

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 25**

[Docket No. FR-5082-P-01]

RIN 2510-AA01

Mortgage Review Board

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would make changes to the Department's Mortgage Review Board (Board) regulations to clarify and better reflect statutory directives and amend current practice. This proposed rule would modify the Board's procedures governing hearings. Additional revisions proposed by this rule would remove provisions that unnecessarily duplicate the authorizing statute and would clarify the authority and duties of the Board in taking administrative action against mortgagees approved by the Federal Housing Administration. This proposed rule would separate and clarify the grounds for administrative action and the factors considered by the Board in evaluating whether to take administrative action, as well as require the mortgagee to address these factors in its response to the Board's notice of violation. Finally, other organizational changes would be made to improve overall clarity.

DATES: *Comment Due Date:* May 27, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0001.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit

comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. *No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Dane Narode, Acting Associate General Counsel for Program Enforcement, Department of Housing and Urban Development, 1250 Maryland Avenue, Suite 200, Washington, DC 20024-0500; telephone number (202) 708-2350 (this is not a toll-free number); e-mail: Dane_M_Narode@hud.gov. Hearing- and speech-impaired persons may access the voice telephone number listed above by calling the toll-free Federal Information Relay Service at 1-(800) 877-8339.

SUPPLEMENTARY INFORMATION:**I. Background**

The Mortgage Review Board (Board) oversees the performance of lenders participating in the Federal Housing Administration (FHA) mortgage insurance programs. Section 1708(c) of the National Housing Act (12 U.S.C. 1708(c)) empowers the Board to initiate the issuance of a letter of reprimand, 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 (15 U.S.C. 1691 *et seq.*), the Fair Housing Act (42 U.S.C. 3601 *et seq.*), or Executive Order 11063, entitled "Equal opportunity in housing." HUD's regulations implementing section 1708(c) are located in 24 CFR part 25. The regulations governing the Board set forth the authority of the Board; administrative actions available and factors to be considered by the Board in taking such action; violations that give rise to administrative actions; the procedures involved in notifying mortgagees of a violation and administrative action, as well as any hearing that results; and provide for the publication and dissemination of information regarding actions.

II. This Proposed Rule

This proposed rule would amend the regulations governing the Board at 24 CFR part 25. This section of the preamble describes the proposed regulatory changes.

A. Hearings To Be Conducted by Administrative Law Judges

This proposed rule would permit hearings to be conducted by an Administrative Law Judge (ALJ). As proposed, hearings would be conducted in accordance with the applicable provisions of 24 CFR part 26, with two modifications identified in the regulatory text. (The regulations codified in 24 CFR part 26 governing hearings that HUD is required to conduct pursuant to the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) will apply to these matters.) This change would eliminate the procedural delay whereby a matter is referred to a hearing official, who then perfunctorily refers the matter to a hearing officer. HUD is also proposing the removal of the definitions of "Hearing Official" and "Hearing Officer" from § 25.3, as a conforming change.

B. Inclusion of References To Authorizing Statute

Additional revisions proposed by this rule would remove provisions that unnecessarily duplicate the authorizing statute (i.e., 12 U.S.C. 1708), and are designed to clarify the authority and duties of the Board in taking administrative action against FHA-approved mortgagees. For example, § 25.5, entitled "Administrative Actions," addresses administrative actions available to the Board against

those mortgagees that fail to comply with either a directive of a letter of reprimand or a term of probation. Paragraphs (b) and (c) of § 25.5 would be revised by referencing the statute as the source of actions available to the Board rather than the current reference of part 25.

C. Clarifying and Organizational Changes

Section 25.2 would be revised to incorporate § 25.12, as currently designated.

The proposed rule would revise § 25.2, which describes the authority for the establishment of the Board, to incorporate the provisions of current § 25.12, regarding the authority of the Board to impose civil money penalties. Section 25.12 would be removed.

