

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-5543-D-01]

**Consolidated Delegation of Authority
to the General Counsel**

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Delegation of Authority.

SUMMARY: On December 1, 2009, HUD published in the **Federal Register** a consolidated notice of delegation of authority from the Secretary to the General Counsel. Today's **Federal Register** notice updates the December 1, 2009, consolidated delegation of authority and supersedes all previous delegations of authority from the Secretary to the General Counsel.

DATES: *Effective Date:* July 9, 2011.

FOR FURTHER INFORMATION CONTACT: John P. Opitz, Associate General Counsel for Finance and Administrative Law, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 8150, Washington, DC 20410-0500, telephone number 202-708-1999. (This is not a toll-free number.) Individuals with speech or hearing impairments may access this number through TTY by calling 1-800-877-8339.

SUPPLEMENTARY INFORMATION: On December 1, 2009, at 74 FR 62801, HUD published a consolidated notice of delegation of authority from the Secretary to the General Counsel. Today's **Federal Register** notice updates the December 1, 2009, consolidated delegation of authority and supersedes all previous delegations of authority from the Secretary to the General Counsel. Published elsewhere in today's **Federal Register** is a redelegation of authority from the General Counsel to subordinate employees within the Office of General Counsel.

Section A of this notice contains general delegations from the Secretary to the General Counsel.

Section B of this notice contains a delegation from the Secretary to the General Counsel regarding enforcement authority. In this section, the Secretary delegates authority to the General Counsel to issue suspensions, debarments, and limited denials of participation, under 2 CFR Part 2424 (adopting the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR Part 180, as supplemented by 2 CFR part 2424). In a separate notice published in today's **Federal Register**, the General Counsel redelegates this authority to the Principal Deputy General Counsel, the

Deputy General Counsel for Enforcement and Fair Housing, the Director of the Departmental Enforcement Center, the Deputy Director of the Departmental Enforcement Center, and the Directors of the satellite Departmental Enforcement Centers.

Section C of this notice contains a delegation from the Secretary to the General Counsel when acting as the Designated Agency Ethics Official. The Secretary previously named the General Counsel as HUD's Designated Agency Ethics Official (DAEO) and authorized the DAEO to waive any provisions in 5 CFR Part 7501 (Supplemental Standards of Conduct for Employees of the Department of Housing and Urban Development). See 5 CFR 7501.102, 7501.103. The Secretary has also named the Deputy General Counsel for Operations as the Alternate Designated Agency Ethics Official to act in the absence of the DAEO. See 5 CFR 7501.102. In this notice, the Secretary delegates the authority to the DAEO to authorize the Alternate DAEO to perform the waiver function of the DAEO in 5 CFR Part 7501 concurrently with the DAEO.

In addition to the authority published in today's consolidated delegation of authority, the Secretary has delegated other authorities to the General Counsel by regulation. These delegations include:

1. Naming the General Counsel as HUD's Designated Agency Ethics Official; 5 CFR 7501.102.
2. Authorizing the General Counsel, and in some instances, the appropriate Associate General Counsel or Regional Counsel, to respond to subpoenas and/or other demands from the courts or other authorities; 24 CFR Part 15.
3. Designating the General Counsel as the source selection authority for the procurement of outside legal services through either the lowest price technically acceptable or a tradeoff process; 48 CFR 2415.303(a)(3).
4. Designating the General Counsel as a responsible official to ensure the implementation of the policies of the National Environmental Policy Act (NEPA) and other environmental requirements of the Department, including the performance of the responsibilities of a Program Environmental Clearance Officer pursuant to 24 CFR 50.10(a), 50.16.
5. Authorizing the General Counsel, as set forth in 24 CFR Parts 103 and 180, to exercise authority pertaining to civil rights statutes, including the Fair Housing Act, 42 U.S.C. 3601 *et seq.*; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 200d *et seq.*;

Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 *et seq.*; the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*; and Section 109 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5301 *et seq.*

6. Authorizing the General Counsel to initiate a civil money penalty action pursuant to Sections 102 and 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a(c), 3545); 24 CFR Part 4 in accordance with the provisions of 24 CFR Part 30.

7. Authorizing the General Counsel to appoint and fix the compensation of a foreclosure commissioner or commissioners and alternate commissioners, in accordance with the Multifamily Mortgage Foreclosure Act of 1981 (12 U.S.C. 3701 *et seq.*); 24 CFR 27.10.

HUD's program Assistant Secretaries have also delegated authority to the General Counsel. The Assistant Secretary for Housing-Federal Housing Commissioner has delegated authority to the General Counsel to issue a notice of violation under the terms of a regulatory agreement; to issue a notice of default under the terms of housing assistance payments contracts (HAPs), Rental Assistance Payment Contracts, Project Rental Assistance Contracts, or Use Agreements; to impose civil money penalties; and to take all actions permitted under 24 CFR 30.36, 30.45, and 30.68.

Section 30.36 of HUD's regulations (24 CFR 30.36) authorizes the Assistant Secretary for Housing-Federal Housing Commissioner, or designee, to initiate civil money penalty action against any principal, officer, or employee of a mortgagee or lender, or other participant or any provider of assistance to a borrower in connection with any such mortgage or loan, including: sellers, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents, dealers, consultants, contractors, subcontractors, and inspectors. Section 30.45 of HUD's regulations (24 CFR 30.45) authorizes the Assistant Secretary for Housing-Federal Housing Commissioner, or designee, to initiate civil money penalty action against any mortgagor of a multifamily property with a mortgage insured, co-insured, or held by the Secretary, pursuant to Title II of the National Housing Act or to Section 202 of the Housing Act of 1959.

