PART 43—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

1. Remove the citation "38 U.S.C. 210" and add in its place "38 U.S.C. 501" wherever it appears.

2. Remove the citation "38 U.S.C. 612" and add in its place "38 U.S.C. 1712" wherever it appears.

3. Remove the citation "38 U.S.C. 641–643" and add in its place "38 U.S.C. 1741–1743" wherever it appears.

PART 44—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Remove the citation "38 U.S.C. 210(c)" and add in its place "38 U.S.C. 501" wherever it appears.

PART 45—NEW RESTRICTIONS ON LOBBYING

Remove the citation "38 U.S.C. 210(c)" and add in its place "38 U.S.C. 501", wherever it appears."

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July 13, 1992

Part III

Office of Management and Budget

Federal Procurement Policy Office

Statement of Objectives, Policies and Concepts (May 1992); Notice

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Cost Accounting Standards Board; Statement of Objectives, Policies and Concepts (May 1992)

In May 1977, the Cost Accounting Standards Board, authorized under Public Law 91-379, published a Restatement of the objectives, policies and concepts within which the Board formulated the existing Cost Accounting Standards and related rules and regulations. The Board published that document to improve the general understanding of its fundamental objectives and concepts. Pursuant to Public Law 100-679, there is established within the Office of Federal Procurement Policy an independent board to be known as the Cost Accounting Standards Board. The Board is now publishing a Statement of its current objectives, policies and concepts. This Statement is intended to make known the current views of the Board, as it considers the cost accounting issues that come before it. As such, the Board intends for subsequent promulgations to be consistent with the objectives and concepts provided herein. Interested members of the public should, on the basis of this Statement, be better able to focus on the complex and difficult issues that the Board faces in promulgating and revising Cost Accounting Standards. Anticipating that the Board, from time-to-time, will revise this document, the Board welcomes the views of interested parties on the objectives, policies and concepts stated herein.

Objectives

The purpose of this Statement is to present the basic policies, procedures and objectives within which the Cost Accounting Standards Board carries out its functions under the authority of Public Law 100-679. The primary objective of the Board is to promulgate, amend, and revise Cost Accounting Standards designed to achieve (1) an increased degree of uniformity in cost accounting practices among Government contractors in like circumstances, and (2) consistency in cost accounting practices in like circumstances by individual Government contractors over periods of time. In accomplishing this primary objective, the Board takes into account (1) the advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning contracts, (2) the probable costs of implementation, including inflationary effects, if any, compared to the probable benefits of such Standards, and (3) the alternatives available.

Increased uniformity and consistency in accounting practices among Government contractors improves understanding and communications, reduces the incidence of contract disputes, increases the effectiveness of the contract administration process and facilitates equitable contract settlements. A Cost Accounting Standard is a statement formally issued by the Cost Accounting Standards Board that (1) enunciates a principle or principles to be followed, (2) establishes practices to be applied, or (3) specifies criteria to be employed in selecting from alternative principles and practices in estimating, accumulating and reporting costs under contracts subject to the rules of the Board. A Cost Accounting Standard may be stated in terms as general or as specific as the Board considers necessary to accomplish its purpose.

Uniformity

Uniformity relates to comparison of two or more accounting entities. The Board's objective in this respect is to achieve comparability of results of entities operating under like circumstances. The Board recognizes the impracticality of defining or attaining absolute uniformity, largely because of the problems related to defining like circumstances. The Board will, nonetheless, seek ways to attain a practical degree of uniformity in cost accounting practices among covered Government contractors.

Absolute uniformity would be achieved only if contractors in the same circumstances, with respect to a given subject, always followed the same cost accounting practices. The Board does not seek to establish a single uniform accounting system or chart of accounts for all the complex and diverse businesses engaged in Government contracting. Any increase in uniformity, however, will provide more comparability among contractors whose circumstances are similar. Therefore, if the Board were to be satisfied that circumstances among all concerned Government contractors were substantially the same in a given subject area, the Board would not be precluded from establishing a single cost accounting treatment for use in such circumstances.

Consistency

Consistency pertains to the use by one accounting entity of compatible cost accounting practices which permit comparability of contract results under similar circumstances over periods of time. Like uniformity, the attainment of absolute consistency can only be measured when like circumstances can be defined. Essentially, consistency relates to the allocation of costs, both direct and indirect, and to the treatment of cost with respect to individual cost objectives as well as among cost objectives in like circumstances. The Board believes that consistency within an entity enhances the usefulness of comparisons between estimates and actuals. It also improves the comparability of cost reports from one time period to another where there are like circumstances.

Allowability and Allocability

While the Board has exclusive authority for establishing Standards governing the measurement, assignment and allocation of costs, it does not determine the allowability of categories or individual items of cost. Allowability is a procurement concept affecting contract price and in most cases is established in regulatory or contractual provisions. An agency's policies on allowability of costs may be derived from law and are generally embodied in its procurement regulations. A contracting agency may include in contract terms, or in its procurement regulations, a provision that will refuse to allow certain costs incurred by contractors that are unreasonable in amount or contrary to public policy. In accounting terms, these same costs may be allocable to the contract in question.

The Board acknowledges that the Chairman, who also serves as Administrator for Federal Procurement Policy, has the authority under 41 U.S.C. 405 and 422 to ensure that the procurement regulations of the Executive Branch agencies are consistent with the Federal Acquisition Regulation and such other procurement policies as the Administrator shall determine (including Cost Accounting Standards promulgated by the Board). In addition, Public Law 100-679 specifies that costs that are subject to the Cost Accounting Standards shall not be subject to agency regulations which differ from the Standards in the areas of measurement, assignment or allocation of such costs. The Administrator may, in accordance with statutory authority, review cost allowability questions that are brought before the Office of Federal Procurement Policy. In such instances, the Administrator exercises his independent authority to make discretionary judgments on public policy issues relating to the allowability of contract costs.

Allocability is an accounting concept involving the ascertainment of contract cost. It results from a relationship between a cost and cost objective such that the cost objective appropriately bears all or a portion of the cost. For a particular cost objective to have allocated to it all or part of a cost, there should exist a beneficial or causal relationship between the cost objective and the cost.

Cost Accounting Standards provide for the definition and measurement of costs, the assignment of costs to particular cost accounting periods, and the determination of the bases for the direct and indirect allocation of the total assigned costs to the contracts and other cost objectives of these periods. The use of Cost Accounting Standards has no direct bearing on the allowability of those individual items of cost which are subject to limitations or exclusions set forth in the contract or which are otherwise specified as unallowable by the Government.

The Board recognizes that contract costs are only one of several important factors which should be involved in negotiating contracts. Therefore, the promulgation of Cost Accounting Standards, and the determination of contract costs thereunder, cannot be considered a substitute for effective contract negotiation. It should be emphasized that where Cost Accounting Standards are applicable, they are determinative as to the costs allocable to contracts. It is a contracting agency's prerogative to negotiate the allowability of costs which are allocated to contracts. However, agency regulations should determine allowability based on reasonableness and/or public policy and not on the way a cost is measured, assigned, or allocated provided that such measurement, assignment, or allocation is consistent with the Cost Accounting Standards promulgated by the Board. The definition of Government contract costs, and how the amount thereof is to be allocated is a function of the Cost Accounting Standards.

Fairness and Equity

The Board considers a Cost Accounting Standard to be fair when in the Board's best judgment it provides equitable allocation of costs to contracts and shows neither bias nor prejudice to either party to affected contracts.

The results of contract pricing may ultimately be regarded as fair or unfair by either or both parties to a particular contract. But if the Cost Accounting Standards utilized in the negotiation, administration, and settlement of the contract provided the contracting parties with accounting data that are representative of the facts, the Standards themselves are fair. The concept of equity will be considered by the Board when a Standard is written and/or amended.

Verifiability

Verifiability is generally accepted as an important goal for information used in cost accounting. Contract cost accounting systems should provide for verifiability to the greatest extent practical. Contract costs should be auditable by examination of appropriate data and documents supporting such costs or by reference to the facts and assumptions used to allocate the costs to the contract.

The Board recognizes that under some Standards individual contractors may accumulate or allocate certain contract costs on a different basis, or in greater detail, than would otherwise be provided in a contractor's general books of account. The Board has stated in the prefatory comments of certain Standards that contractors may use memorandum accounting records to meet the requirements of Standards. These statements reflect the Board's intent that, for these Standards and elsewhere, only such detail of cost allocation and recordkeeping should be required as is necessary to provide the verifiability that is needed to satisfy regulatory contract cost audit requirements. Detailed contractor accounting records of contract costs should be reconcilable with the general books of account.

Cost Allocation Concepts

In order to achieve increased uniformity and consistency in accounting for costs of negotiated Government contracts, Cost Accounting Standards provide criteria for the allocation to cost objectives of the costs of resources used. As used in this discussion, cost is the monetary value of the resources used. A cost objective as defined by the Board is "a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc." Standards deal with all aspects of cost allocability, including:

1. The definition and measurement of costs which may be allocated to cost objectives,

2. The determination of the cost accounting period to which such costs are assignable, and

3. The determination of the methods by which costs are to be allocated to cost objectives.

The basic premise of good cost accounting is that the measurement, assignment, and allocation of costs to cost objectives be based on the beneficial or causal relationship between those costs and the cost objectives. In defining the proper measurement, assignment, and allocation of cost, certain accounting concepts such as materiality, the choice of an appropriate accounting method, and full costing should be carefully considered.

Materiality

Materiality must be considered in applying the Cost Accounting Standards because, as a practical matter, the cost of an accounting application should not exceed its benefit. Although uniformity and consistency in accounting are desired goals of the Cost Accounting Standards, the Board recognizes that the applications of accounting criteria must consider issues of practical application. Consequently, the application of Cost Accounting Standards in determining the measurement, assignment, and allocation of costs should not be so stringently interpreted that the desired benefits are negated by excessive administrative costs.

Method of Accounting

The accounting areas of interest to the Board include assignment of the costs of resources consumed to time periods. This accounting area is also of interest to other authoritative bodies established to issue pronouncements affecting accounting for financial and tax purposes. The Board will continue taking those other pronouncements into account to the extent it can do so in accomplishing its objectives. However, the Board recognizes that the purposes of these pronouncements are not intended to meet the objectives of contract costing. Therefore, the Board will retain and exercise full responsibility for meeting the objectives of contract costing.

