and the comment period initially closed on September 10, 2008.

The Commission has received numerous letters, including from state insurance commissioners, members of Congress, and others, requesting that the comment period be extended.[2] In general, these commenters indicated that an extension would help them analyze the proposal and prepare meaningful comments. In order to provide additional time for the public to thoroughly consider the proposal, and in view of the significant continuing public interest in the proposal, the Commission believes that it is appropriate to reopen the comment period. Accordingly, we will reopen the comment period for an additional 30 days.

By the Commission.

Dated: October 10, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–24625 Filed 10–16–08; 8:45 am]

BILLING CODE 8011–01–P

[2] Comments on the proposal are available at *http://www.sec.gov/comments/s7-14-08/s71408.shtml.*

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 30

[Docket No. FR–5081–P–01]

RIN 2501–AD23

Civil Money Penalties: Certain Prohibited Conduct

AGENCY: Office of General Counsel, HUD.

ACTION: Proposed rule.

SUMMARY: This rule would revise HUD's regulations that govern the imposition of civil money penalties. Specifically, the rule would revise the definition of ''material or materially'' and add a definition of ''ability to pay,'' which is one factor used in determining the appropriateness of the amount of any civil money penalty. Additionally, the proposed rule would require respondents, in their responses to the prepenalty notice, to specifically address the factors used in determining the appropriateness and amount of civil money penalty. This rule would also allow Government Counsel to file complaints on behalf of the Mortgagee Review Board and departmental officials. Finally, this rule would make other minor clarifying changes.

DATES: *Comment Due Date:* December 16, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Interested persons also may submit comments electronically through The Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically in order to make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All 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). 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, SW., Suite 200, Washington, DC 20024–0500; telephone number 202–708–2350 (this is not a toll-free number), or e-mail address *Dane.M.Narode@hud.gov.* Hearing- or speech-impaired individuals may access the telephone number listed above by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Proposed Rule

HUD's civil money penalties regulations are located in 24 CFR part 30. In general, 24 CFR part 30 outlines the procedures and requirements that concern violations, prepenalty notices, and complaints. This proposed rule would make several revisions in 24 CFR part 30.

First, ''ability to pay'' is one of the factors used in determining the appropriateness of civil money penalties under § 30.80(c). To provide more clarity with respect to this factor, HUD proposes to define ''ability to pay'' in § 30.10. As defined, ''ability to pay'' would be determined based on the respondent's resources available presently and prospectively, from which the Department could ultimately recover the total award. The definition would also allow for the consideration of respondent's resources to be based on historical evidence. This would include an analysis of the resources available to the respondent from which the respondent could pay the judgment in one lump sum, over time, or at some point in the future. This analysis would also examine the resources from which the Department could obtain enforced collection or administrative offset. A second modification would revise the definition of ''Material'' or ''Materially'' to mean anything having the natural tendency or potential to influence, or, considering the totality of the circumstances, in some significant respect or to some significant degree. To rise to the level of material, acts or conduct would not be required to actually influence a decision or course of action by the Department, but merely to have the potential to do so. Therefore, this revised definition would not require ''but for'' or actual causation for an act or conduct to be material. Moreover, after revision, the definition of material would no longer require consideration of any factor listed in § 30.80, which are generally to be used only to determine the amount of the civil money penalty imposed, if any, but would permit the Department to introduce evidence of the relevant factors to establish the significance of a violation in light of the totality of the circumstances.

Additionally, this proposed rule would revise § 30.35, the section that lists the actions authorized against a mortgagee or lender. Currently, § 30.35(a)(14) includes failure to comply with ''the terms of a settlement agreement with HUD'' among the list of actions for which the Mortgagee Review Board may initiate a civil money penalty action. The proposed revision would delete this provision as a basis upon which HUD may initiate a civil money penalty action against a mortgagee or lender.

HUD is seeking to clarify some apparent ambiguity in §§ 30.45 and 30.68. First, this proposed rule would revise § 30.45(d) to clarify that the violation of programmatic procedures and standards are indicators of unsatisfactory management. In addition, this proposed rule would modify § 30.68(b) to clarify that any violation of a housing assistance payments contract may result in the imposition of a civil money penalty. HUD has learned that some confusion exists about whether the violations in § 30.68(b)(1) and (b)(2) are exhaustive. The proposed rule

would establish that the specific violations listed are merely examples and not an exhaustive list.