Additionally, the proposed rule would remove the authority to delegate the power to impose administrative sanctions on the grounds specified in paragraphs (e), (h), and (u) of § 25.6 or to take administrative actions for failure to remain in compliance with the requirements for approval in 24 CFR 202.5(i), 202.5(n), 202.7(b)(4), 202.8(b)(1), and 202.8(b)(3). The Department has decided to return this action to the Board, conforming it to the Board's practice regarding sanctions for other violations.

Finally, this proposed rule would remove reference to the delegation of the Board's authority to hold hearings under this part. This part now specifies that hearings are to be conducted by an Administrative Law Judge in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* Therefore, the provision authorizing delegation of this authority is no longer necessary.

Section 25.4 would be revised to cite directly to the statute and clarify the title of an advisor.

Section 25.4(a) would be revised to cite to the statute for the identity of the members of the Board. Section 25.4(b) would be revised based on the change in title of one advisor to Director of the Office of Lender Activities and Program Compliance.

Current § 25.9 would be redesignated as new § 25.6.

Section 25.9, entitled "Violations creating grounds for administrative action," would be redesignated as § 25.6 so that the regulations reflect the progression of the administrative process. In addition to the redesignation, this section would also be revised. The language of the introductory paragraph has been moved to create a new § 25.8. Redesignated § 25.6(g) would be revised to provide

that grounds for administrative action exist if a mortgagee fails to comply with any agreement, certification, undertaking, or condition of approval listed on, or applicable to, either a mortgagee's application for approval or an approved mortgagee's branch office notification. Redesignated § 25.6(i) would be revised to change the reference from hearing official or officers to Administrative Law Judge to reflect the change in hearing procedures proposed by this rule. Redesignated § 25.6(j) would be revised to include the violation of an agreement with HUD as creating grounds for administrative action. Redesignated § 25.6(ff) would be revised to include a catchall provision whereby a violation of FHA requirements that the Board or the Secretary determines to be so serious creates grounds for administrative action.

Current § 25.6 would be redesignated as new § 25.7.

Section 25.6, entitled "Notice of violation," would be redesignated as § 25.7. This section would also be revised to clarify that proof of delivery of the notice of violation to the mortgagee's address of record establishes that the mortgagee has received the notice. New § 25.7 also would provide that in responding to the notice, mortgagees must address the factors listed in new § 25.8. HUD also proposes to add a provision to this section that would create an exception to the written notice of violation requirement before issuing a letter of reprimand, provided that the Board has received information that discloses a basis for the issuance of a letter of reprimand.

Addition of a new § 25.8.

This proposed rule would separate and clarify the grounds for administrative action and the factors considered by the Board in evaluating whether to take administrative action under 12 U.S.C. 1708(c). Further, this proposed rule would also require the mortgagee to address these factors in its response to the Board's notice of violation, which would assist in the Board's informed consideration of the factors. This proposed rule would eliminate the existing exception from consideration of the enumerated factors for those cases that are based on a mortgagee's failure to maintain basic threshold eligibility for FHA approval, as set forth in paragraphs (e), (h), and (u) of § 25 (i.e., (e) failure of a nonsupervised mortgagee to submit the required annual audit report of its financial condition prepared in accordance with instructions issued by the Secretary within 90 days of the close

of its fiscal year, or such longer period as the Assistant Secretary of Housing—Federal Housing Commissioner may authorize in writing prior to the expiration of 90 days; (h) failure of an approved mortgagee to meet or maintain the applicable net worth, liquidity, or warehouse line of credit requirements of 24 CFR part 202 pertaining to net worth, liquid assets, and warehouse line of credit or other acceptable funding plan; and (u) failure to pay the application and annual fees required by 24 CFR part 202.) With the removal of the delegation from § 25.2 for these cases, the Board will now consider the mortgagee's response to the Notice of Violation in the same manner as all other cases it considers.

Current § 25.7 is redesignated as new § 25.9.

Section 25.7, entitled "Notice of administrative action," would be redesignated as § 25.9. This section would also be revised to clarify that proof of delivery of a notice of administrative action to the mortgagee's address of record establishes that the mortgagee has received the notice. The section would also be amended to require that in actions for probation, suspension, or withdrawal, the notice must describe the nature and duration of the administrative action, specify the reasons for the action, inform the mortgagee of its right to a hearing, and inform the mortgagee of the time and manner in which to request a hearing.