As a practical matter, the simplest way to determine the period in which to recognize a cost is to select the period of cash payment. However, generally accepted accounting principles usually require deferral or accrual in order to recognize costs in periods other than those in which cash payment is made. Differences between the cash and accrual basis of accounting will occur with respect to the assignment of cost when liquidation of an obligation is deferred. Although the Board believes that the accrual basis of accounting generally provides for a better matching of costs to the production of goods and services which gave rise to them, the assignment of costs to accounting periods for government contract costing purposes must be carefully evaluated to assure that the assignment shows neither bias nor prejudice to either party to the contract. The Board in individual Standards will provide guidance with respect to the use of accrual, cash or any other accounting methods for assigning costs to accounting periods.

Full Costing

The Board will adhere to the concept of full costing whenever appropriate. Full allocation of all costs of a period, including general and administrative expenses and all other indirect costs, is considered by the Board generally to be the basis for determining the cost of negotiated Government contracts.

Under the full costing concept, all costs initially allocated to intermediate cost objectives must be subsequently reallocated to final cost objectives. For this purpose, a final cost objective may be established to include unreasonable costs or costs unallowable for other reasons. The bases selected for allocating costs from intermediate cost objectives to final cost objectives are the devices used to associate costs with final cost objectives when such costs are not directly identifiable with those cost objectives. If the base selected is a reasonable measure of the relationship between the cost and cost objectives, the cost will be reasonably allocated to such cost objectives. The Board has referred to this conceptual relationship in the Standards as the beneficial or causal relationship between costs and cost objectives. In addition to the expression of this concept, the Cost Accounting Standards define in appropriate circumstances what criteria should be used to select the allocation base that best expresses this conceptual relationship.

Hierarchy for Allocating Costs

As an ideal, each item should be assigned to the cost objective that was intended to benefit from the resource represented by the cost or, alternatively, that caused incurrence of the cost. To approach this goal, the Board believes in the desirability of direct identification of costs with final cost objectives where the following allocation characteristics exist:

1. The beneficial or causal relationship between the incurrence of cost and cost objectives is clear and exclusive.

2. The amount of resource used is readily and economically measurable.

However, if all items of cost incurred for the same purpose in like circumstances do not have these characteristics, then none of these items should be identified directly with final cost objectives.

In addition, the Board recognizes that there are circumstances where although the units of resource used can be directly identified with a final cost objective, it would be inappropriate or unnecessary to directly identify the cost with the final cost objective. Where the units of resource used are interchangeable, as for example in the case of like machinery and equipment, consumption of materials and supplies or utility services, the amount of cost to be allocated to cost objectives may more appropriately be determined on the basis of an average cost and not on the actual cost of each unit used. The Board believes that this averaging concept should be applied in appropriate circumstances. Individual Cost Accounting Standards recognize specific instances where, although the incidence of resource use is directly identified with particular final cost objectives, the cost of the resource used should be determined on an averaging or indirect basis.

Where units of resource used are not directly identified with final cost objectives, the cost of such resources should be grouped into logical and homogeneous pools for allocation to cost objectives in accordance with a hierarchy of preferable techniques. Homogeneity means that the costs of functions allocated by a single base have the same or a similar relationship to the cost objectives for which the functions are performed, and the grouping of such costs in homogeneous pools for allocation to benefitted cost objectives results in a better identification of cost with cost objectives. There are circumstances where unlike functions will have the same or a similar relationship to cost objectives; it may be appropriate to group the cost of such functions and use a measure of the common relationship as the base for cost allocation purposes. Finally, where the final output of either goods or services is the same or similar (i.e., homogeneous), all indirect functions attributable to the common output may be grouped for allocation of the costs of those functions.

The Board believes that the preferable allocation techniques for distributing homogeneous pools of cost are as follows:

1. The preferred representation of the relationship between the pooled cost and the benefiting cost objectives is a measure of the activity (input) of the function or functions represented by the pool of cost. This relationship can be measured in circumstances where there is a direct and definitive relationship between the function or functions and the benefiting cost objectives. In such cases, a single unit of measure can generally represent the consumption of resources in performance of the activities represented by the pool of cost. Measures of the activity ordinarily can be expressed in such terms as labor hours, machine hours, or square footage. Accordingly, costs of these functions can be allocated by use of a rate, such as a rate per labor hour, rate per machine hour or cost per square foot of the support activity.

2. Where such measures are unavailable or impractical to ascertain, the basis for allocation can be a measurement of the output of the function or functions represented by the pool of cost. Thus the output becomes a substitute measure for the use of resources, and is a reasonable alternative where direct measurement of input is impractical. Output can be measured in terms of units of end product produced by the functions, as for example, number of printed pages for a print shop, number of purchase orders processed by a purchasing department, or number of hires by a personnel office.

3. Where neither activity (input) nor output of the functions can be measured practically, a surrogate must be used to measure the resources used. Surrogates used to represent the relationship generally measure the activity of the cost objectives receiving the service and should vary in proportion to the services received. For example, a personnel department may provide various services which cannot be measured practically on an activity or output basis. Number of personnel served may reasonably represent the use of resources of the personnel function for the cost objectives receiving the service, where this base varies in proportion to the services performed.

4. Pooled costs that cannot readily be allocated on measures of specific beneficial or causal relationship generally represent the cost of overall management activities. Such costs do not have a direct and definitive relationship to the benefiting cost objectives. These costs should be grouped in relation to the activities managed, and the base selected to measure the allocation of these indirect costs to cost objectives should be a base

representative of the entire activity being managed. For example, the total cost of plant activities managed might be a reasonable base for allocation of general plant indirect costs. The use of a portion of a total activity, such as direct labor costs or direct material costs only, as a substitute for a total activity base, is acceptable only if the base is a good representative of the total activity being managed.

In developing allocation techniques for individual Cost Accounting Standards, the Board will define the circumstances where direct identification or an appropriate level of the allocation hierarchy should be used.

Accounting Standards and the Flow of Costs

Cost Accounting Standards on cost allocation address the accounting for the flow of incurred costs as resources are used. The costs of resources used are initially allocated to a cost pool or to final cost objectives. The cost pools are intermediate cost objectives under the full costing concept of cost allocation used by the Board. Cost pools are either service centers, overhead pools or general and administrative (G&A) cost pools. Costs are allocated from cost pools to other cost pools and to final cost objectives until all costs are accumulated in final cost objectives, thus determining the total cost of those final cost objectives. Costs accumulated in service center pools can be allocated to other service center pools, to overhead pools, to G&A pools, and to final cost objectives. The costs accumulated in the overhead and G&A cost pools are allocated only to final cost objectives.

The particular distribution and cost flow characteristics of cost pools can be identified by relating the cost flow concept described above with the hierarchy of preferable allocation techniques described previously. Costs initially allocated to the various cost pools and final cost objectives are costs that can be directly identified with those cost objectives. Cost pools that are identified as service centers normally will distribute their costs on a base which measures the activity or output of the service center and, as a result, these costs can be allocated to any cost objective benefiting from that service including other cost pools. Cost pools that are identified as overhead pools will distribute their costs using an allocation base that measures the total activity of a period. These costs are allocated only to cost objectives that ultimately reflect that total activity, i.e., the final cost objectives of a business unit.

As Standards are promulgated for the treatment of pools of cost, each pool is categorized either as a function of general support (e.g., overhead pool) or specific support (e.g., service center). The classification is determined by the type of allocation base and flow of cost that is prescribed for that pool.

Operating Policies

The following descriptions of policies illustrate a number of important considerations that will be relevant to the Board as it seeks to achieve the objectives discussed previously.

Relationship to Other Authoritative Bodies

A number of authoritative bodies have been established to issue pronouncements affecting accounting and financial reporting. The Cost Accounting Standards Board views its work as relating directly to the preparation, use, and review of cost accounting data in the negotiation, administration, and settlement of Government contracts. The Board is the exclusive body established by law with the specific responsibility to promulgate, amend, and rescind Cost Accounting Standards designed to achieve uniformity and consistency in the cost accounting practices governing government contractors. Furthermore, Standards, rules, regulations, and interpretations promulgated or amended by the Board have the full force and effect of law in the negotiation, administration, and settlement of Government contracts.

The accounting areas of interest to the Board that are also of interest to others for financial and tax accounting purposes are: (1) definition and measurement of costs; (2) assignment of the cost of resources consumed to time periods; and (3) allocation of direct labor, direct material, and indirect costs to the goods and services produced in a period.

The Cost Accounting Standards Board seeks to avoid conflict or disagreement with other bodies having similar responsibilities and will, through continuous liaison, make every reasonable effort to do so. The Board will give careful consideration to the pronouncements affecting financial and tax reporting and, in the development of Cost Accounting Standards, it will take those pronouncements into account to the extent it can do so in accomplishing its objectives. The nature of the Board's authority and its mission, however, is such that it must retain and exercise full responsibility for meeting its objectives.

Transition Method

In consideration of the expanded application of the Cost Accounting Standards to civilian agency contracts, as well as the current application of the Standards to defense contracts, the Board is especially cognizant of the fact that the process of converting from preexisting cost accounting practices to the practices required by the Standards (or those required by the promulgation of a new Standard) could be a source of disagreement between the contracting parties. To assist in minimizing such disagreements, the Board expects that it will on occasion issue guidance so that the implementation of the Standards may be accomplished in such a manner as to place the contracting parties in a position where any amount of money that might be left to be dealt with by an equitable adjustment to the affected contract(s) would be immaterial. For other Standards, the impact of changes in cost accounting practices required by the implementation of the Standards, or by the promulgation of new Standards, will be accommodated by price adjustments for covered prime contracts and subcontracts through the equitable adjustment provisions provided for in the covered contracts.

Single Government Representative

To assure maximum uniformity of interpretation of its promulgations, the Cost Accounting Standards Board believes that it is highly desirable to have Federal agencies agree upon a single representative to deal with a given contractor regarding the application and administration of the contract requirements of the Board's rules and Standards. Because of its conviction of the merit of such a procedure, the Board recommended that agencies arrange for a single contracting officer for each contractor, or major component thereof, to be designated to negotiate as needed to achieve consistent practices relating to the application of the Cost Accounting Standards.

Both contractors and the Government will benefit from the establishment of procedures by which a Government contractor may be certain that only one contracting officer will deal with it to resolve issues that may arise under the contractor's Government contracts concerning the application of Cost Accounting Standards, rules, and regulations.