This proposed rule would revise section 30.70 to require the prepenalty notice to inform the respondent that if a determination is made to seek civil penalties and a complaint is issued under § 30.85, the respondent will have the ability to request a hearing. Additionally, this proposed rule would require both the Department and respondent to preserve documents related to the matters contained in the prepenalty notice, upon receipt of the notice by the respondent.

In order to enable adequate consideration of the factors used in determining the appropriateness and amount of any penalty, this proposed rule would also revise § 30.75, which establishes the procedures for responding to prepenalty notices. As revised, § 30.75 would require that a response to a prepenalty notice address the factors set forth in § 30.80 and include any argument opposing the imposition of a civil money penalty. Additionally, this proposed rule would require the respondent to provide documentary support as part of its response in any case in which the respondent seeks to raise ability to pay as an affirmative defense or argument in mitigation.

Further, § 30.80 is revised to clarify that the factors listed are to be considered after a determination has been made that a knowing and material violation has occurred subjecting the respondent to liability for a civil money penalty. Additionally, § 30.80 is revised to clarify that consideration may be given to any prior offenses and would delete references to the effective dates of specific sections of this part. The proposed rule would also clarify that the respondent's ability to pay need not be proven by the Department, but is presumed unless specifically raised by the respondent as an affirmative defense or mitigating factor. As such, the respondent bears the burden of proof for the affirmative defense or mitigating factor in accordance with the Department's regulations at 24 CFR 26.45(e).

This proposed rule would also revise § 30.85(b) and (d) and add subsection (e) to clarify the complaint requirements. First, § 30.85(b) would be revised to state that the complaint under § 30.85 will be issued by government counsel on behalf of the government officials authorized to issue such complaints. In addition, under section 536 of the National Housing Act (12 U.S.C. 1735f–14(b)(3)), HUD is required to inform the Attorney General before taking action to impose a civil money penalty under §§ 30.35, 30.36, or 30.50. The requirement for notifying the Attorney General, currently in § 30.85(d), is being revised by codifying this provision at § 30.85(e). The revised § 30.85(e) more closely conforms to the statutory requirement and adds a requirement that the complaint state that this action has been taken.

This proposed rule would revise § 30.90 to state that the respondent may request a hearing within 15 days of receipt of the complaint and that if such a hearing is requested, the respondent's answer to the complaint would be due 30 days from receipt of the complaint.

Finally, this proposed rule would revise § 30.100 to clarify that it applies only to the settlement of an action that could be brought under part 30 and to permit the execution of a settlement agreement by a designee of the Mortgagee Review Board.

II. Solicitation of Specific Comments

HUD welcomes comments on all aspects of this proposed rule. HUD is also soliciting comments on whether to remove from the regulations the provisions concerning the issuance of a prepenalty notice, and to instead codify in this proposed rule only those procedures beginning with the issuance of a determination to seek civil money penalties. The authorizing statutes do not require the issuance of such prepenalty notices, and HUD is interested in commenters' views as to whether the formal codification of the issuance of prepenalty notices is necessary. Were the Department to remove the prepenalty provisions from any final regulation, the regulatory process would begin with the issuance of a notice of determination and complaint by the authorized official, as required by § 30.85, notifying the respondent of the Department's intent to seek civil money penalties.

Should the Department decide to remove the prepenalty notice provisions from any final rule, the Department still would be favorably disposed to utilizing a more informal pre-complaint process that, though not specifically set forth in regulation, would allow the Department to discuss allegations with respondents before moving to the formal issuance of a determination and complaint. HUD is, therefore, also requesting comments as to whether any type of prepenalty process, be it regulatory or informal in nature, is desirable or if it represents an unnecessary additional burden for respondents.

III. Findings and Certifications

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (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. All entities, small or large, will be subject to the same potential penalties as established by statute and implemented by this rule. The statute does not provide an exemption for small entities. 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 economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

In accordance with 24 CFR 50.19(c)(6) of HUD's regulations, this rule involves the Department's regulations implementing civil money penalty statutes. In accordance with 24 CFR 50.19(c)(1) of HUD's regulations, 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. Therefore, this proposed rule is categorically excluded from the requirements of 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 persons who fail to comply with the Department's requirements, 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 (UMRA) (2 U.S.C. 1531–1538) 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 any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Small Business Concerns Related to Board Enforcement Actions

With respect to enforcement actions undertaken by the Board against a mortgagee, and, as noted in the March 28, 2008, proposed rule, 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 include the language cited above on notices implementing enforcement actions, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

List of Subjects in 24 CFR Part 30

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

For the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 30 to read as follows:

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

1. 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. 1437z–1 and 3535(d).

