

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR-4836-P-01; HUD-2004-0015]

RIN 2502-AI01

Multifamily Accelerated Processing (MAP): MAP Lender Quality Assurance Enforcement

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

ACTION: Proposed rule.

SUMMARY: HUD is publishing for comment the basis for, and procedures applicable to, enforcement actions under Multifamily Accelerated Processing (MAP), a form of “fast-track processing” that gives qualified lenders the option of preparing the applicable Federal Housing Administration (FHA) forms and doing preliminary underwriting for certain loan applications.

DATES: *Comment Due Date:* February 15, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at: <http://www.regulations.gov>; or
- The HUD electronic Web site at: <http://www.epa.gov/feddocket>. Follow the link entitled View Open HUD Dockets.” Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (fax) comments are not acceptable. In all cases, communications must refer to the above docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at <http://www.epa.gov/feddocket>.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Office of Housing, Room 6138, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500; telephone (202) 708-1142 (this is not a toll-free number). Persons with hearing or speech disabilities may access this number through TTY by

calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

MAP Lender Quality Assurance Enforcement. Multifamily lenders that are approved MAP lenders and that process a multifamily mortgage loan using MAP procedures do so with the understanding and agreement that their loan processing actions and decisions are subject to HUD review. By allowing a MAP lender to prepare much of the documentation for a loan submission for FHA multifamily mortgage insurance, HUD places confidence in the lender's integrity and competence. If, in the process of performing this function, the lender should place the FHA multifamily mortgage insurance portfolio at risk, HUD must have (1) an accelerated process for review of the lender's actions, and (2) the means to act expeditiously to correct violations. This accelerated review process and mechanism for HUD action is referred to as “MAP Lender Quality Assurance Enforcement.” The proposed rule establishes in 24 CFR part 200, a new subpart Y, consisting of §§ 200.1500 through 200.1545, which presents the requirements and procedures that constitute MAP Lender Quality Assurance Enforcement.

To accomplish quality assurance of a lender's MAP loan processing actions, the Directors of HUD field offices (Hub/Program Centers) and the Director of the Office of Multifamily Development initiate discussions with MAP lenders regarding concerns with respect to a MAP lender's actions. These discussions may lead to the imposition of a sanction by HUD, including a warning letter, a Limited Denial of Participation (LDP) action against the lender or an employee or contract person of the MAP lender, referral to the Office of the Inspector General, referral to the MAP Lender Review Board, or referral to the Mortgagee Review Board. Sanctions involving MAP probation, suspension or termination will generally be the result of a recommendation by the Director of the Office of Multifamily Development, HUD Headquarters, or Hub Director to the MAP Lender Review Board.

The identification of the specific HUD staff and officials who may initiate and participate in the procedures provided in this rule is a matter of HUD's organization and HUD's own internal practices or procedures, and may change from time to time. Therefore, although this preamble may discuss actions taken by specific HUD officials, the proposed rule text more generally

refers to actions taken by “HUD” to avoid the necessity of amending the rule whenever there is a change in an official's title.

MAP Lender Review Board. The MAP Lender Review Board (Board) is to consist of three HUD Multifamily Housing officials designated by the Assistant Secretary for Housing or his designee. The Board is authorized to take action against any MAP lender for reasons provided in § 200.1530 of this proposed rule entitled, “Bases for sanctioning a MAP lender.” Actions include: warning letters, probation, suspension or termination of MAP lender privileges. Decisions will be by majority vote. Board members are expected to possess a sound knowledge of multifamily housing origination, underwriting and construction loan procedures. HUD's Office of Inspector General (OIG) and Office of General Counsel (OGC) will each designate a non-voting advisor to the Board. Further, the Board is authorized to refer MAP lenders to OIG and may refer the staff, or the contractors of the MAP lender, to the Deputy Assistant Secretary (DAS) for Multifamily Housing for imposition of an LDP, as defined in 24 CFR 24.105. The general procedures governing the Board are provided in § 200.1535 of this rule.

MAP Warning Letters. HUD Multifamily Hub and Program Center Directors, the Director of Multifamily Development, and the Board may issue MAP warning letters for minor offenses as well as for more serious offenses. Warning letters must specify the MAP violations and may direct the taking of corrective actions. In addition, these HUD officials will issue MAP warning letters to MAP lenders for violations by a MAP lender's third party contractor. A MAP warning letter does not suspend or terminate a lender's MAP privileges, but it may be used as evidence in a subsequent action which results in the imposition of probation, suspension, or termination. The issuance of a MAP warning letter is not, however, a prerequisite for these more serious actions. Section 200.1505 of this rule addresses HUD's use of warning letters.