The Board believes experience has demonstrated the benefits to be derived by both the Government and contractors from this single-representative system and will work with the civilian agencies in order to encourage uniform contract administration of the Standards as these Standards become more widely applicable to the contracts of the civilian agencies.

Responsibilities for Compliance

The Board recognizes that the basic responsibility for securing compliance with Board promulgations, as with all contractual matters, rests with the relevant Federal contracting agencies. They are responsible for such matters as:

1. Incorporating all applicable Cost Accounting Standards Board promulgations into their procurement regulations;
2. Including the contract clause in all covered contracts;
3. Receiving Disclosure Statements;
4. Reviewing and approving the adequacy of such Statements;
5. Reviewing contractors' records to determine whether or not contractors have (a) followed consistently their disclosed cost accounting practices and (b) complied with the Cost Accounting Standards;
6. Making appropriate contract price adjustments because of changed accounting practices, failure to follow existing Standards, or the issuance of new Standards; and
7. Evaluating the validity of claims by contractors and subcontractors for exemptions from the requirements of the Standards as established in Public Law 100-679.

It should be noted that section 26(k) of the Office of Federal Procurement Policy Act gives to any authorized representative of the head of the agency concerned, or of the Offices of the Inspector General established pursuant to the Inspector General Act of 1978, or of the Comptroller General of the United States, the right to examine and make copies of any documents, papers, or records relating to compliance with the Board's rules.

Another element of compliance concerns the manner in which relevant contracting agencies implement the requirements established by the Board. Special and recurring reviews of agencies' compliance with Board promulgations should be performed by the agencies' internal review staffs, the agencies' Inspectors General, and by the U.S. General Accounting Office.

The Board must retain responsibility for evaluating the effectiveness of the Standards, rules, and regulations that it promulgates. Some of the Board's evaluative needs can be met by reviewing reports from contracting and audit organizations. However, the Board may also from time-to-time request reports and analyses concerning its rules from affected Federal agencies.

The Board also recognizes its responsibility for receiving evaluations of promulgated Standards, rules, and regulations from contractors, professional associations, and other associations and persons outside the Government who are concerned with the effectiveness of the Board's Standards, rules, and regulations, as well as the economy and efficiency of the Government procurement process in general. The Board will consider holding periodic conferences on promulgated Standards and regulations. Additionally, the Board welcomes comments and inquiries at any time.

Interpretations

The Board notes the existence of contractual and administrative provisions for the resolution or settlement of disputes arising under Government contracts. In particular, the Board notes that the Contract Disputes Act, 41 U.S.C. 601 *et seq.*, provides a mechanism for resolving disputes involving the Cost Accounting Standards. The Board will not seek to intervene or supersede this process. When there are widespread and serious questions of the Board's intention or meaning in its promulgations, however, the Board may, at its discretion, respond to requests for authoritative interpretations of its rules, regulations, and Cost Accounting Standards. Such interpretations are authorized pursuant to 41 U.S.C. section 422(f). Interpretations will be published in the **Federal Register**, and will be considered by the Board to be an integral part of the rules, regulations, and Cost Accounting Standards to which the interpretations relate. This formalized procedure does not preclude informal consultation between members of the public and the Executive Secretary and members of the Board's staff.

Exemptions and Waivers

The Board is authorized by law to grant exemptions to such classes or categories of contractors or contracts as it determines are appropriate and consistent with the purposes sought to be achieved by the Board's enabling legislation. In previous years, the Cost Accounting Standards Board used this authority to (1) exempt from its rules and regulations certain categories of contractors, (2) grant waivers of its requirements for certain individual contracts, (3) limit the requirements for formal disclosure of accounting practices to the larger Government contractors, (4) limit the application of some individual Standards either by exempting certain categories of contractors or by establishing a dollar threshold for the application of the Standard, and (5) exempt certain classes of contractors from the requirement to comply with Standards on the condition that they accept application of the Disclosure Statement regulations.

The Board anticipates that it will grant waivers only in rare and unusual cases. The Board notes that the granting of an exemption or a waiver from Cost Accounting Standards or the disclosure regulations reduces the extent to which the primary goals of increased uniformity and consistency are achieved.

The Process of Developing Standards

Research and Development of Standards

The promulgation of any Cost Accounting Standard is characterized by an in-depth study of the subject and by participation of various interested parties. The Board is not committed to any specific research process, but uses those techniques and resources which are appropriate to the topic. Typical research steps in the development of Standards are briefly described below.

1. Selection of topics—The Board's objectives are clearly set forth in Public Law 100-679; the Board seeks to develop Cost Accounting Standards to provide increased uniformity and consistency in cost accounting practices of Government contractors. Specific subjects for research and possible development of Cost Accounting Standards are selected after considering the nature and magnitude of the costing problems related to the subject, as well as the relationship of the subject to other Standards and other staff research projects. The Board has sought advice from interested parties in the selection of topics of research. Board approval of a work project or its continuance does not imply the ultimate promulgation of a Standard.

2. Reserch of concepts and existing practices—Early research generally involves review of the accounting concepts and existing practices. This review includes examination of available literature, and often involves discussions with representatives of professional accounting and other organizations. Early research also usually involves review of the treatment of the cost in connection with negotiated contracts. This requires examination of Government procurement regulations, and the decisions of courts and of Boards of Contract Appeals. It also

involves meeting with representatives of procurement agencies and of contractors. Review may be made of Disclosure Statements and various reports received from Government agencies as to practices currently being followed. Personal interviews and plant visits may be made to review existing practices further in connection with contracts. The extent of this phase of the research and the amount of participation by interested parties depend on the nature of the topic.

3. Prior to promulgating, amending, or rescinding a Cost Accounting Standard or interpretation thereof, the Board is required to:

a. Take into account, after consultation and discussion with the Comptroller General, professional accounting organizations, contractors, government agencies and other interested parties:

(1) The probable costs of implementation, including inflationary effects, if any, compared to the probable benefits;

(2) The advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, contracts; and

(3) The scope of, and alternatives available to, the action proposed to be taken;

b. Prepare and publish a report in the **Federal Register** on the issues reviewed under paragraph 3.a. above;

c. (1) Publish an advance notice of proposed rulemaking in the **Federal Register** in order to solicit comments on the report prepared pursuant to paragraph 3.b. above; and

(2) Provide all parties affected a period of not less than 60 days after such publication to submit their views and comments; and

d. Publish a notice of such proposed rulemaking in the **Federal Register** and provide all parties affected a period of not less than 60 days after such publication to submit their views and comments.

4. The **Federal Register** publication provides an opportunity for participation by all those who are interested in the work of the Board. The Board reviews the responses received, and determines what changes may be warrant in its proposal. Follow-up visits to Government agencies and contractors may be arranged in connection with particular comments received. Sometimes, interested members of the public may be invited to meet with individual Board Members or the Board's staff.

5. Consultation with the Comptroller General—Throughout the **Federal Register** publication phase described in paragraph 3, above, the Board will directly consult with and consider any recommendation the Comptroller General may make regarding the potential costs, benefits, advantages, disadvantages, and improvements anticipated regarding the Board's proposals to establish, amend, or rescind Cost Accounting Standards or interpretations thereof.

6. Promulgation—Rules, regulations, cost accounting standards, and modifications thereof promulgated or amended by the Board, shall have the full force and effect of law and shall become effective within 120 days after publication in the **Federal Register** in final form, unless the Board determines a longer period is necessary. Implementation dates for contractors and subcontractors shall be determined by the Board, but in no event shall such dates be later than the beginning of the second fiscal year of affected contractors or subcontractors after the Standard becomes effective. Rules, regulations, Cost Accounting Standards, and modifications thereof promulgated or amended by the Board shall be accompanied by prefatory comments and by illustrations, if necessary.

7. The functions of the Board described in paragraphs 1 through 6, above, are excluded by statute form the operations of sections 551, 553 through 559, and 701 through 706 of Title 5, United States Code.

8. Continuing review—The Board keeps informed on the operation of Standards in actual contract situations. The Board will publish authoritative interpretations in the **Federal Register** for comment when there are widespread and serious questions of the Board's intention or meaning in its promulgations. The Board will also modify any of its promulgations if experience shows that modification is desirable.

Format of Standards

The Board uses the same general format for all of its Cost Accounting Standards to facilitate their use.

The "Purpose" section normally provides a brief description of the goals of the Board in promulgating the Standard. The "Definition" section states, as referenced in the "Definitions" part of the Board's regulations, terms which are prominent in a particular Standard.

The "Fundamental Requirement" section contains the broad principles or practices to be applied in accounting for the cost covered by the Standard.

The "Techniques for Application" section provides criteria for the selection of alternative practices to implement the concepts contained in the "Fundamental Requirement." The techniques for application may describe the practices to be followed with respect to particular fundamental requirements or in particular circumstances. As a general rule, the techniques for application will narrow the accounting options in accordance with the concepts in the fundamental requirement. This section may also provide special techniques for applying the concepts of the fundamental requirement to give consideration to materiality or special circumstances.

Examples of how the Standard is to operate in specific circumstances appear under "Illustrations." Usually this section describes actual or hypothetical accounting practices and specifies whether or not such practices would comply with the provisions of the Standard. This section may also illustrate specific practices which may be followed in particular circumstances.

The final three sections of a Standard are "Interpretation," "Exemption," and "Effective Date." Where necessary, this format of a Standard may be supplemented by additional material, such as appendices, which also are an integral part of the Standard.

No one section of a Standard stands alone, and all sections must be read in the context of the Standard as a whole.

Prefatory Comments

The Board prefaces its issuance of Standards, rules, and regulations with analytical comments to provide additional insight into the process by which the issuance was developed and the factors which led to the provisions set out in the issuance. The prefatory comments summarize the comments received in response to the publication and explain the reasons for any significant changes made as well as the reasons for not making changes which were suggested. Although these prefatory comments are not a formal part of any promulgation, they nonetheless are authoritative statements by the Board. As such, the Board encourages their use as aids in applying Standards, rules, and regulations to specific situations.

Comparing Costs and Benefits

As previously mentioned, Public Law 100–679 requires the Board, in promulgating Standards, to take into account (1) "the probable costs of implementation, including inflationary effects, if any, compared to the probable benefits," (2) "the advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, contracts"; and (3) "the scope of, and alternatives to, the action proposed to be taken."