2. Revise § 30.1 to read as follows:

§ 30.1 Purpose and scope.

Unless provided for elsewhere in this title or under separate authority, this part implements HUD's civil money penalty provisions. The procedural rules for hearings under this part are those applicable to hearings in accordance with the Administrative Procedure Act, as set forth in 24 CFR part 26.

3. Amend § 30.10 by adding, in alphabetical order, the definition of Ability to Pay and revising the definition of Material or Materially, to read as follows:

§ 30.10 Definitions.

* * * * *

Ability to pay. Determined based on an assessment of the respondent's resources available both presently and prospectively from which the Department could ultimately recover the total award, which may be predicted based on historical evidence.

* * * * *

Material or Materially. Having the natural tendency or potential to influence, or when considering the totality of the circumstances, in some significant respect or to some significant degree.

* * * * *

§ 30.35 [Amended]

4. Amend § 30.35 by removing paragraph (a)(14) and by redesignating paragraph (a)(15) as (a)(14).

5. Revise § 30.45(d) to read as follows:

§ 30.45 Multifamily and section 202 or 811 mortgagors.

* * * * *

(d) *Acceptable management.* For purposes of this rule, management acceptable to the Secretary under 12 U.S.C. 1735f–15(c)(1)(B)(xiv) shall include:

(1) Fiscal management in accordance with HUD regulations and requirements;

(2) Handling of vacancies and tenanting in accordance with HUD regulations and requirements;

(3) Handling of rent collection in accordance with HUD regulations and requirements;

(4) Maintenance in accordance with HUD regulations and requirements;

(5) Compliance with HUD regulations and requirements on tenant organization; and

(6) Any other matters that pertain to proper management in accordance with HUD regulations and requirements.

* * * * *

6. In § 30.68, revise paragraph (b) introductory text to read as follows:

§ 30.68 Section 8 owners.

* * * * *

(b) *General.* The Assistant Secretary for Housing—Federal Housing Commissioner, or his or her designee, or the Assistant Secretary for Public and Indian Housing, or his or her designee, may initiate a civil money penalty against any owner, any general partner of a partnership owner, or any agent employed to manage the property that has an identity of interest with the owner or the general partner of a partnership owner of a property receiving project-based assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) for a knowing and material breach of a housing assistance payments contract. Examples of covered violations include, but are not limited to, the following:

* * * * *

7. Revise § 30.70 to read as follows:

§ 30.70 Prepenalty notice.

(a) Prior to determining whether to issue a complaint under § 30.85, the official designated in subpart B of this part, or his or her designee (or the chairperson of the Mortgagee Review Board, or his or her designee, in actions under § 30.35), shall issue a written notice to the respondent. This prepenalty notice shall include the following:

(1) That HUD is considering seeking a civil money penalty;

(2) The specific violations alleged;

(3) The maximum civil money penalty that may be imposed;

(4) The opportunity to reply in writing to the designated program official within 30 days after receipt of the notice;

(5) That failure to respond within the 30-day period may result in issuance of a complaint under § 30.85 without consideration of any information that

the respondent may wish to provide; and

(6) That if a complaint is issued under § 30.85, the respondent may request a hearing before an administrative law judge in accordance with § 30.95.

(b) *Obligation to preserve documents.* Upon receipt of the prepenalty notice, the respondent is required to preserve and maintain all documents or data, including electronically stored data, within his or her possession or control that may relate to the violations alleged in the prepenalty notice. The Department shall also preserve such documents or data upon the issuance of the prepenalty notice.

8. Revise § 30.75 to read as follows:

§ 30.75 Response to prepenalty notice.

(a) The response shall be in a format prescribed in the prepenalty notice. The response shall address the factors set forth in § 30.80 and include any arguments opposing the imposition of a civil money penalty that the respondent may wish to present.

(b) In any case where respondent seeks to raise ability to pay as an affirmative defense or argument in mitigation, the respondent shall provide documentary evidence as part of its response.

