

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

Office of the Secretary

24 CFR Part 25

[Docket No. FR-3979-F-01]

RIN 2501-AC09

**Mortgagee Review Board; Streamlined
Final Rule**

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule further streamlines HUD's regulations on the Mortgagee Review Board (MRB). This rule is part of HUD's efforts to comply with the President's regulatory reform initiatives by producing concise regulations that are easy to use and understand. This rule will not change the substantive requirements of the MRB regulations, but it will eliminate provisions that are redundant of the MRB statute.

EFFECTIVE DATE: February 8, 1996.

FOR FURTHER INFORMATION CONTACT: Emmett N. Roden, Assistant General Counsel for Administrative Proceedings, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, S.W., Room 10251, Washington, D.C. 20410, telephone (202) 708-2350. The telephone number for the hearing impaired (TDD) is (202) 708-9300. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Mortgagee Review Board (MRB or the Board) final rule was published in the Federal Register on August 1, 1995 (60 FR 39236). The August 1, 1995 final rule streamlined the hearing procedures to allow the Board to delegate its hearing authority to a hearing official. This new process is much less time-consuming and expensive, and it is consistent with the President's regulatory reform initiatives expressed in Executive Order 12866 and the President's memorandum of March 4, 1995 to all Federal departments and agencies.

However, HUD has determined that it can further streamline the regulations by removing language that is redundant of the MRB statute (12 U.S.C. 1708(c)-(d)). For example, the statute fully describes the types of administrative actions that the Board may take against mortgagees, the Board's authority to request the Secretary to issue cease and desist orders to mortgagees, and the requirement to notify GNMA of withdrawal actions. Since these statutory provisions are nearly self-explanatory and widely accessible, it is

unnecessary to repeat them in the Code of Federal Regulations.

Therefore, this rule removes several redundant provisions from the MRB regulations. This rule revises § 25.3 to remove the following definitions: administrative action, cease and desist order, letter of reprimand, notice of charges, party, probation, reasonable cause, suspension, and withdrawal. The rule revises § 25.5 (Administrative actions) and removes § 25.12 (Cease and desist orders). The rule also revises § 25.14 concerning the requirement to notify GNMA of withdrawal actions, and removes § 25.15 concerning annual reports to the Secretary. In place of the redundant statutory language, this rule includes the references to the appropriate statutory provisions.

Although the statutory provisions are accessible and are referenced in the new rule text, HUD seeks to ensure that this rule is easy to use. Therefore, HUD intends to provide mortgagees with a copy of the MRB statute along with the copies of the updated regulatory text that HUD routinely provides.

This rule also amends the regulations to correct three minor errors. First, this rule corrects a typographical error in § 25.9(l); the word "inquiries" should appear instead of "inquires." Second, this rule corrects § 25.9(p) to refer to prudent "mortgagees" rather than "lenders." HUD had intended to use the term "mortgagees" in this paragraph, in conformance with the definition of that term in § 25.3. Third, this rule restores language in § 25.5(d) regarding the effect of a suspension upon Title I lenders that was inadvertently deleted from § 202.9(a)(3) in the August 1, 1995 final rule.

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a final rule for effect, in accordance with its regulations on rulemaking (24 CFR part 10). However, part 10 provides exceptions from 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). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. Since this rule does not alter any rights or responsibilities of parties affected by the rule nor any substantive requirements of the rule, such prior public procedure is unnecessary.

Findings and Other Matters

National Environmental Policy Act

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of HUD regulations, the policies and procedures contained in this rule relate only to administrative decisions, which do not constitute development decisions and do not affect the physical condition of a project area or building. Therefore, this rule is categorically excluded from the requirements of the National Environmental Policy Act.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule streamlines the Mortgagee Review Board regulations by removing language from the Code of Federal Regulations that is redundant of language that appears in the United States Code. It will have no adverse or disproportionate economic impact on small businesses.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this final rule does not have potential for significant impact on family formation, maintenance, and general well-being. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns. Therefore, the rule is not subject to review under the Order.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the final rule is not subject to review under the Order.

List of Subjects in 24 CFR Part 25

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

Accordingly, 24 CFR part 25 is amended as follows:

PART 25—MORTGAGEE REVIEW BOARD

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

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

2. Section 25.3 is amended by removing the definitions for the following terms: “*administrative action*”, “*cease and desist order*”, “*letter of reprimand*”, “*notice of charges*”, “*party*”, “*probation*”, “*reasonable cause*”, “*suspension*”, and “*withdrawal*”; and by revising the definitions for the terms “*lender*”, “*loan correspondent*”, and “*mortgagee*”, to read as follows:

§ 25.3 Definitions.

* * * * *

Lender. A financial institution as defined in § 202.2(a) of this title.

Loan correspondent. A financial institution as defined in § 202.2(b) 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. 1707(a), 1713(a)(1));

(2) A lender or loan correspondent as defined in this section;

(3) A branch office or subsidiary of the mortgagee, lender, or loan correspondent; or

(4) Successors and assigns of the mortgagee, lender, or loan correspondent, as are approved by the Commissioner.

* * * * *

3. Section 25.5 is revised to read as follows:

§ 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.* A suspension shall be based upon adequate evidence and shall be effective upon receipt of the notice of suspension by the mortgagee. During the period of suspension, HUD will not endorse any mortgage originated by the suspended mortgagee unless prior to the date of suspension a firm commitment has been issued relating to any such mortgage, or a Direct Endorsement underwriter has approved the mortgage for any such mortgage. During the period of suspension, a lender or loan correspondent may not originate new title I loans under their Title I Contracts of Insurance or apply for a new Contract of Insurance.

(e)(1) *Withdrawal.* During the period of withdrawal, HUD will not endorse any mortgage originated by the withdrawn mortgagee unless prior to the date of withdrawal a firm commitment has been issued relating to any such mortgage, or a Direct Endorsement underwriter has approved the mortgage for any such mortgage. During the period of withdrawal, a lender or loan correspondent may not originate new title I loans under their Title I Contracts 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.

4. Section 25.9 is amended by revising paragraphs (l) and (p) to read as follows:

§ 25.9 Grounds for an administrative action.

* * * * *

(l) Failure of a mortgagee to respond to inquiries from the Board;

* * * * *

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

* * * * *

§ 25.12 [Removed]

5. Section 25.12 is removed.

§ 25.13 [Redesignated as § 25.12]

6. Section 25.13 is redesignated as § 25.12.

7. Section 25.14 is redesignated as § 25.13, and is revised to read as follows:

§ 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.)

§ 25.15 [Removed]

8. Section 25.15 is removed.

§ 25.16 [Redesignated as § 25.14]

9. Section 25.16 is redesignated as § 25.14.

§ 25.18 [Redesignated as § 25.15]

10. Section 25.18 is redesignated as § 25.15.

Dated: December 15, 1995.

Henry G. Cisneros,

Secretary.

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