The Board views costs and benefits in a broad sense. All disruptions of contractors' and agencies' practices and procedures are viewed as costs. Prior to making a final promulgation decision, the Board makes specific inquiries into the likely costs of implementing proposed Standards, both for contractors and for affected agencies of the Government. In this inquiry, an effort is made to distinguish transitional costs from those that may persist on a recurring basis. Also, the Board makes a distinction between (1) incremental administrative costs, i.e., the cost of added activities over and above that which would otherwise have been incurred, and (2) costs that are absorbed in implementing and administering Standards, i.e., the cost of effort or resources diverted to the implementation and administration of Standards that otherwise would have been applied elsewhere. Out-of-pocket administrative expenses can be estimated, albeit with difficulty, and any increase in such expenses must be regarded as a cost.

Benefits from the application of the Cost Accounting Standards to Government contractors include reductions in the number of time-consuming controversies stemming from unresolved aspects of cost allocability, as well as greater equity to all concerned. The Board also believes that additional benefits accrue through simplified contract negotiation, administration, audit, and settlement procedures. In addition, the Standards should serve to reduce the opportunities for the manipulation of accounting methods alleged to have existed prior to the establishment of the Standards. Finally, and most importantly, the availability of better cost data stemming from the use of Cost Accounting Standards permits improved comparability of offers and facilitates better negotiation of resulting contracts. The Board believes that it would be extremely difficult, if not impossible, to quantify the benefits that accrue to Government and contractors alike from continued use of the Standards.

The Board is interested in data that will enable it to gauge the impact of a proposed Standard on the amount of costs that may result in a shift to or from Government contracts as a result of one or more Standards. The Board recognizes that a fair Cost Accounting Standard may result in a shift of cost either to or from Government contracts. In formulating Standards, the Board will not regard such shifts of costs as determinative.

The likely impact of a Cost Accounting Standard on a contractor is to modify the distribution of its costs among time periods or among its projects in a given time period. Standards may increase administrative costs, which if not offset by increased productivity in Government contracting, would contribute to inflation; the Board considers the total of benefits relative to the total cost.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202-395-3254).

Allan V. Burman,

Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.

[FR Doc. 92-16190 Filed 7-10-92; 8:45 am]

BILLING CODE 3110-01-M

federal register

Monday
July 13, 1992

Part IV

Department of Commerce

International Trade Administration

Consortia of Businesses in the Newly Independent States of the Former Soviet Republics; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 920498-2098]

Consortia of American Businesses in the Newly Independent States

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of a New Business Consortia Grant Program to Assist U.S. Firms Establish a Commercial Presence in the Newly Independent States of the former Soviet republics.

SUMMARY: A program has been designed to assist U.S. firms in establishing a commercial presence in the former Soviet republics through the formation of Consortia of American Businesses in the Newly Independent States (CABNIS). CABNISs are private and public non-profit organizations which will be formed to promote U.S. goods and services in the Newly Independent States (NIS). The participants in these consortia will be for-profit U.S. firms interested in trade with the former Soviet republics. CABNISs will establish offices and staff in the NIS to provide a broad range of services for their for-profit member firms, including market research, sales promotion, communication of sales opportunities, identification of and introduction to potential buyers and trade contacts, staging trade and technical missions and seminars, provision or arrangement of necessary legal services, and other export trade facilitation services. Grant funds will be awarded as seed money to pay the start-up costs of establishing and operating U.S. consortia offices in the NIS. CABNISs can be organized along a single industry line or represent more than one business sector. There is no limitation on the number of for-profit firms that a consortium may represent.

SUPPLEMENTARY INFORMATION:

Program Objectives

The consortia are intended to strengthen the U.S. business presence in the NIS. They will provide direct trade facilitation support for their member firms, stimulating increased U.S. exports to the NIS. The consortia will promote two-way trade and will be expected to support the privatization movement of host country economies through consortia assistance with defense plant conversion projects, finding markets for NIS products, promoting U.S. investment and U.S.-NIS joint ventures, and/or technical training.

Funding Availability

Pursuant to Section 531 and Section 632(b) of the Foreign Assistance Act of 1961, as amended, (the "Act") funding for the program will be provided by the Agency for International Development (A.I.D.). ITA will award financial assistance and administer the program pursuant to the authority contained in section 635(b) of the Act. The total amount of program grant funds available for CABNIS is $1 million for FY 1992 and an anticipated $3.5 million for FY 1993.

Funding Instrument and Project Duration

The Federal grant contribution will not exceed 50 percent of proposed eligible project costs with a maximum grant amount of $500,000 per consortium. Applicants are expected to provide the remaining share, preferably in cash. Federal funding will be a one-time injection with a grant period not to exceed three years. Assistance will be available for the period of time required to complete the scope of work but not to exceed three years from the date of the grant offer.

Request for Applications

Competitive Application kits (Application Kits) #110-0005-1 will be available from Commerce starting July 13, 1992.

To obtain a copy of the Application Kit #110-0005-1, please send a written request with two self-addressed mailing labels to Mr. George Muller, Director, Office of Export Trading Company Affairs, room 1800 HCHB, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Only written requests will be honored; telephone, fax, or walk-in requests will not be accepted. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requester. Applications (Standard Form 424 (Rev. 4-88)) are to be received at the addressed designated in the Application Kit no later than 3 PM E.D.T. August 28, 1992. Commerce intends to award a minimum of two grants prior to the end of FY 1992 and, subject to availability of funds, award an anticipated minimum of seven grants during 1993. Applications which are not selected for funding in FY 1992 will be carried over automatically and be evaluated for possible funding in FY 1993—again subject to availability of FY 1993 funds.

Eligibility

Eligible applicants for the CABNIS grant program will be private and public non-profit U.S. organizations including non-profit corporations, associations and public sector entities established to represent the commercial interests of U.S. firms. Within the industry or industries represented by the consortium, membership in a consortium must be available on a non-discriminatory basis. For example, membership in a trade association cannot be a requirement for membership in a consortium. Only applicants proposing to open an office in one or more of the Newly Independent States are eligible for this program. Each application will receive an independent, objective review by one or more review panels qualified to evaluate the applications submitted under the program. Applications will be evaluated on a competitive basis in accordance with the selection criteria set below.

Selection Criteria

Consideration for financial assistance will be given to those CABNIS proposals which:

1. Demonstrate how proposed member firms' U.S. exports and consortia business activities will support privatization and private enterprise (e.g., through assistance with defense plant conversion projects, technical training, marketing assistance and investment promotion). Marketability of the proposed products and/or services in the NIS will be taken into account in evaluating applications.

2. Are proposed by non-profit organizations with the capacity, qualifications and staff necessary to successfully undertake the intended activities.

In addition, priority consideration will be given to those applications which:

3. Demonstrate the capability and intent of enlisting small and mid-sized U.S. firms as members of the consortium.

4. Provide a reasonable assurance that the proposed project can be continued on a self-sustained basis after expiration of the Federal grant expenditure period.

5. Contain a commitment to encourage, support and assist in the development of indigenous counterpart organizations (e.g. trade associations) and a well reasoned plan as to how that will be accomplished.

6. Present a realistic work plan detailing the services it will provide to the consortium member firms.

7. Present a reasonable, itemized budget for the proposed activities.

Selection criteria factors 1 and 2 will be weighted equally and will take precedence over priority consideration factors 3–7. Priority consideration factors 3–7 will be weighted equally.

The need for U.S. products and services and for assistance in the privatization process canvasses all of the former Soviet republics. Different geographic locations will be more suitable for different industries (e.g., oil production equipment versus medical equipment). In selecting grant recipients, ITA reserves the right to award grants in such a way to ensure a reasonably balanced distribution of consortia and the industry sectors that they represent among the NIS countries. Preference will be given to financial proposals which demonstrate the maximum allocation of Federal and non-Federal resources to program activities. ITA reserves the right to determine the level of funding for each grant awarded.

Notifications

All applicants are advised of the following:

1. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the deliquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

2. Primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Governmental Debarment and Suspension (Nonprocurement)" and the related section of the certification form prescribed above applies. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

3. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department of Commerce in accordance with the instructions contained in the award document.

4. A false statement on the application may be grounds for denial or termination of funds.

5. All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

6. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

7. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

8. If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

9. Awards under this program shall be subject to all Federal and Departmental regulations, policies and procedures applicable to financial assistance awards.

10. The Standard Form 424 (Rev. 4–88) mentioned in this Notice is subject to the requirements of the Paperwork Reduction Act and it has been approved by OMB under Control No. 0348–0006.

11. Executive Order 12372 "Intergovernmental Review of Federal Programs" does not apply to this program.

Dated: July 8, 1992.

George Miller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92–16336 Filed 7–10–92; 8:45 am]

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federal register

Monday
July 13, 1992

PART V

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 25 and 202
Mortgagee Review Board; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 25 and 202

[Docket No. R-92-1499; FR-2801-F-03]

RIN 2501-AB01

Mortgagee Review Board

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule makes comprehensive changes in the Department of Housing and Urban Development's Mortgagee Review Board (Board) procedures. The purpose of the rule is to conform Board procedures to the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act of 1989).

EFFECTIVE DATE: August 1, 1992.

FOR FURTHER INFORMATION CONTACT: For discussion of legal issues or matters of regulatory interpretation: Emmett N. Roden, III, Assistant General Counsel, Inspector General and Administrative Proceedings Division, Department of Housing and Urban Development, room 10251, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 608-3200.

For programmatic issues: William Heyman, Director, Office of Lender Activities and Land Sales Registration, Department of Housing and Urban Development, room 9146, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 708-1824. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. 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 1980 and have been assigned OMB control number 2502-0450.

II. In General

This rule amends part 25 of title 24, of the Code of Federal Regulations. It implements sections 202(c), 202(d), 203(s), and 536 of the National Housing Act (National Housing Act), (12 U.S.C. 1708 (c), (d), 1709(s) and 1735f-14) as added by sections 135, 142, and 107 of the Department of Housing and Urban Development Reform Act of 1989. (Pub. L. 101-235, approved December 15, 1989). Section 536 of the National Housing Act authorizes the Board to impose civil money penalties against mortgagees and lenders. Section 203(s) requires the Secretary to notify eight government or Federally chartered entities if the Secretary takes discretionary action to suspend or revoke the approval of any mortgagee to participate in any HUD/FHA mortgage insurance program. Section 202(c) of the National Housing Act established the Board. Section 202(d) requires the Government National Mortgage Association (GNMA) and (FHA) to coordinate withdrawal actions in their respective programs.

