

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 25

[Docket No. FR-5082-F-02]

RIN 2510-AA01

**Mortgagee Review Board (MRB);
Amendments to the MRB Regulations**

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

ACTION: Final rule.

SUMMARY: This final rule makes changes to the Department's Mortgagee Review Board (Board) regulations to clarify and better reflect statutory directives and amend current practice, and to modify the Board's procedures governing hearings. This rule also removes provisions that unnecessarily duplicate the authorizing statute and clarifies the authority and duties of the Board in taking administrative action against mortgagees approved by the Federal Housing Administration. This rule separates and clarifies the grounds for administrative action and the factors considered by the Board in evaluating whether to take administrative action, as well as requiring the mortgagee to address these factors in its response to the Board's notice of violation.

This rule follows publication of a March 28, 2008, proposed rule on which HUD received one public comment. At this final rule stage, HUD has decided to adopt the proposed rule with minor changes, as described below.

DATES: *Effective Date:* November 10, 2008.

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 Mortgagee 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 to

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; procedures involved in notifying mortgagees of a violation and administrative action, as well as any hearing that results; and guidelines for the publication and dissemination of information regarding actions.

II. March 2008 Proposed Rule

On March 28, 2008, at 73 FR 16605, HUD published a proposed rule to amend the regulations governing the Board at 24 CFR part 25. Some of the more significant amendments proposed included the following: to permit hearings to be conducted by an Administrative Law Judge (ALJ); 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; to include the violation of an agreement with HUD as creating grounds for administrative action; 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; to provide that, in responding to the notice, mortgagees must address the factors listed in new § 25.8; to establish 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; to add a new § 25.8 that clarifies 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); to 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; to clarify that mortgagees that may be subject to probation, suspension, or withdrawal are entitled to a hearing, but a hearing must be requested; and to

reflect the authority of an ALJ to conduct hearings. With the exception of the changes described below, all the regulatory amendments are described and discussed in detail in the preamble to the March 28, 2008, proposed rule. The Department has made technical revisions to the language proposed in the March 28, 2008, proposed rule with respect to §§ 25.5(b) and (c), 25.8, 25.9(b), 25.10(a), and 25.11, to ensure the clarity of those provisions.

III. Discussion of Public Comments

At the end of the public comment period on May 27, 2008, HUD received only one public comment on the proposed rule. The commenter had several comments, which are provided below along with HUD's responses:

Comment: Rule Removes an Important Due Process Currently Available to Lenders. The commenter expressed concern about HUD's proposal in 24 CFR 25.7(c), which provides an exception to the notice-of-violation requirement. The commenter stated that under the existing regulations, the Board must provide a notice of a violation of an FHA-approved mortgagee before issuing a letter of reprimand. The March 2008 rule proposes to create an exception to this requirement, and allow the Board to bypass written notification whenever information comes before the Board that the Board believes provides a basis for issuance of a letter of reprimand. The March 2008 proposed rule allows the Board to issue this letter without issuing a notice of violation to the mortgagee or providing any subsequent hearing. According to the commenter, this change in the regulation would deprive the lender of due process, and without an opportunity for hearing, a lender's reputation could be harmed. The commenter urged that this provision be withdrawn at the final rule stage, and that the existing regulation remain in place.

HUD Response: While this regulation does include an express exemption from the notice requirements of § 25.7, which does represent a change in the text of the regulation, no substantive change is being made through this change in the phrasing of the regulation. This rule does not alter in any way the existing regulatory provisions concerning the issuance of a letter of reprimand by the Board. The Department's current regulations do not require the issuance of a notice of violation for a letter of reprimand, instead stating specifically that such a notice shall be issued prior to the consideration of any probation, suspension, or withdrawal action. This rule retains the exemption from

issuance of a notice of violation prior to issuance of a letter of reprimand, and merely casts the process in different terms.

The Department disagrees that this exemption denies a mortgagee any due process. The exemption of letters of reprimand from the notice of violation derives directly from the authorizing statute, evidencing Congress's belief that additional processes were unnecessary prior to the issuance of a letter of reprimand.

Additionally, the commenter is concerned with the effect that the issuance of a letter of reprimand would have on a mortgagee. The Department does not believe the impact on a mortgagee is sufficient to warrant the full procedural protections afforded when the Board determines to take one of the other administrative actions provided for by the statute and regulations. Specifically, unlike the other administrative actions, a letter of reprimand does not in and of itself have any effect on a mortgagee's approval or authority to originate mortgages for insurance by FHA.

Comment: Rule Removes an Important Due Process Available to Lenders in the Future. The commenter expressed concern that a letter of reprimand may serve as a basis for a future proceeding, notwithstanding that there is no opportunity by the mortgagee to contest it. The commenter urged that this provision be withdrawn at the final rule stage and that the existing regulation remain in place.

