

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Parts 25 and 30

[Docket No. FR-4308-F-02]

RIN 2501-AC44

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

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule makes conforming changes to HUD's regulations to reflect statutory changes made by the Multifamily Assisted Housing Reform and Affordability Act of 1997. These amendments are designed to strengthen HUD's enforcement authority under its insured housing programs. The final rule also makes several clarifying, non-substantive amendments to these regulations. This final rule follows publication of a February 23, 2000 interim rule. No public comments were received on the interim rule. Accordingly, HUD is adopting the February 23, 2000 interim rule without change.

DATES: *Effective Date:* July 21, 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. Background—The February 23, 2000 Interim Rule

On February 23, 2000 (65 FR 9084), HUD published an interim rule amending its 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 February 23, 2000 interim rule updated these regulations to reflect statutory amendments made by sections 551 and 553 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (Title V of the Fiscal Year 1998 HUD Appropriations Act; Pub.L. 105-65, approved October 27, 1997) (referred to as the "Multifamily Reform Act" or the "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. Section 551 of the 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. Section 553 of the Multifamily Reform Act expands the list of persons and types of violations subject to a civil money penalty under HUD's insured housing programs.

In addition to implementing sections 551 and 553 of the Multifamily Reform Act, the February 23, 2000 interim rule also made several clarifying, non-substantive, amendments to HUD's regulations at 24 CFR parts 25 and 30. The first amendment clarified under what conditions HUD's Mortgagee Review Board may issue a suspension. The second amendment clarified the effect of a suspension or withdrawal issued by the Board. The third amendment clarified that the Assistant Secretary for Public and Indian Housing may initiate a civil money penalty under the section 184 Indian housing loan guarantee program.

A complete description of the amendments to 24 CFR parts 25 and 30 was provided in the preamble to the February 23, 2000 interim rule.

II. This Final Rule

This final rule adopts the policies and procedures contained in the February 23, 2000 interim rule. The public comment period on the interim rule closed on April 24, 2000. HUD did not receive any public comments on the interim rule. Accordingly, this final rule adopts the February 23, 2000 interim rule without change.

**III. Other Enforcement-Related
Amendments Made by the Multifamily
Reform Act**

In addition to the statutory amendments described above, the Multifamily Reform Act made several other revisions to HUD's enforcement authority under its 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. Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of the Department's regulations, this final 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 final 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 final 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 final rule 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 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 applicable program regulations and requirements.

The rule also makes three clarifying, non-substantive amendments to these

regulations. These amendments do not impose new regulatory requirements, but codify existing HUD practice. Accordingly, HUD has determined that this final rule will have no adverse or disproportionate economic impact on small entities.

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.

PARTS 24 AND 30—[AMENDED]

For the reasons discussed in the preamble, the interim rule amending 24 CFR part 25 and 24 CFR part 30, which was published at 65 FR 9084, is adopted as a final rule without change.

Dated: June 14, 2000.

Andrew Cuomo,
Secretary.

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