Current § 25.8 is being redesignated as new § 25.10.

Section 25.8, entitled "Hearings and hearing request," would be redesignated as § 25.10. This section would also be revised to clarify that mortgagees that may be subject to probation, suspension, or withdrawal are entitled to a hearing, but a hearing must be requested. This section would also be revised to reflect the authority of an ALJ to conduct the hearing. As such, former § 25.8(d)(2), entitled "Referral to a hearing officer or other independent official," has been removed. Additionally, the proposed rule would revise the procedural rules governing a hearing. Hearings would be conducted in accordance with the provisions of 24 CFR part 26 governing hearings that are conducted in accordance with the Administrative Procedure Act, as those provisions are modified by this section.

Current § 25.14 is being redesignated as new § 25.11.

Section 25.14, entitled "Prohibition against modification of Board orders," would be redesignated as new § 25.11. This section would also be revised to reflect that under the proposed rule hearings are to be conducted by ALJs.

Current §§ 25.10, 25.11, and 25.13 are being consolidated into new § 25.12.

Section 25.10, entitled "Publication in Federal Register of actions," § 25.11, entitled "Notification to other agencies," and § 25.13, entitled "Notifying GNMA of withdrawal actions," are being combined and redesignated as § 25.12. In addition to including each of the referenced provisions, § 25.12 would be revised to include a paragraph that provides for the availability of all non-privileged information regarding the nature of the violation and the resolution of the action to the public in cases where the notice of administrative action does not result in a hearing or in any case in which a settlement is entered into by the Board and a mortgagee.

III. Small Business Concerns Related to Board Enforcement Actions

With respect to enforcement actions undertaken by the Board against a mortgagee, HUD is cognizant that section 222 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (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 federal agencies include the following language on agency publications and notices that are provided to small business 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], you will find the necessary comment forms at www.sba.gov/ombudsman or call 1-888-REG-FAIR (1-888-734-3247).

In accordance with its notice describing HUD's actions on the implementation of SBREFA, which was published on May 21, 1998 (63 FR 28214), HUD will 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.

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0523. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a valid OMB control number.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would make changes to HUD's Mortgage Review Board regulations at 24 CFR part 25 to clarify and better reflect statutory directives and to amend current practice. All entities, small or large, are subject to the same penalties for violations of HUD requirements, as established by statute and implemented by the part 25 regulations. To the extent the rule has any impact on a small entity, it would be a result of the entity's failure to comply with HUD requirements.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant 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.

Environmental Impact

This proposed 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. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of Section 6 of the Executive Order are met. This rule affects only mortgagees and 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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of UMRA.

List of Subjects in 24 CFR Part 25

Administrative practice and procedure, Loan programs-housing and community development, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 25 to read as follows:

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 1735f-14; 42 U.S.C. 3535(d).

2. Revise § 25.2 to read as follows:

§ 25.2 Establishment and authority of Board.

(a) *Establishment of the Board.* The Mortgage Review Board (Board) was established in the Federal Housing Administration, which is in the Office of the Assistant Secretary for Housing—

Federal Housing Commissioner, by section 202(c)(1) of the National Housing Act (12 U.S.C. 1708(c)(1)), as added by section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989).

(b) *Authority of the Board.* The Board has the authority to initiate administrative actions against mortgagees and lenders under 12 U.S.C. 1708(c) and shall exercise all of the functions of the Secretary with respect to administrative actions against mortgagees and lenders and such other functions as are provided in this part. The Board shall have all powers necessary and incident to the performance of these functions and such other functions as are provided in this part, except as limited by this part.

(1) *Administrative Actions.* The Board has the authority to take any administrative action against mortgagees and lenders as provided in 12 U.S.C. 1708(c). The Board may delegate its authority to take all nondiscretionary acts.