MAP Probation. The Board may place a lender on MAP probation after following procedures that give notice and a pre-deprivation conference to the MAP lender. MAP probation is limited to the time to make the corrective changes and/or improvements required by the Board. When the MAP lender has taken all corrective actions or completed the improvements directed by the Board, the MAP lender shall notify the Board. Once the Board is satisfied that the corrective actions have occurred, the

probation period shall end. Failure on the part of the MAP lender to take responsible corrective action in a timely manner to satisfy the charges that resulted in the probation creates the potential for a recommendation to the Board of either MAP suspension or termination. In such instances, and to the extent practical, the Board members who served on the original Board bringing the original charges should comprise the Board that hears the subsequent charges.

MAP probation covers all MAP lender activity regardless of geographic location. HUD shall issue the notice of MAP probation in writing. During MAP probation, the MAP lender's corporate name shall be removed from the HUD Web site listing approved MAP lenders, but the corporate name shall be returned to the Web site once MAP probation has been lifted. During MAP probation, a MAP lender may not submit, and the HUD field office may not accept, materials for a new MAP pre-application or firm commitment application after the close of business on the date of the probation letter. However, a MAP lender placed on probation may continue to process applications submitted to the HUD Hub/Program Center prior to the close of business on the date of the probation letter. Placing a MAP lender on MAP probation does not impact the authority of the subject lender from receiving, or continuing to process, non-MAP mortgage loans. MAP probation is covered by § 200.1510 of this rule.

Suspension of MAP Privileges. The Board may suspend a MAP lender from MAP activity for serious offenses after following procedures that give notice and a pre-deprivation conference to the MAP lender. Suspension is time limited to no more than one year, except where conditions are imposed. Any conditions that may be imposed by MAP probation may also be applied to MAP suspension. If both a time limit and corrective conditions are imposed, MAP suspension shall terminate following (1) the expiration of the time limit, (2) the MAP lender's submission to the Board of a certification of compliance with any conditions imposed, and (3) the Board's notification to the MAP lender that it has received the certification of compliance and is satisfied that the corrective actions have occurred. Suspension of MAP privileges carries the same lender processing restrictions as MAP probation, cited above. Suspension is nationwide in effect. Section 200.1515 of this rule addresses MAP suspension.

Termination of MAP Privileges. The Board may terminate a lender's

eligibility for MAP for poor performance, among other reasons after following procedures that give notice and a pre-deprivation conference to the MAP lender. An application for reinstatement of MAP authority following notification of termination may not be submitted until 12 months have passed from the date of termination. Requirements for reinstatement shall be similar to the initial qualification for MAP lender approval stated in Chapter 2 of the MAP Guide with the additional proof that the conditions that resulted in the termination have been resolved to the satisfaction of HUD. MAP termination affects all MAP processing by the lender nationwide. HUD will not endorse any MAP loan processed by the terminated lender unless a firm commitment was issued prior to the date of termination. MAP applications and pre-applications in process should be transferred either to the traditional application processing (TAP) procedure or to another MAP lender. In either case, the loan must be reprocessed in its entirety.

In certain circumstances, termination of MAP lender status may also occur without action by the Board. Failure by a MAP lender to maintain its status as an FHA approved Lender results in immediate removal as an approved MAP lender. In addition, MAP lenders must maintain a minimum level of MAP lender activity. This rule would require all MAP lenders to submit either a pre-application package or firm commitment application at least once every 12 months. Failure to maintain this minimum level of MAP activity will subject the lender to removal from the MAP program by the Office of Multifamily Development. Notification will be given to the MAP lender prior to termination for violation of this minimum level of activity requirement. When a MAP lender loses its MAP lender status as a result of failure to meet and maintain the minimum level of MAP activity, the lenders' status to process using TAP is unaffected. MAP lenders who have their MAP status rescinded for inactivity may reapply for MAP lender approval to commence one year from the effective date of having their approved MAP lender status terminated. Termination of MAP lenders is addressed in § 200.1520 of the rule.

Settlement Agreements. The Director of HUD's Office of Multifamily Development may enter into discussions with a MAP lender leading to a negotiated settlement agreement between HUD and the MAP lender before or after the issuance of a warning letter or referral to the Board. For

example, discussions may result in a settlement agreement under which the MAP lender agrees to implement or revise a quality control plan, in lieu of being referred to the Board. When these discussions occur following a referral to the Board for possible disciplinary action, any settlement agreement reached is subject to approval by the Board. The provisions for settlement agreements appear at § 200.1525 of the rule.