III. Background

Section 202(c) of the National Housing Act establishes within FHA the Board which is composed of five HUD officials at the Assistant Secretary level, and the Department's Chief Financial Officer. The Board is authorized to initiate administrative actions against HUD/FHA approved mortgagees found to be engaging in activities in violation of Federal Housing Administration requirements or the Equal Credit Opportunity Act, the Fair Housing Act, or Executive Order 11063.

The Board is empowered to issue a letter of reprimand, place a mortgagee on probation, suspend, or withdraw the HUD/FHA approval of a mortgagee. The Board is required to follow statutory notice and hearing procedures when imposing administrative sanctions, except in the case of the issuance of a letter of reprimand. The Board also is authorized to enter into a settlement agreement with a mortgagee to resolve any outstanding grounds for an administrative action.

Section 202(c) further provides that the Board may request the Secretary of HUD to issue a temporary cease and desist order against a mortgagee where a violation of HUD/FHA requirements could result in a significant cost to the government or the public. In addition, section 202(c) requires that the Board, in consultation with the FHA Advisory Board, must annually make appropriate recommendations for regulatory or statutory changes to ensure the long term financial strength of the FHA mortgage insurance funds, and adequate support for home mortgage credit. This section also requires the Department to publish in the **Federal Register** administrative actions taken by the Board against mortgagees.

IV. Discussion of Public Comments

The Proposed Rule

On April 4, 1991 (56 FR 13984) HUD published a proposed rule amending 24 CFR part 25 of the Code of Federal Regulations. Nine persons submitted comments on the proposed rule. The issues raised by the commenters are summarized below.

Discussion of Section 25.2 Establishment of Board

Comment: The provision in § 25.2 which states that "The Board may redelegate its authority to take administrative actions on the grounds specified in §§ 25.9 (e), (h) and (u) and to take all other nondiscretionary acts." should be deleted, or in the alternative, be modified to relate only to the instance when the administrative action to be imposed is a letter or reprimand.

Response: The Board may redelegate its authority to take administrative actions relating to nondiscretionary acts. Since §§ 25.9 (e), (h) and (u) relate to non-waivable lender approval requirements, if the Board determines that a violation of any one or more of these requirements warrants withdrawal of approval, the taking of this action is nondiscretionary.

Comment: These regulations should not apply to Title I lenders since the HUD Reform Act of 1989 did not grant authority to the Board to sanction such lenders.

Response: The intent of the HUD Reform Act of 1989 is to include title I lenders as entities against whom the Board may take an administrative action. For purposes of clarification, § 25.2 has been revised to reflect the authority of the Board in this regard by including lenders. This provision is consistent with existing regulations at 24 CFR 202.8 and in any event section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)) authorizes the Secretary to delegate his authority to sanction title I lenders to the Board.

Discussion of Section 25.3 Definitions

Comment: The definition of "Adequate Evidence" fails to explain the quantum of proof contemplated by this term.

Response: The definition of "Adequate Evidence" as stated in these regulations is consistent with rulings by the Department's Hearing Officers. Thus, the quantum of proof necessary has been determined to be within the discretion of the individuals making the determination as to whether adequate evidence exists in any particular instance.

Comment: The Definition of "Mortgagee" should not be expanded to include the term "Affiliates."

Response: The Department agrees with this comment and has revised these regulations accordingly.

Comment: The definition of "Reasonable Cause" should be clarified to provide objective standards upon which to justify the issuance of a Cease and Desist Order.

Response: The definition of "Reasonable Cause" as stated in these regulations reflects decisions rendered by the Department's Hearing Officers and is consistent with the provisions of the Act.

Discussion of Section 25.4 Operations of the Mortgagee Review Board

Comment: The reference to "designees" in this section should be modified to provide that only senior officials will serve in this capacity.

Response: This provision is consistent with the HUD Reform Act of 1989. It is the intention of the HUD Reform Act of 1989 to give full discretion to the Board members to choose their designees.

Comment: Board administrative actions should be determined by a unanimous vote of the Quorum.

Response: While in the past the Board has rendered its decisions with respect to suspensions and withdrawals by a unanimous vote, the HUD Reform Act of 1989 has increased the membership on the Board, and consequently, the Department believes that requiring a majority vote is more appropriate.

Discussion of Section 25.5 Administrative Actions

Comment: The provision stating that a letter of reprimand may only be issued once to a mortgagee without the Board taking further administrative action should be clarified.

Response: The HUD Reform Act of 1989 provides that a letter of reprimand may be issued by the Board only once to a mortgagee. The Department interprets this provision of the HUD Reform Act of 1989 to relate to specific violations. Thus, the Board may issue more than one letter of reprimand to a mortgagee, provided that each such letter of reprimand relates to a different violation.

Comment: The placing of a mortgagee on probation should not be effective until 30 days after the mortgagee receives notice and fails to contest the action, or in the alternative, should the mortgagee request an administrative hearing, until such time as the Hearing Officer affirms the Board's action.

Response: In response to this comment, the Department has amended these regulations so that the placing of a mortgagee on probation shall be effective upon receipt of notice by the mortgagee. Court decisions have affirmed the authority of the Board to take administrative actions against mortgagees and to determine that the effective date of an administrative action will occur before expiration of the 30-day notice period during which the mortgagee has the right to appeal, and, before the time that a Department Hearing Officer affirms the Board's action.

Comment: The provision stating that the Department will neither commit to insure nor endorse for insurance any mortgage originated by the suspended mortgagee should be modified.

Response: The Department has accepted this comment and has revised these regulations to provide that during the period of suspension, the mortgagee is without HUD approval, and HUD will not endorse any mortgage originated by the suspended mortgagee unless prior to the date of suspension a firm commitment has been issued relating to any such mortgage or unless a Direct Endorsement underwriter has approved the mortgagor for any such mortgage.

Comment: A suspension should not be effective until 30 days after the mortgagee receives notice and fails to request an administrative hearing to contest the action, or in the alternative, should the mortgagee request an administrative hearing to contest the action, until such time as the Hearing Officer affirms the Board's action.

Response: In response to this comment, the Department has revised these regulations so that the suspension of a mortgagee shall be effective upon receipt of notice by the mortgagee. Court decisions have affirmed the authority of the Board to take administrative actions against mortgagees and to determine that the effective date of the administrative actions should occur before the 30-day period within which the mortgagee has the right to appeal, and before a Department Hearing Officer affirms the Board's action.

Comment: The withdrawal of a mortgagee's approval by the Board should automatically incorporate a suspension of the mortgagee effective upon receipt of notice.

Response: These regulations provide that the Board may at its option withdraw a mortgagee's approval immediately upon receipt of notice.

Comment: The Board should not enter into a settlement agreement with a mortgagee when the mortgagee's alleged violations indicate that the mortgagee lacks responsibility.

Response: These regulations give the Board full discretion to determine the mortgagees with whom the Department will enter into settlement agreements.

Comment: Should the Board propose to enter into a settlement agreement with a mortgagee, the refusal of the mortgagee to sign such an agreement shall not constitute independent grounds for an administrative action.

Response: These regulations do not incorporate the concept that a mortgagee's refusal to enter into a settlement agreement is independent grounds for an administrative action.

Comment: The failure by a mortgagee to comply with the terms and provisions of a settlement agreement shall be a sufficient cause for suspension or withdrawal only in the event such failure is a material failure to comply with the terms and provisions of the settlement agreement.

Response: It is the Department's position that any breach of a settlement agreement may be sufficient cause for suspension or withdrawal of a mortgagee's approval.

Discussion of Section 25.6 Notice of Violation

Comment: The mortgagee's response to the Board should not be limited as to length.

Response: The Department disagrees, having determined that for the Board members to be in a position effectively to evaluate a mortgagee's response, the response should be limited in length as provided by these regulations.

Discussion of Section 25.7 Notice of Administrative Action

Comment: The Notice of Administrative Action should enumerate the specific reasons upon which an administrative action is based in addition to stating the violations upon which the administrative action is based.

Response: The Department has determined that the wording of these regulations is sufficiently broad to accommodate this comment.

Comment: The provision relating to supplemental notices should be modified to include specific restrictions.

Response: The Department has determined that there is no basis for restricting a supplemental notice, since a mortgagee is provided with the opportunity to submit a written response to the underlying facts that would be set forth in a supplemental notice.

Discussion of Section 25.8 Hearings and Hearing Request

Comment: Hearings on appeals of decisions of the Board are not required to be conducted under the Administrative Procedure Act and before Administrative Law Judges.

Response: The Department agrees with this comment and has revised these regulations accordingly.

Comment: The limitations on discovery are arbitrary and should be eliminated.

Response: The Department has determined that the importance of a hearing within a 30-day period should outweigh the mortgagee's interest in requesting voluminous discovery materials. Excessive discovery requests by the mortgagee would seriously jeopardize the Hearing Officer's ability to schedule a speedy hearing.

Because of the importance of a speedy hearing and the fact that the hearing provided the mortgagee is a trial de novo, the Department has determined that Board members shall not be subject to being deposed.

Comment: The provision that hearings on appeals of Board decisions generally be held in Washington, DC, should be eliminated.

Response: The Department has provided mortgagees the opportunity for a speedy hearing. For this to be accomplished, the hearing site should be Washington, DC, unless, as these regulations provide, extenuating circumstances exist.

Discussion of Section 25.9 Grounds for Administrative Action

Comment: Administrative actions should not be based on violations of HUD Handbooks or Mortgagee Letters.

Response: Since mortgagees have an affirmative obligation to know and follow the Department's requirements set out in HUD Handbooks or Mortgagee Letters, violations of the provisions of either or both are appropriate grounds upon which the Board may base administrative actions.

Comment: The provisions of § 25.9(n) are too broad and subjective.

Response: In response to this comment, the Department has amended 24 CFR 25.9 so that the term "employee" includes only those individuals who are or will be involved in HUD–FHA programs.

Comment: The provisions of § 25.9(p) are too broad and subjective.

Response: The Department does not agree that the provisions of this section of the regulations are too broad and subjective. The Department has given discretion to the members of the Board to make determinations with reference to administrative actions and will rely on the Board to apply the provisions of this section.

Comment: The provisions of § 25.9(y) should be removed as grounds for an administrative action.