(2) *Civil Money Penalties.* The Board is authorized pursuant to section 536 of the National Housing Act (12 U.S.C. 1735(f)-14) to impose civil money penalties upon mortgagees and lenders, as set forth in 24 CFR part 30. The violations for which a civil money penalty may be imposed are listed in subpart B (Violations) of 24 CFR part 30. Hearings to challenge the imposition of civil money penalties shall be conducted according to the applicable rules of 24 CFR part 30.

(3) *Authorization for other administrative actions.* The Board may, in its discretion, approve the initiation of a suspension or debarment action against a mortgagee or lender by any Suspending or Debarring Official under 24 CFR part 24.

3. In § 25.3, remove the definitions of "Hearing Official" and "Hearing Officer."

4. In § 25.4, revise paragraphs (a) and (b) to read as follows:

§ 25.4 Operation of the Mortgagee Review Board.

(a) *Members.* The Board consists of those HUD officials designated to serve on the Board by section 202(c)(2) of the National Housing Act (12 U.S.C. 1708(c)(2)).

(b) *Advisors.* The Inspector General or his or her designee, and the Director of the Office of Lender Activities and Program Compliance (or such other position as may be assigned such duties), and such other persons as the Board may appoint, shall serve as nonvoting advisors to the Board.

* * * * *

5. Revise § 25.5 to read as follows:

§ 25.5 Administrative actions.

(a) *General.* The Board is authorized to take administrative actions in accordance with 12 U.S.C. 1708(c), including, but not limited to, the following: issue a letter of reprimand, probation, suspension, or withdrawal; or enter into a settlement agreement.

(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 as provided by 12 U.S.C. 1708(c) 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 as provided by 12 U.S.C. 1708(c) that the Board finds appropriate.

(d) *Suspension.* (1) *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.

(2) *Effective date of suspension.* A suspension issued pursuant to § 25.7(d) 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.

(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 § 25.10, if the mortgagee has not requested a hearing; or

(B) Upon receipt of the Board's decision under § 25.10, if the mortgagee requests a hearing.

§§ 25.10 and 25.11 [Removed]

6. Remove §§ 25.10 and 25.11.

7. Redesignate §§ 25.6, 25.7, 25.8, and 25.9 as §§ 25.7, 25.9, 25.10, and 25.6, respectively.

8. In newly designated § 25.6, revise the section heading, the introductory text, and paragraphs (g), (j), (x), and (ff), to read as follows:

§ 25.6 Violations creating grounds for administrative action.

Any administrative action imposed under 12 U.S.C. 1708(c) shall be based upon one or more of the following violations:

* * * * *

(g) Failure to comply with any agreement, certification, undertaking, or condition of approval listed on, or applicable to, either a mortgagee's application for approval or an approved mortgagee's branch office notification;

* * * * *

(j) Violation of the requirements of any contract or agreement with the Department, or violation of the requirements set forth in any statute, regulation, handbook, mortgagee letter, or other written rule or instruction;

* * * * *

(x) Failure to submit a report required under 24 CFR 202.12(c) within the time determined by the Commissioner, or to commence or complete a plan for corrective action under that section within the time agreed upon with the Commissioner.

* * * * *

(ff) Any other violation of Federal Housing Administration requirements that the Board or the Secretary determines to be so serious as to justify an administrative sanction.

9. Revise newly designated § 25.7, to read as follows:

§ 25.7 Notice of violation.

(a) *General.* The Chairperson of the Board, or the Chairperson's designee, shall issue a written notice to the mortgagee at the mortgagee's address of record at least 30 days prior to taking any action under 12 U.S.C. 1708(c) against the mortgagee. Proof of delivery to the mortgagee's address of record shall establish the mortgagee's receipt of the notice. The notice shall state the specific violations that have been alleged, and shall direct the mortgagee to reply in writing to the Board within 30 days after receipt of the notice by the mortgagee. The notice shall also provide the address to which the response shall be sent. If the mortgagee fails to reply during such time period, the Board may make a determination without considering any comments of the mortgagee.