HUD Response: The prior issuance of a letter of reprimand against a mortgagee cannot, in and of itself, support an action against an FHA-approved mortgagee. Should a mortgagee again be found to have violated HUD requirements, any action by the Board would be based on those future violations. As noted above, while including a change to the text of the regulation, no substantive change is being made through this revision of the current regulation. Therefore, the Department has made no change to the regulation in response to this comment.

Comment: Do Not Require ALJ to Grant a Hearing Extension Only if Both Parties Agree. The commenter also expressed concern about 24 CFR 25.10(c). The commenter states that under the March 2008 proposed rule, the ALJ can grant an extension of time for a hearing beyond 30 days only if the parties agree. The ALJ can also extend for good cause. This is a change from the current rule, which allows the mortgagee to request a hearing beyond 30 days. Both parties should not have to agree to the extension in order for the

extension to be granted. The commenter urged that the final rule authorize the ALJ to grant an extension on the basis of either party's request.

HUD Response: The Department believes that the swift resolution of these matters is in the interests of both parties, which is why the proposed rule required the parties to agree to any delay in the proceedings. However, the Department recognizes that the interests of the mortgagee could also be protected through the provision for an extension upon motion by the mortgagee, which would then be ruled upon by the presiding Administrative Law Judge. Therefore, the Department has made a change in this final rule to provide that the mortgagee may move for an extension of time for the conduct of the hearing.

Comment: Allow the ALJ to Dismiss Charge Upon Unreasonable Delay by HUD. The commenter recommended that in addition to authorizing the ALJ to grant an extension on the basis of one party's request or to extend for good cause, the final rule should make clear that since the mortgagee is the aggrieved party, the ALJ may dismiss the charge if HUD delays the proceeding unreasonably.

HUD Response: The Department's procedural regulations at 24 CFR part 26, subpart B, generally govern the conduct of the hearing by the ALJ. Because § 26.36 of 24 CFR part 26 contains provisions permitting the ALJ to impose sanctions against either party for improper conduct, including failure to prosecute or defend an action, it is unnecessary to add a similar sanction provision to this part. Therefore, the Department has not made any change in response to this comment.

Comment: Allow Discovery of Certain Information if ALJ Determines Such Information is Relevant. With respect to the documentary evidence provision of the proposed rule in 24 CFR 25.10(c), the commenter urges that the final rule allow certain information, such as reviews or audits by HUD against lenders other than the appealing mortgagee, which may be relevant to a given mortgagee appeal, to be the subject of discovery if the ALJ concurs in the relevancy of such information.

HUD Response: The provisions prohibiting discovery of information concerning other mortgagees has not been altered from those in the current regulation. The purpose of this limitation is to restrict burdensome and unnecessary discovery into irrelevant matters, such as the Department's decision whether or not to pursue enforcement actions. Under *Heckler v. Chaney*, 470 U.S. 821, 84 L. Ed. 2d 714,

105 S. Ct. 1649 (1985), the review of an agency action under the Administrative Procedure Act does not extend to the right to judicial review of an agency's decision not to take enforcement action. Under *Heckler v. Chaney*, the decision not to undertake enforcement action is "committed to an agency's absolute discretion," rendering such decision presumptively unreviewable (see 470 U.S. at 831). It is necessary to retain this prohibition to prevent unnecessary and irrelevant inquiries that will not lead to admissible or relevant evidence. Therefore, no change has been made in response to this comment.

IV. 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 <http://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.

V. Findings and Certifications

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 rule makes changes to HUD's Mortgagee 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.

Environmental Impact

This 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 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 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 amends 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 Mortgagee 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 Debarment Official under 24 CFR part 24.

§ 25.3 [Amended]

■ 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 the following 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)):

- (1) The Assistant Secretary of Housing-Federal Housing Commissioner;
- (2) The General Counsel of the Department;
- (3) The President of the Government National Mortgage Association (GNMA);
- (4) The Assistant Secretary for Administration;
- (5) The Assistant Secretary for Fair Housing and Equal Opportunity (in cases involving violations of nondiscrimination requirements);
- (6) The Chief Financial Officer of the Department; and
- (7) The Director of the Enforcement Center; or their designees.

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

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

(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.

■ 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.

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(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.

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■ 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 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 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 any administrative action under 12 U.S.C. 1708(c), except for a letter of reprimand, may request a hearing, which shall be held on the record before an administrative law judge. 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 Mortgagee Review Board Docket Clerk, Department of Housing and Urban Development, 451 7th 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 mortgagee moves for an extension of time. 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. Section 25.14 is redesignated as § 25.11 and is revised to read as follows:

§ 25.11 Modification of Board orders.

No order of an ALJ before whom proceedings are conducted under § 25.10 may modify or otherwise disturb in any way an order or notice by the Board, unless the order of the ALJ becomes final agency action in accordance with Subpart B of Part 26 of this Title.

■ 14. 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).

Dated: September 23, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

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