Response: The Department has determined that its underwriting standards and requirements are adequately set forth in departmental issuances. Failure to perform underwriting functions properly in accordance with these standards and requirements should constitute grounds for an administrative action.

Comment: The provisions of § 25.9(bb) should be removed as grounds for an administrative action.

Response: The Department considers a Fiduciary duty to be in the nature of an agreement. A breach of any agreement by a mortgagee is potential evidence of the lack of responsibility, which the Board should take into consideration in determining whether an administrative action is appropriate.

Comment: The provision of § 25.9 which states that any one or more of the enumerated mortgagee violations may result in an administrative action is inconsistent with the provision in § 25.5 which states that when the Board determines that a mortgagee has committed a violation which is grounds for an administrative action, the Board shall take one of the enumerated actions.

Response: The Department has considered this comment and has determined that the provisions in these regulations, as currently drafted, are not inconsistent.

Discussion of Section 25.10 Publication in Federal Register of Actions and Section 25.11 Notification to Other Agencies

Comment: The provisions in those sections should be modified to provide specific criteria for disclosing Board actions to the public and other agencies, and such information should only be given after a mortgagee has exhausted all appeals.

Response: The publication in the **Federal Register** and notification to other agencies of Board actions before a mortgagee has exhausted all appeals is consistent with the provisions of these regulations in regard to the Board's statutory mandate to effectuate an administrative action before a mortgagee's appeal.

Discussion of Section 25.12 Cease and Desist Order

Comment: The Secretary should not have the ability to redelegate his or her authority to issue a Cease and Desist Order to the Chairperson of the Board.

Response: The proposed rule is consistent with other provisions in the Department's regulations and the statutory authority given to the Secretary to redelegate his or her authority.

Discussion of Section 25.13 Civil Money Penalties

Comment: The Department does not have authority to impose a civil money penalty solely on the basis of a party's being an affiliate of a mortgagee.

Response: As indicated in the discussion relating to § 25.3, above, the definition of "mortgagee" has been revised to exclude affiliates.

Comment: Civil money penalties should only be imposed for violations of law.

Response: The provisions of this section are consistent with the HUD Reform Act of 1989.

Discussion of Section 25.16 Prohibition Against Modification of Board Orders

Comment: The Department should reconsider the provision removing a Hearing Officer's discretion to modify an Order of the Board if the modification is deemed by the Hearing Officer to be in the best interests of the public.

Response: The Department has determined that it is in the best interest of the public and the Department that a Hearing Officer not be permitted to modify or otherwise disturb an order of the Board pending a final determination of a matter.

Discussion of Section 25.17 Appeal to Secretary—Separation of Functions

Comment: Since the HUD Reform Act of 1989 does not specifically provide for Secretarial review of a Hearing Officer's determination, this provision should be removed.

Response: Section 25.17 is consistent with similar provisions in other regulations of the Department. The Department believes that Secretarial review is in the best interests of the public and the Department.

Discussion of Section 25.18 Retroactive Application of Board Regulations

Comment: Mortgagee violations occurring before the effective date of the HUD Reform Act of 1989 (December 15, 1989) should not be subject to the provisions of these regulations.

Response: This provision is consistent with similar provisions in other HUD Regulations. The Department also believes that the Board should have the discretion to take administrative actions based on mortgagee violations, regardless of the date of occurrence of the violations.

V. Finding and Certifications

Executive Order 12291

This rule does not constitute a "major rule" as that term is defined in § 1(b), of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or Local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4331. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Flexibility

The Secretary in approving this rule for publication, certifies that under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), this rule does not have a significant economic impact on a substantial number of small entities. The rule implements statutory authority that is intended to protect the Department's programs from abusive practices, but it has no adverse economic impact on small businesses, nor would it be appropriate to provide differing procedures applicable to the practices of small businesses.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule establishes an administrative regime for the prosecution of abuses of HUD programs but it has no impact on the family.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule does not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The rule's major effects are on individuals and businesses.

This rule was listed as item number 1114 in the Department's Semiannual Agenda of Regulations published on April 27, 1992 (57 FR 16804, 16816) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 25

Administrative practice and procedure, Loan programs—housing and community development, organization and functions (Government agencies).

24 CFR Part 202

Administrative practice and procedure, approval of lending institutions, Credit insurance, Government contracts, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 25 and 202 are amended as follows: 1. Part 25, (consisting of §§ 25.1 through 25.18) is revised in its entirety, to read as follows:

PART 25—MORTGAGEE REVIEW BOARD

Sec.
25.1 Scope of rules in this part.
25.2 Establishment of Board.
25.3 Definitions.
25.4 Operation of the Mortgagee Review Board.
25.5 Administrative actions.
25.6 Notice of violation.
25.7 Notice of administrative action.
25.8 Hearings and hearing request.
25.9 Grounds for an administrative action.
25.10 Publication in Federal Register of actions.
25.11 Notification to other agencies.
25.12 Cease and desist order.
25.13 Civil money penalties.
25.14 Coordination with GNMA.
25.15 Annual report.
25.16 Prohibition against modification of board orders.
25.17 Appeal to the Secretary.
25.18 Retroactive application of board regulations.

Authority: 12 U.S.C. 1708 (c) and (d), 1709(s), 1715b and 1734(f)–14); 42 U.S.C. 3535(d).

§ 25.1 Scope of rules in this part.

The rules in this part are applicable to the operation of the Mortgagee Review Board and to proceedings arising from administrative actions of the Mortgagee Review Board.

§ 25.2 Establishment of Board.

The Mortgagee Review 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). Except as limited by this part, the Mortgagee Review Board 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, except the authority to review decisions and orders of a Hearing Officer. The Mortgagee Review 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 part 24 of this title. The Mortgagee Review Board shall have all powers necessary and incident to the performance of these functions. The Mortgagee Review Board may redelegate its authority to impose administrative actions on the grounds specified in §§ 25.9(e), (h) and (u) and to take all other nondiscretionary acts. With respect to actions taken against title I lenders, the Mortgagee Review Board may redelegate its authority to take administrative actions on the grounds specified in 24 CFR 202.3(J), 202.5(a), and 202.5(c) of this title (as incorporated in § 202.6(b)(1) of this title).

§ 25.3 Definitions.

Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

Administrative action. A letter of reprimand, an order of probation, a suspension, a withdrawal of approval of a mortgagee or lender or a settlement agreement between the Mortgagee Review Board and a mortgagee or lender.

Board. The Mortgagee Review Board.

Cease and desist order. A temporary order issued by the Secretary or his or her designee requiring the mortgagee to stop violations as set forth in the order, and to take affirmative action to prevent such violations, or the continuation of such violations pending completion of proceedings of the Board with respect to such violations.

Lender. A financial institution which is approved for credit insurance, holds a valid title I contract of insurance that has not been terminated by the Secretary, and is approved by the Secretary under 24 CFR part 202 to originate and purchase, and to hold, service, and sell title I loans insured under 24 CFR part 201. In matters involving the imposition of civil money penalties, this term also includes a financial institution whose title I contract of insurance has been terminated, but, with the Secretary's approval, has been permitted to hold, sell or continue to service title I insured loans held in its portfolio prior to the contract's termination.

Letter of reprimand. A letter issued by the Board that explains a violation or violations to the mortgagee and describes the actions the mortgagee should take to correct the violations.

Mortgagee. The original lender under the mortgage (as that term is defined at sections 201(a) and 207(a)(1) of the National Housing Act, (12 U.S.C. 1707(a) and 1713(a)(1)) and its successors and assigns as are approved by the Commissioner. As used in this part, reference to the term *mortgagee* also includes *lender* as defined in this section.

Notice of charges. A notice, issued in conjunction with a cease and desist order of the Secretary pursuant to § 25.12, setting forth all statements and information that are required in a notice of administrative action issued pursuant to § 25.7.

Party. The Department of Housing and Urban Development or the mortgagee.

Person. Any individual, corporation, partnership, association, unit of government or legal entity, however organized.

Probation. A period of time of up to six months during which a mortgagee is allowed under conditions as specified by the Board, to continue to participate in HUD/FHA mortgage insurance programs, while an evaluation is made of the mortgagee's compliance with HUD/FHA, Equal Credit Opportunity Act (ECOA), (15 U.S.C. 1601), Fair Housing Act (42 U.S.C. 3601–3619), or Executive Order 11063 requirements, or an order of the Board.

Reasonable cause. Such grounds as to justify the issuance of a cease and desist order, founded upon circumstances sufficiently strong to warrant a reasonable person to believe that a violation has or will occur.

Secretary. The Secretary of the Department of Housing and Urban Development or a person designated by the Secretary.

Suspension. The exclusion of the mortgagee from HUD/FHA mortgagee insurance programs for a temporary period of time of not less than six months, pending completion of an audit, review, investigation, or other administrative or legal proceedings.

Withdrawal. The exclusion of a mortgagee from participation in HUD/FHA mortgage insurance programs for a specified period of time. The withdrawal shall be not less than one year, and, where the Board has determined that the violation is egregious or willful, the withdrawal shall be permanent.

§ 25.4 Operation of the Mortgagee Review Board.

(a) *Members.* The Board consists of the following voting members: The Assistant Secretary for Housing—Federal Housing Commissioner who serves as chairperson; the General Counsel; the President of the Government National Mortgage Association (GNMA); the Assistant Secretary for Administration; the Chief Financial Officer of the Department; and, in cases involving violations of nondiscrimination requirements, the Assistant Secretary for Fair Housing and Equal Opportunity; or their designees.

(b) *Advisors.* The Inspector General or his or her designee, and the Director of the Office of Mortgagee Activities and Land Sales Registration (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.

(c) *Quorum.* Four members of the Board or their designees shall constitute a quorum.

(d) *Determination by the Board.* Any administrative action taken by the Board shall be determined by a majority vote of the quorum.

§ 25.5 Administrative actions.

When any report, audit, investigation or other information before the Board discloses that grounds for an administrative action against a mortgagee exist under § 25.9, the Board, depending upon the nature and extent of the violations, shall take one of the following actions:

(a) *Letter of reprimand.* The Board may issue a letter of reprimand to a mortgagee explaining the existence or occurrence of a violation and describing actions the mortgagee should take to bring and maintain its activities in conformity with all HUD/FHA requirements. The issuance of a letter of reprimand shall be effective upon receipt by the mortgagee in accordance with § 25.7. A letter of reprimand may only be issued once to a mortgagee in regard to specific violations without the Board taking action under paragraphs (b), (c) or (d) of this section in regard to these specific violations. Failure of the mortgagee to comply with a directive in the letter of reprimand may result in any other administrative action under this part that the Board finds appropriate.