9. Revise § 30.80 to read as follows:

§ 30.80 Factors in determining amount of civil money penalty.

After determining that a respondent has committed a violation as described in Subpart B of this part that subjects the respondent to liability under this part, the officials designated in subpart B of this part shall consider the following factors to determine the amount of penalty to seek against a respondent, if any.

(a) The gravity of the offense;

(b) Any history of prior offenses;

(c) The ability to pay the penalty, which ability shall be presumed unless specifically raised as an affirmative defense or mitigating factor by the respondent;

(d) The injury to the public;

(e) Any benefits received by the violator;

(f) The extent of potential benefit to other persons;

(g) Deterrence of future violations;

(h) The degree of the violator's culpability;

(i) With respect to Urban Homestead violations under § 30.30, the expenditures made by the violator in connection with any gross profit derived; and

(j) Such other matters as justice may require.

(k) In addition to the above factors, with respect to violations under §§ 30.45, 30.55, 30.60, and 30.68, the Assistant Secretary for Housing—Federal Housing Commissioner, or his or her designee, or the Assistant Secretary for Public and Indian Housing, or his or her designee, shall also consider:

(1) Any injury to tenants; and/or

(2) Any injury to lot owners.

(l) HUD may consider the factors listed in paragraphs (a) through (k) of this section to determine the appropriateness of imposing a penalty under § 30.35(c)(2); however, HUD cannot change the amount of the penalty under § 30.35(c)(2).

10. In § 30.85, revise paragraphs (b) introductory text, (c), and (d) and add paragraph (e) to read as follows:

§ 30.85 Complaint.

* * * * *

(b) If a determination is made to seek a civil money penalty, government counsel shall issue a complaint to the respondent on behalf of the officials listed at subpart B of this part or the Mortgagee Review Board for violations under § 30.35. The complaint shall be served upon respondent and simultaneously filed with the Office of Administrative Law Judges, and shall state the following:

* * * * *

(c) A copy of this part and of 24 CFR part 26, subpart B, shall be included with the complaint.

(d) *Service of the complaint.* The complaint shall be served on the respondent by first class mail, personal delivery, or other means.

(e) Before taking an action under §§ 30.35 for violation of 12 U.S.C. § 1735f–14(b)(1)(D) or (F), 30.36, or 30.50 for violation of 12 U.S.C. 1723i(b)(1)(G) or (I), the Secretary shall inform the Attorney General of the United States, which may be accomplished by providing a copy of the complaint. The Secretary shall include in the body of the complaint a statement confirming that this action was taken.

11. In § 30.90, revise paragraph (a), redesignate paragraph (b) as (c), and revise the new paragraph (b) to read as follows:

§ 30.90 Response to the complaint.

(a) *Request for a hearing.* If the respondent desires a hearing before an administrative law judge, the respondent shall submit a request for a hearing to HUD and the Office of Administrative Law Judges no later than 15 days following receipt of the complaint, as required by statute. This mandated period cannot be extended.

(b) *Answer.* In any case in which the respondent has requested a hearing, the respondent shall serve upon HUD and file with the Office of Administrative Law Judges a written answer to the complaint within 30 days of receipt of the complaint, unless such time is extended by the administrative law judge for good cause. The answer shall include the admission or denial of each allegation of liability made in the complaint; any defense on which the respondent intends to rely; any reasons why the civil money penalty should be less than the amount sought in the complaint, based on the factors listed at § 30.80; and the name, address, and telephone number of the person who will act as the respondent's representative, if any.

* * * * *

12. Revise § 30.95 to read:

§ 30.95 Hearings.

Hearings under this part shall be conducted in accordance with the procedures applicable to hearings in accordance with the Administrative Procedure Act, set forth in 24 CFR part 26.

13. Revise § 30.100 to read as follows:

§ 30.100 Settlement of a civil money penalty action.

The officials listed at subpart B of this part, or their designees (or the Mortgagee Review Board, or designee, for violations under § 30.35), are authorized to enter into settlement agreements resolving civil money penalty actions that may be brought under part 30.

Dated: September 23, 2008.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E8–24574 Filed 10–16–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–5181–P–01]

RIN 2506–AC22

State Community Development Block Grant Program: Administrative Rule Changes

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would make changes to several sections of the regulations for the Community