(b) *Mortgagee's response.* The mortgagee's response to the Board shall be in a format prescribed by the Secretary and shall not exceed 15 double-spaced typewritten pages. The response shall include an executive summary, a statement of the facts surrounding the matter, an argument, and a conclusion. Such response shall also address the factors listed in § 25.8. A more lengthy submission, including documents and other exhibits, may be simultaneously submitted to Board staff for review.

(c) *Exception for letter of reprimand.* Whenever information comes before the Board that discloses a basis for the issuance of a letter of reprimand, the Board may issue the letter without having previously issued a notice of violation.

(d) *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.

10. Add § 25.8, to read as follows:

§ 25.8 Factors considered in taking administrative action.

In determining which administrative action under 12 U.S.C. 1708(c), if any, should be taken, the Board will consider, among other factors, the seriousness and extent of the violations, the degree of mortgagee responsibility for the occurrences, and any other mitigating or aggravating facts. Where the Board is considering the taking of a withdrawal action, the Board will also consider whether the violations were

egregious or willful in order to determine whether a permanent withdrawal is mandated by 12 U.S.C. 1708(c).

11. Revise newly designated § 25.9 to read as follows:

§ 25.9 Notice of administrative action.

(a) Whenever the Board decides to take an action in accordance with 12 U.S.C. 1708(c)(3), the Chairperson of the Board, or the Chairperson's designee, shall issue a written notice of the action to the mortgagee at the mortgagee's address of record of the determination. Proof of delivery to the mortgagee's address of record shall establish the mortgagee's receipt of the notice.

(b) In actions for probation, suspension, or withdrawal, the notice shall describe the nature and duration of the administrative action, and shall specifically state the reasons for the action. In actions for probation, suspension, or withdrawal, the notice shall inform the mortgagee of its right to a hearing, pursuant to § 25.10, regarding the administrative action and of the manner and time in which to request a hearing.

12. Revise newly designated § 25.10 to read as follows:

§ 25.10 Hearings and hearing request.

(a) *Hearing request.* A mortgagee subject to administrative action under 12 U.S.C. 1708(c) (except for a letter of reprimand) is entitled to a hearing, which, when requested, shall be held on the record. The mortgagee shall submit its request for a hearing within 30 days of receiving the Board's notice of administrative action. The request shall be addressed to the Mortgage Review Board Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. The request shall specifically respond to the violations set forth in the notice of administrative action. If the mortgagee fails to request a hearing within 30 days after receiving the notice of administrative action, the Board's action shall become final.

(b) *Hearing by Administrative Law Judge.* Hearings are to be conducted by an Administrative Law Judge (ALJ), as set forth in this part. The ALJ shall commence a de novo hearing within 30 days of HUD's receipt of the mortgagee's request, unless the parties agree to an extension. The ALJ may extend this time period for good cause.

(c) *Procedural rules.* The hearing shall be conducted in accordance with the applicable provisions of 24 CFR part 26, with the following modifications:

(1) The mortgagee or its representative shall be afforded an opportunity to

appear, submit documentary evidence, present witnesses, and confront any witness the agency presents, except that the parties shall not be allowed to present members of the Board as witnesses.

(2) Discovery of information and/or documents that do not pertain to the appealing mortgagee, including, but not limited to, reviews or audits by the Department or administrative actions by the Board against mortgagees other than the appealing mortgagee, shall not be permitted. Members of the Board shall not be subject to deposition.

(3) The hearing shall generally be held in Washington, DC. However, upon a showing of undue hardship or other cause, the ALJ may, in his or her discretion, order the hearing to be held in a location other than Washington, DC.

13. Revise § 25.12 to read as follows:

§ 25.12 Public access to information; Publication of actions.

(a) Where a notice of administrative action does not result in a hearing and in any cases in which a settlement is entered into by the Board and a mortgagee, all non-privileged information regarding the nature of the violation and the resolution of the action shall be available to the public.

(b) *Publication in the Federal Register.* The Secretary shall publish, in the **Federal Register**, a description of and the cause for each administrative action taken by the Board against a mortgagee.