(b) *Probation.* The Board may issue an order placing a mortgagee on probation for a specified period of time, not to exceed six months, for the purpose of evaluating the mortgagee's compliance with HUD/FHA requirements, compliance with the Equal Credit Opportunity Act (ECOA), (15 U.S.C. 1601), Fair Housing Act, (42 U.S.C. 3601–3619), Executive Order 11063, or an order of the Board. During a period of probation, the Board may impose reasonable additional requirements on the mortgagee to aid the Board in evaluating the mortgagee. Such additional requirements may include supervision of the mortgagee's activities by HUD/FHA, periodic reporting to HUD/FHA, or submission to HUD/FHA of internal audits, audits by an Independent Public Accountant or order audits or such other provisions as are deemed appropriate by the Board. If the Board determines that a mortgagee has failed to comply with the terms of an order or probation or otherwise commits a violation of HUD/FHA requirements, Equal Credit Opportunity Act, (15 U.S.C. 1601), the Fair Housing Act, (42 U.S.C. 3601–3619) or Executive Order 11063 requirements, the Board may take any other administrative action the Board determines appropriate. The placing of a mortgagee on probation shall be effective upon receipt of notice by the mortgagee.

(c) *Suspension*—(1) *General.* The Board may issue an order suspending a mortgagee's HUD/FHA approval temporarily if there exists adequate evidence of violation(s) under § 25.9, and if continuation of the mortgagee's HUD/FHA approval pending, or at the completion of, any audit, investigation, or other review, or other administrative or legal proceedings as may ensue, would not be in the public interest or in the best interests of the Department. Suspension shall be based upon adequate evidence.

(2) *Duration.* A suspension shall be for a specified period of time but not less than 6 months.

(3) *Effect.* During the period of suspension, the mortgagee is not approved and HUD will not endorse any mortgage originated by the withdrawn mortgagor unless prior to the date of withdrawal a firm commitment has been issued relating to any such mortgage or unless a Direct Endorsement underwriter has approved the mortgagor for any such mortgage.

(4) *Effective date of suspension.* The suspension of a mortgagee's approval shall be effective upon receipt of notice by the mortgagee.

(d) *Withdrawal.* (1) Where the Board makes a determination of a serious violation or a repeated violation by the mortgagee, the Board may issue an order withdrawing the HUD/FHA approval of the mortgagee.

(2) *Duration.* A withdrawal shall be for a reasonable, specified period of time, not less than one year, commensurate with the seriousness of the ground(s) for withdrawal. A withdrawal shall be permanent where the Board has determined that the violation is egregious or willful.

(3) *Effect.* (i) During the period of withdrawal, the mortgagee is not approved and HUD will not endorse any mortgage originated by the withdrawn mortgagor unless prior to the date of withdrawal a firm commitment has been issued relating to any such mortgage or unless a Direct Endorsement underwriter has approved the mortgagor for any such mortgage. The Board may limit the geographical extent of the withdrawal, or limit its scope to either the single family or multifamily activities of the withdrawn mortgagee.

(ii) Upon expiration of a stated period of withdrawal, the mortgagee may file a new application for approval with the Secretary under 24 CFR part 203.

(4) *Effective date of withdrawal.* The withdrawal of a mortgagee's approval shall be effective: (i) upon receipt of notice by the mortgagee if the board determines that continuation of mortgagee approval pending a hearing under § 25.8 would not be in the public interest or in the best interests of the Department;

(ii) At the expiration of the 30-day period specified in § 25.8, if the mortgagee has not requested a hearing; or

(iii) Upon receipt of a final determination under 24 CFR part 26.

(e) *Settlements.* The Board may at any time enter into a settlement agreement with a mortgagee to resolve any outstanding grounds for administrative action. Agreements may include but are not limited to provisions for cessation of any violation; correction or mitigation of the effects of any violation; repayment of sums of money wrongfully or incorrectly paid to the mortgagee by a mortgagor, a seller of HUD; actions to collect sums of money wrongfully or incorrectly paid by the mortgagee to a third party; indemnification of HUD/FHA for mortgage insurance claims on mortgages originated in violation of HUD/FHA requirements; modification of the length of any penalty; implementation of a quality control plan that meets HUD's requirements or other corrective measures acceptable to the Board; or such other provisions as are deemed appropriate by the Board. Failure of a mortgagee to comply with a settlement agreement shall be sufficient cause for suspension or withdrawal.

§ 25.6 Notice of violation.

(a) *General.* The Chairperson of the Board, or the Chairperson's designee, shall issue a written notice to the mortgagee at least thirty days prior to taking any probation, suspension or withdrawal action against a mortgagee. The notice shall state the specific violations that have been alleged, and shall direct the mortgagee to reply in writing to the Board within thirty 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. A more lengthy submission, including documents and other exhibits, may be simultaneously submitted to Board staff for review.

(Approved by the Office of Management and Budget under Control Number 2502–0450.)

§ 25.7 Notice of administrative action.

Whenever the Board takes an action to issue a letter of reprimand, place a mortgagee on probation, or to suspend or withdraw a mortgagee's approval, the Board shall promptly notify the mortgagee in writing of the determination. Except for a letter of reprimand, the notice shall describe the nature and duration of the administrative action, shall specifically state the violations and shall set forth the findings of the Board. The notice shall inform the mortgagee of its right to a hearing pursuant to 24 CFR part 26 and the manner and time in which to request a hearing, as required by § 25.8. The notice shall be served in accordance with 24 CFR 26.15. A supplemental notice may be issued in the discretion of the Board to add or modify the reasons for the action.

§ 25.8 Hearings and hearing request.

(a) *Hearing request.* In the case of probation, suspension or withdrawal action, a mortgagee is entitled to request a hearing before a Departmental Hearing Officer to challenge the action. If, within 30 days of receiving the notice of administrative action, the mortgagee requests a hearing, there shall be a hearing on the record regarding the violations within 30 days of receiving the request from the mortgagee. The mortgagee may voluntarily agree to have the hearing held more than 30 days after the request is received by HUD.

(b) *Procedure for request.* The request for hearing shall be made in writing within 30 days of receipt of the notice of probation, suspension or withdrawal. The request shall be filed in accordance with 24 CFR 26.14, addressed to the Board Docket Clerk, Department of Housing and Urban Development, at the address set out in the notice. Failure to request a hearing within 30 days shall be deemed a waiver of the mortgagee's opportunity for hearing and a waiver of its right to contest the probation, suspension or withdrawal, which shall then become final.

(c) *Procedural rules.* Hearings to challenge a probation, suspension or withdrawal action shall be conducted according to the applicable rules of 24 CFR part 26, except as modified by this part. Because of stringent time deadlines, facsimile machine filing is encouraged, pursuant to the provisions regarding the use of facsimile filing set forth in 24 CFR 30.425(b)(3).

(d) *Hearing location.* Hearings, if held within the 30-day period set forth in paragraph (a) of this section, shall generally be held in Washington, DC, unless undue hardship is otherwise shown. In cases where undue hardship is shown, the Hearing Officer may order the hearing, or a bifurcation of the hearing, in a location other than Washington, DC.

(e) *Limitation of discovery.* Discovery shall be conducted in accordance with subpart E of 24 CFR part 26, except as modified by this part. Discovery shall be limited to exclude requests for answers to interrogatories, requests for admissions, and production of documents that:

(1) Do not pertain to the appealing mortgagee; and

(2) Pertain to reviews or audits conducted by the Department, and administrative actions taken by the Board against mortgagees other than the mortgagee which is a party to the pending administrative action.

Because the hearing provided a mortgagee is a trial *de novo*, the members of the Board shall not be subject to being deposed.

§ 25.9 Grounds for an administrative action.

One or more of the following violations by a mortgagee may result in an administrative action by the Board under § 25.5. Except in cases where the Board's authority has been delegated in accordance with § 25.2, the Board will consider, among other factors, the seriousness and extent of the violations, the degree of mortgagee responsibility for the occurrences and any mitigating factors, in determining which administrative action, if any, is appropriate. Any administrative action imposed under § 25.5 shall be based upon one or more of the following grounds:

(a) The transfer of an insured mortgage to non-approved mortgagee, except pursuant to 24 CFR 203.433 or 203.435;

(b) The failure of a nonsupervised mortgage to segregate all escrow funds received from mortgagors on account of ground rents, taxes, assessments and insurance premiums, or to deposit such funds in a special account with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation or by the National Credit Union Administration, except as otherwise provided in writing by the Assistant Secretary for Housing—Federal Housing Commissioner;

(c) The use of escrow funds for any purpose other than that for which they are received;

(d) The termination of a mortgagee's supervision by a governmental agency;

(e) The 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;

(f) The payment by a mortgagee of a referral fee to any person or organization; or payment of any thing of value, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person, including but not limited to an attorney, escrow agent, title company, consultant, mortgage broker, seller, builder or real estate agent, if that person has received any other compensation from the mortgagor, the seller, the builder or any other person for services related to such transactions or from or related to the purchase or sale of the mortgaged property, except compensation paid for the actual performance of such services as may be approved by the Assistant Secretary for Housing—Federal Housing Commissioner;

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

(h) Failure of an approved mortgagee to meet or maintain the net worth in assets required by 24 CFR part 203;

(i) Failure or refusal of an approved mortgagee to comply with an order of the Board, the Secretary or Hearing Officer under this part;

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

(k) Submission of false information to HUD in connection with any HUD/FHA insured mortgage transaction;

(l) Failure of a mortgagee to respond to inquires from the Board;

(m) Indictment or conviction of a mortgagee or any of its officers, directors, principals or employees for an offense which reflects upon the responsibility, integrity, or ability of the mortgagee to participate in HUD/FHA programs as an approved mortgagee;

(n) Employing or retaining:

(1) An officer, partner, director or principal at such time when such person was suspended, debarred, ineligible, or subject to a limited denial of participation under 24 CFR part 24 or otherwise prohibited from participation in HUD programs, where the mortgagee knew or should have known of the prohibition;

(2) An employee who is not an officer, partner, director, or principal and who is or will be working on HUD/FHA program matters at a time when such person was suspended, debarred, ineligible, or subject to a limited denial of participation under 24 CFR part 24 or otherwise prohibited from participation in HUD programs, where the mortgagee knew or should have known of the prohibition;