Section 30.68 of HUD's regulations (24 CFR 30.68) authorizes the Assistant Secretary for Housing-Federal Housing Commissioner, or designee, to initiate

civil money penalty action against any owner, general partner of a partnership, or agent employed to manage the property that has an identity of interest with the owner or general partner receiving project-based assistance under Section 8 of the United States Housing Act of 1937 for a knowing and material breach of housing assistance payment (HAP) contracts.

Section A. Authority

The Secretary of Housing and Urban Development hereby delegates the following authorities to the General Counsel:

1. To interpret the authority of the Secretary and to determine whether the issuance of any rule, regulation, statement of policy, or standard promulgated by HUD is consistent with that authority.

2. To direct all litigation affecting HUD and to sign, acknowledge, and verify on behalf of and in the name of the Secretary all declarations, bills, petitions, pleas, complaints, answers, and other pleadings in any court proceeding brought in the name of or against the Secretary or in which the Secretary is a named party.

3. To direct the referral of cases and other matters to the Attorney General for appropriate legal action and to transmit information and material pertaining to the violation of law or HUD rules and regulations. Excepted from this authority, however, are those referrals and transmittals that the Inspector General is authorized to make by law or by delegation of authority.

4. To accept, on behalf of the Secretary, service of all summonses, subpoenas, and other judicial, administrative, or legislative processes directed to the Secretary or to an employee of HUD in an official capacity, and to execute affidavits asserting HUD's deliberative process privilege.

5. Where not inconsistent with regulations pertaining to proceedings before administrative law judges, to approve the issuance of subpoenas or interrogatories pertaining to investigations for which responsibility is vested in the Secretary.

6. To consider, ascertain, adjust, determine, compromise, allow, deny, or otherwise dispose of claims under the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671 *et seq.* and the Military Personnel and Civilian Employees' Claims Act of 1974, 31 U.S.C. 3721 *et seq.*

7. To act upon the appeals and issue final determinations on appeals of denial of access or record correction under the Privacy Act of 1974, except appeals regarding records maintained by

the Office of Inspector General (Pub. L. 93-579), 5 U.S.C. 552(c).

8. To make written requests, for purposes of civil or criminal law enforcement activities, to other agencies for the transfer of records or copies of records maintained by such agencies under subsection (b)(7) of the Privacy Act of 1974, as amended (5 U.S.C. 552a(b)(7)).

9. To act upon appeals under the Freedom of Information Act, 5 U.S.C. 552, except appeals from decisions of the Office of Inspector General.

10. To appoint a foreclosure commissioner or commissioners, or a substitute foreclosure commissioner, to replace a previously designated foreclosure commissioner under:

(a) Section 805 of the Single Family Mortgage Foreclosure Act of 1994, 12 U.S.C. 3754; the power to fix compensation for the foreclosure commissioner under Section 812 of the Single Family Mortgage Foreclosure Act of 1994, 12 U.S.C. 3761; and to promulgate regulations necessary to carry out the provisions of the Single Family Mortgage Foreclosure Act of 1994; and

(b) Section 365 of the Multifamily Mortgage Foreclosure Act of 1981, 12 U.S.C. 3701, *et seq.*; the power to fix compensation for the foreclosure commissioner under Section 369(c) of the Multifamily Mortgage Foreclosure Act of 1981, 12 U.S.C. 3701, *et seq.*; and to promulgate regulations necessary to carry out the provisions of the Multifamily Mortgage Foreclosure Act of 1981.

11. To make determinations and certifications required under Section 1114 of the Right to Financial Privacy Act, 12 U.S.C. 3401, *et seq.*

12. To designate authorized officials to exercise the powers or perform the duties of the General Counsel, through an order of succession (subject to the provisions of the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345-3349d), during any period when, by reason of absence, disability, or vacancy in office, the General Counsel for HUD is not available.

13. Where not inconsistent with other regulations pertaining to proceedings before administrative law judges, to serve as an Attesting Officer and to cause the seal of HUD to be affixed to such documents as may require its application and to certify that a copy of any book, paper, microfilm, or other document is a true copy of that in the files of HUD.

14. To act as the designated official under Section 5(a) of Executive Order 12630, Governmental Actions and Interference With Constitutionally

Protected Property Rights, issued March 15, 1987, (53 FR 8859, March 18, 1988) consistent with Executive Order 13406, Protecting the Property Rights of the American People, issued June 23, 2006 (71 FR 36973, June 28, 2006).

15. To make determinations of federalism implications, preemption, or the need for consultations with state and local officials as required by Executive Order 13131, Federalism, issued August 4, 1999 (64 FR 43255, August 10, 1999).

Section B. Enforcement Authority

The Secretary hereby delegates the following authority to the General Counsel:

1. To issue suspensions, debarments, and limited denials of participation, under 2 CFR part 180.

Section C. Authority Delegated to the Designated Agency Ethics Official

The Secretary hereby delegates the following authority to the General Counsel when acting as HUD's Designated Agency Ethics Official:

1. To authorize the Alternate Designated Agency Ethics Official to perform the waiver function of the Designated Agency Ethics Official, as provided by 5 CFR Part 7501, concurrently with the Designated Agency Ethics Official.

Section D. Authority To Redelegate

The General Counsel is authorized to redelegate to employees of HUD any of the authority delegated under Sections A, B, and C above.

Section E. Authority Superseded

This delegation supersedes all previous delegations of authority from the Secretary to the General Counsel.

Authority: Section 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 9, 2011.

Shaun Donovan,
Secretary.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5543-D-02]

Consolidated Redefinition of Authority to the Office of General Counsel

AGENCY: Office of General Counsel, HUD.

ACTION: Notice of Redefinition of Authority.