(c) *Notification of other agencies.* Whenever the Board has taken any discretionary action to suspend and/or withdraw the approval of a mortgagee, the Secretary shall provide prompt notice of the action and a statement of the reasons for the action to the Secretary of Veterans Affairs; the chief executive officer of the Federal National Mortgage Association; the chief executive officer of the Federal Home Loan Mortgage Corporation; the Administrator of the Rural Housing Service (formerly the Farmers Home Administration); the Comptroller of the Currency, if the mortgagee is a National Bank or District Bank or subsidiary or affiliate of such a bank; the Board of Governors of the Federal Reserve System, if the mortgagee is a state bank that is a member of the Federal Reserve System or a subsidiary or affiliate of such a bank, or a bank holding company or a subsidiary or affiliate of such a company; the Board of Directors of the Federal Deposit Insurance Corporation, if the mortgagee is a state bank that is not a member of the Federal Reserve System, or is a subsidiary or affiliate of such a bank; and the Director of the

Office of Thrift Supervision, if the mortgagee is a federal or state savings association or a subsidiary or affiliate of a savings association.

(d) *Notification to GNMA of withdrawal actions.* Whenever 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).

§ 25.13 [Removed]

14. Section 25.13 is removed.

15. Section 25.14 is redesignated as § 25.11 and is revised to read as follows:

§ 25.11 Prohibition against modification of Board orders.

No ALJ before whom proceedings are conducted under § 25.10 shall modify or otherwise disturb in any way an order or notice by the Board until the hearing under § 25.10 has been concluded. Any order issued by the presiding ALJ following the conclusion of the hearing under § 25.10 shall not become effective until all administrative appeals have been exhausted.

16. Redesignate § 25.15 as § 25.13.

Dated: February 26, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E8-6323 Filed 3-27-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-133300-07]

RIN 1545-BG80

Automatic Contribution Arrangements; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on a notice of proposed rulemaking under sections 401(k), 401(m), 402(c), 411(a), 414(w), and 4979(f) of the Internal Revenue Code relating to automatic contribution arrangements. These proposed regulations will affect administrators of, employers maintaining, participants in, and beneficiaries of eligible plans that include an automatic contribution arrangement under section 401(k)(13), 401(m)(12), or 414(w).

DATES: The public hearing is being held on Monday, May 19, 2008, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by Monday, April 28, 2008.

ADDRESSES: The public hearing is being held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC: PA: LPD: PR (REG-133300-07), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC: PA: LPD: PR (REG-133300-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic outlines of oral comments via the Federal eRulemaking Portal at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, R. Lisa Mojiri-Azad, Dana Barry or William D. Gibbs at (202) 622-6060; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst at Richard.A.Hurst@irs.counsel.treas.gov or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG-133300-07) that was published in the **Federal Register** on Thursday, November 8, 2007 (72 FR 63144).

Persons, who wish to present oral comments at the hearing that submitted written comments, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by April 28, 2008.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue, NW., entrance, 1111 Constitution Avenue, NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER**

INFORMATION CONTACT section of this document.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-114126-07]

RIN 1545-BG54

Reduction of Foreign Tax Credit Limitation Categories Under Section 904(d); Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document cancels a public hearing on proposed regulations that provide guidance relating to the reduction of the number of separate foreign tax credit limitation categories under section 904(d) of the Internal Revenue Code. Changes to the applicable law were made by the American Jobs Creation Act of 2004 reducing the number of section 904(d) separate categories from eight to two, effective for taxable years beginning after December 31, 2006.

DATES: The public hearing, originally scheduled for April 22, 2008, at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT:

Funmi Taylor of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622-3628 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking by cross-reference to temporary regulations and a notice of public hearing that appeared in the **Federal Register** on Friday, December 21, 2007 (72 FR 72645), announced that a public hearing was scheduled for April 22, 2008, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under the section 904 of the Internal Revenue Code.

The public comment period for these regulations expired on March 20, 2008. The notice of proposed rulemaking by