(o) Violation by an approved mortgagee of the nondiscrimination requirements of the Equal Credit Opportunity Act (15 U.S.C. 1691–1691f), Fair Housing Act (42 U.S.C. 3601–3619), Executive Order 11063 (27 FR 11527), and all regulations issued pursuant thereto;

(p) Business practices which do not conform to generally accepted practices of prudent lenders or which demonstrate irresponsibility;

(q) Failure to cooperate with an audit or investigation by the Department's Office of Inspector General or an inquiry by HUD/FHA into the conduct of the mortgagee's HUD/FHA insured business or any other failure to provide information to the Secretary or a representative related to the conduct of the mortgagee's HUD/FHA business;

(r) Violation by an approved mortgagee of the requirements or prohibitions of the Real Estate Settlement Procedures Act (12 U.S.C. 2601–2617);

(s) Without regard to the date of the insurance of the mortgage, failure to service an insured mortgage in accordance with the regulations and any other requirements of the Secretary which are in effect at the time the act or omission occurs;

(t) Failure to administer properly an assistance payment contract under section 235 of the National Housing Act (12 U.S.C. 1715z);

(u) Failure to pay the application and annual fees required by 24 CFR 203.2(k);

(v) The failure of a coinsuring mortgagee:

(1) To properly perform underwriting, servicing or property disposition functions in accordance with instructions and standards issued by the Commissioner;

(2) To make full payment to an investing mortgagee as required by 24 CFR part 204;

(3) To discharge responsibilities under a contract for coinsurance;

(4) To comply with restrictions concerning the transfer of a coinsured mortgage to an agency not approved under 24 CFR part 250;

(5) To maintain additional net worth requirements, as applicable;

(w) Any other reasons the Board, Secretary of Hearing Officer, as appropriate, determine to be so serious as to justify an administrative sanction;

(x) Failure to remit, or timely remit mortgage insurance premiums, loan insurance changes, late charges or interest penalties to the Department;

(y) Failure to properly perform underwriting functions in accordance with instructions and standards issued by the Department;

(z) Failure to fund mortgage loans or any other misuse of mortgage loan proceeds;

(aa) Permitting the use of strawbuyer mortgagors in an insured mortgage transaction where the mortgagee knew or should have known of such use of strawbuyers;

(bb) Breach by the mortgagee of a fiduciary duty owed by it to any party, including GNMA and the holder of any mortgage-backed security guaranteed by GNMA, with respect to an insured loan or mortgage transaction.

(cc) Violation by title I lender, of any of the applicable enumerated provisions as stated in this section, or as stated in 24 CFR 202.6(b).

(dd) Failure to pay any civil money penalty, but only after all administrative appeals requested by the mortgagee have been exhausted.

(Approved by the Office of Management and Budget under Control Number 2502–0450.)

§ 25.10 Publication in Federal Register of actions.

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. Such publication shall be made quarterly or more frequently in the discretion of the Secretary.

§ 25.11 Notification to 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 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.

§ 25.12 Cease and desist order.

(a) *Issuance of order.* Whenever the Secretary, upon the request of the Board, determines that there is reasonable cause to believe that a mortgagee is violating, has violated, or is about to violate a law, rule, regulation, or any written condition imposed by the Secretary or the Board, and that such violation could result in significant cost to the Federal Government or to the public, the Secretary may issue a temporary order requiring the mortgagee to cease and desist from any such violation, and to take affirmative action to prevent such violation or a continuation of such violation pending completion of proceedings of the Board with respect to such violation. Each cease and desist order shall include a notice of charges and shall be effective upon service on the mortgagee. A cease and desist order shall remain effective and enforceable for a period not to exceed 30 days pending the completion of proceedings of the Board regarding the violation, unless the mortgagee obtains an injunction as described in paragraph (b) of this section. If, after receiving the order, the mortgagee requests a hearing, there shall be a hearing on the record regarding the violation. The opportunity for the hearing before a Hearing Officer shall be provided for the mortgagee as soon as practicable, but no later than 20 days after the order has been served. The mortgagee's request for a hearing shall be filed with the Department within 10 days after the order has been served, otherwise the request shall be void. The request shall be filed with the Board Docket Clerk, Department of Housing and Urban Development, at the address set out in the order. Because of stringent time deadlines, facsimile machine filing is encouraged, pursuant to the provisions regarding the use of facsimile machine filing contained in 24 CFR 30.425(b)(3).

(b) *Application to U.S. District Court by mortgagee.* Within ten days after the mortgagee receives the order, the mortgagee may apply to the United States District Court in the judicial district in which the home office of the mortgagee is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting or suspending the enforcement, operation or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the mortgagee, and such court shall have jurisdiction to issue the injunction.

(c) *Application to U.S. District Court by HUD.* If the mortgagee violates, threatens to violate, or otherwise fails to obey a cease and desist order, the Secretary may apply to the United States District Court, or the United States Court of any territory, within the jurisdiction of which the home office of the mortgagee is located, for an injunction to enforce the order.

(d) *Special definitions.* For the purposes of this section, the term "mortgagee" includes a branch office or subsidiary of a mortgagee, or a director, officer, employee, agent or other person participating in the conduct of the affairs of the mortgagee; and the term "home office" means whatever the mortgagee has shown as its primary business address in its application for HUD/FHA approval.

(e) *Redelegation.* The Secretary may redelegate authority to issue a cease and desist order to the Chairperson of the Board.

(Approved by the Office of Management and Budget under Control Number 2502–0450.)

§ 25.13 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 on mortgagees and title I lenders, as set forth in 24 CFR part 30. The violations for which a civil money penalty may be imposed are listed at 24 CFR 30.320. Hearings to challenge the imposition of civil money penalties shall be conducted according to the applicable rules of 24 CFR part 30.

§ 25.14 Coordination with GNMA.

(a) *Notification to GNMA.* When the Board issues a notice of violation that could lead to withdrawing a mortgagee's approval, the Board shall:

(1) Notify GNMA in writing within 24 hours of the action taken;

(2) Provide GNMA with the factual basis for the action taken; and

(3) Publish the Board's decision in the **Federal Register** if the mortgagee's approval is withdrawn.

(b) *Notification by GNMA.* When GNMA notifies the Federal Housing Administration of an action that could lead to withdrawal of GNMA approval, the Board shall, within 60 days of receipt of such notice:

(1) Conduct and complete its own investigation;

(2) Provide GNMA written notification of the Board's decision and the factual basis for the decision; and

(3) If the Board withdraws the mortgagee's approval, publish its decision in the **Federal Register**.

(Approved by the Office of Management and Budget under Control Number 2502–0450).

§ 25.15 Annual report.

The Board, in consultation with the Federal Housing Administration Advisory Board, shall recommend annually to the Secretary amendments to statutes and regulations which the Board deems appropriate to ensure the long term financial strength of the Federal Housing Administration fund and adequate support for home mortgage credit.

§ 25.16 Prohibition against modification of board orders.

(a) Policy. The Board, before issuing orders, will carefully examine evidence and undertake deliberation before reaching a decision.

(b) Modification of orders. Notwithstanding any provision contained in 24 CFR part 26, pending a final determination of a matter brought before a Departmental Hearing Officer, the Hearing Officer shall not modify or otherwise disturb in any way an order of the Board.

(c) In cases involving probation, suspension, or withdrawal actions where a Hearing Officer rules in a final determination that there was no legal basis for the Board's decision to take the administrative action, the Board's action shall be stayed pending an appeal, if any, to the Secretary.

§ 25.17 Appeal to the Secretary.

A party may petition for review of a determination or order of a hearing officer. The Secretary or designee, within 15 days upon receipt of a request for review of the Hearing Officer's determination or order under 24 CFR 26.25, shall issue a determination, in writing, granting or denying the request. The written determination of the Secretary or designee shall be issued within 45 days of receipt of the briefs filed by the opposing parties.

(Approved by the Office of Management and Budget under Control Number 2502-0450).

§ 25.18 Retroactive application of board regulations.

Limitations on participation in HUD mortgage insurance programs proposed or imposed prior to August 12, 1992, under an ancillary procedure shall not be affected by this part. This part shall apply to sanctions initiated after the effective date of the Department of Housing and Urban Development Reform Act of 1989 (December 15, 1989) regardless of the date of the cause giving rise to the sanction.

PART 202—APPROVAL OF LENDING INSTITUTIONS UNDER TITLE I

2. The authority citation for part 202 is revised to read as follows:

Authority: 12 U.S.C. 1703, 1709, 1715b, 1751; 42 U.S.C. 3535(d).

3. Section 202.8 is amended by revising paragraph (a) introductory text, and paragraphs (b)(1), (c), and (d), to read as follows:

§ 202.8 Administrative actions.

(a) *General.* The provisions of 24 CFR part 25 shall be applicable to a lender participating in the Title I program. Administrative actions which may be applied are set forth in 24 CFR 25.5. Civil money penalties may also be taken against Title I lenders pursuant to 24 CFR 25.13 and part 30 of this title.

* * * * *

(b) * * *

(1) Failure to remain in compliance with the requirements for approval of lenders under this part.

* * * * *

(c) *Notice, hearing and hearing requests.* In the case of a probation, suspension or withdrawal action, a lender is entitled to notice and to request a hearing before a Hearing Officer to challenge the action, in accordance with the procedures in 24 CFR part 25. Hearings to challenge a probation, suspension or withdrawal action shall be conducted in accordance with the applicable rules of 24 CFR part 26.

(d) *Settlement agreements.* The Mortgagee Review Board may at any time enter into a settlement agreement with a lender to resolve any outstanding grounds for administrative action. Agreements may include but are not limited to provisions for cessation of any violation; correction or mitigation of the effects of any violation; repayment of sums of money wrongfully or incorrectly paid to the lender by a borrower or by HUD; actions to collect sums of money wrongfully or incorrectly paid by the lender to a third party; indemnification of HUD for insurance claims on title I loans originated in violation of HUD requirements; modification of any penalty; implementation of a quality control plan that meets HUD's requirements or other corrective measures acceptable to the Board; or such other provisions as deemed appropriate by the Board. Failure of a lender to comply with a settlement agreement shall be sufficient cause for suspension or withdrawal.

Dated: July 2, 1992.

Jack Kemp,

Secretary.

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