule updates HUD's FHA enforcement regulations at 24 CFR parts 25 and 30 to conform these regulations to the statutory amendments made by the Multifamily Reform Act. HUD does not have the discretion to modify these statutory requirements based on public comment. The interim rule tracks the language of the Multifamily Reform Act, and does not expand, elaborate or interpret this language. These amendments do no more than conform HUD's regulations to existing statutory authority.

The rule also clarifies under what conditions the HUD Mortgagee Review Board may issue a suspension. The rule also clarifies the effect of a suspension or withdrawal issued by the Board. Further, the rule clarifies that the Assistant Secretary for Public and Indian Housing has been delegated the authority to initiate civil money penalties under the Indian housing loan guarantee program. These amendments do not modify the scope or substance of the existing regulations. Rather, the amendments will help to eliminate confusion and conform the regulations to existing HUD practice.

Although HUD has determined that, it is unnecessary for HUD to solicit public comment before issuing this rule for effect, HUD is issuing these amendments on an interim basis and invites public comment on the interim rule. All public comments will be

considered in the development of the final rule.

VI. Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of the Department's regulations, this interim rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this interim rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This interim rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this is not anticipated to have a significant economic impact on a substantial number of small entities. As discussed in this preamble, the rule makes conforming changes to HUD regulations in 24 CFR parts 25 and 30 to reflect statutory changes made to the National Housing Act by the Multifamily Reform Act. These changes are not discretionary on the part of HUD. These changes are applicable regardless of whether HUD revises its regulations to reflect these statutory amendments.

The purpose of the legislation, as noted earlier in the preamble, is to grant additional enforcement tools to HUD to use against those who violate agreements and program requirements. The Multifamily Reform Act expanded the list of persons and the types of violations subject to civil money penalties under HUD's insured housing programs for the purpose of protecting

the FHA insurance fund. To the extent that these statutory changes impact small entities it will be as a result of actions taken by small entities themselves—that is, violation of multifamily program regulations and requirements.

The rule also makes three clarifying, non-substantive amendments to these regulations. The first clarifies under what conditions HUD's Mortgagee Review Board may issue a suspension. The second amendment clarifies the effect of a suspension or withdrawal issued by the Board. The third clarifies that the Assistant Secretary for Public and Indian Housing has been delegated the authority to initiate civil money penalties under the Indian housing loan guarantee program. These amendments do not impose new regulatory requirements, but codify existing HUD practice.

Accordingly, HUD has determined that this interim rule will have no adverse or disproportionate economic impact on small entities. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

List of Subjects

24 CFR Part 25

Administrative practice and procedure, Loan programs—housing and community development, Organization and functions (Government agencies).

24 CFR Part 30

Administrative practice and procedure, Loan programs—housing and community development, Mortgages, Penalties.

PART 25—MORTGAGEE REVIEW BOARD

1. The authority citation for 24 CFR part 25 continues to read as follows:

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

2. In § 25.5, revise paragraphs (d) and (e)(1) to read as follows:

§ 25.5 Administrative actions.

* * * * *

(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.

(2) *Effect of suspension.* (i) During the period of suspension, 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 mortgagor 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.

(e) *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.

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3. Section 25.6 is amended by adding a new paragraph (c) to read as follows:

§ 25.6 Notice of violation.

* * * * *

(c) *Exception for immediate suspension.* If the Board determines that there exists adequate evidence that immediate action is required to protect the financial interests of the Department or the public, the Board may take a suspension action without having previously issued a notice of violation.

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

4. The authority citation for 24 CFR part 30 continues to read as follows:

Authority: 12 U.S.C. 1701q-1, 1703, 1723i, 1735f-14, 1735f-15; 15 U.S.C. 1717a; 28 U.S.C. 2461 note; 42 U.S.C. 3535(d).

5. Add § 30.36 to read as follows:

§ 30.36 Other participants in FHA programs.

(a) *General.* The Assistant Secretary for Housing-Federal Housing Commissioner (or his/her designee) may initiate a civil money penalty action against any principal, officer, or employee of a mortgagee or lender, or other participants in either a mortgage insured under the National Housing Act or any loan that is covered by a contract of insurance under title I of the National Housing Act, or a provider of assistance to the borrower in connection with any such mortgage or loan, including:

- (1) Sellers;
- (2) Borrowers;
- (3) Closing agents;
- (4) Title companies;
- (5) Real estate agents;
- (6) Mortgage brokers;
- (7) Appraisers;
- (8) Loan correspondents;
- (9) Dealers;
- (10) Consultants;
- (11) Contractors;
- (12) Subcontractors; and

(13) Inspectors.

(b) *Knowing and material violations.* The Assistant Secretary for Housing-Federal Housing Commissioner or his/her designee may impose a civil penalty on any person or entity identified in paragraph (a) of this section who knowingly and materially:

(1) Submits false information to the Secretary in connection with any mortgage insured under the National Housing Act (12 U.S.C. 1701 *et seq.*), or any loan that is covered by a contract of insurance under title I of the National Housing Act;

(2) Falsely certifies to the Secretary or submits a false certification by another person or entity to the Secretary in connection with any mortgage insured under the National Housing Act or any loan that is covered by a contract of insurance under title I of the National Housing Act; or

(3) Is a loan dealer or correspondent and fails to submit to the Secretary information which is required by regulations or directives in connection with any loan that is covered by a contract of insurance under title I of the National Housing Act.

(c) *Amount of penalty.* The maximum penalty is \$5,500 for each violation, up to a limit of \$1,100,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

6. Revise § 30.40(a) to read as follows:

§ 30.40 Loan guarantees for Indian housing.

(a) *General.* The Assistant Secretary for Public and Indian Housing (or his/her designee) may initiate a civil money penalty action against any mortgagee or holder of a guarantee certificate who knowingly and materially violates the provisions of 12 U.S.C. 1715z-13a(g)(2) concerning loan guarantees for Indian housing.

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Dated: January 18, 2000.

Andrew Cuomo,
Secretary.

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