Lender Notification. Prior to the MAP Board reviewing any matter for consideration of a sanction against a MAP lender, the Board Chairperson shall notify the subject MAP lender. This notification shall be in writing stating the specific alleged violation(s) along with the citation of the HUD requirements that are the subject of the charge. The MAP lender shall be provided an opportunity to meet informally with the Board, through a conference call, in person, or by teleconference video, using HUD facilities and/or to present in writing any relevant information. The MAP lender shall also be provided an opportunity to respond in writing to the Board regarding the alleged violation prior to any meeting. The MAP Lender Review Board procedures are included in § 200.1535.

The Review Board shall have the power, however, to issue a notice of action to terminate a MAP lender, or to place a MAP lender on probation or suspension without advance notice to the MAP lender in those instances where the Board believes there exists a need to protect the financial interest of the government from imminent harm. In all such instances, the Board shall notify the lender of the Board's decision promptly giving the reasons for the decision. The lender shall have the right to submit materials to the Board and to appear before the Board to seek prompt reconsideration of the Board's decision. These imminent harm provisions appear at § 200.1540.

Appeals. When the Board imposes a sanction of probation, suspension or termination against a MAP lender, the lender shall have the option of requesting an informal conference with a designated appeals official designated by the Assistant Secretary for Housing. The designated appeals official will not be a member of the Board involved in the original sanction decision. If the appeals official overturns the Board's decision, on probation, suspension or termination, the lender shall return immediately to active status as a MAP lender. Participation in the appeals process is not a prerequisite for the filing of an action for judicial review

under the Administrative Procedures Act. The appeals procedures are located in § 200.1545 of this rule.

II. Issues Highlighted for Public Comment

HUD is specifically seeking comment on whether quantitative measures, such as a lender's frequency or severity of claims, exist which may serve as a basis for sanctioning MAP lenders, and if so, what those quantitative measures may be. In the current proposed rule, HUD lists numerous qualitative measures that may serve as the basis of sanctions, but does not include quantitative measures. HUD is also particularly interested in obtaining public comment on additional qualitative measures that might serve as the basis for sanctions and whether the MAP Lender Quality Assurance Enforcement process may be made less burdensome, while still providing MAP lenders the opportunity to respond adequately to a notice of violation and to participate in the resolution of problems.

III. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Unfunded Mandates Reform Act

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

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and

either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the executive order.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons. The rule provides clear, uniform, expeditious, and equitable requirements and procedures to permit HUD to take enforcement actions, correct MAP violations, and protect the financial interests of the government. As such, the rule results in an industrywide and governmental benefit in that it clarifies the terms of the relationship between HUD and MAP lenders.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

With respect to taking appropriate enforcement action against a MAP lender, HUD is cognizant that section 222 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) (referred to as "SBREFA") requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to "work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel." To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices that are provided to small businesses at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], call 1-888-REG-FAIR (1-888-734-3247).

As HUD stated in its notice describing HUD's actions on the implementation of SBREFA, which was published on May 21, 1998 (63 FR 28214), HUD intends to work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan or mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.134.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, HUD proposes to amend 24 CFR part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

2. A new subpart Y is added to read as follows:

Subpart Y—Multifamily Accelerated Processing (MAP): MAP Lender Quality Assurance Enforcement

Sec.

- 200.1500 Sanctions against a MAP lender.
- 200.1505 Warning letter.
- 200.1510 Probation.
- 200.1515 Suspension of MAP privileges.
- 200.1520 Termination of MAP privileges.
- 200.1525 Settlement agreements.
- 200.1530 Bases for sanctioning a MAP lender.
- 200.1535 MAP Lender Review Board.
- 200.1540 Imminent harm notice of action.
- 200.1545 Appeals of MAP Lender Review Board decisions.

§ 200.1500 Sanctions against a MAP lender.

(a) In addition to any other legal remedy available to HUD, HUD may take the following actions with respect to a MAP lender:

- (1) Warning letter;
- (2) Probation;
- (3) Suspension;
- (4) Termination;
- (5) Limited Denial of Participation (LDP);
- (6) Referral to the Mortgagee Review Board; and
- (7) Referral to the Office of Inspector General.

(b) The actions listed in paragraphs (a)(1) through (a)(4) of this section are carried out in accordance with the requirements of this subpart. An LDP is a sanction applied in accordance with subpart G of 24 CFR part 24 to participants in loan transactions other than FHA-insured lenders. The Mortgagee Review Board procedures are found at 24 CFR part 25.

§ 200.1505 Warning letter.

(a) *In general.* HUD may issue a warning letter, which specifies problems or violations identified by HUD, to a MAP lender.

(b) *Effect of warning letter.* The warning letter:

- (1) Does not suspend a lender's MAP privileges;
- (2) May impose a higher level of review of the lender's underwriting by HUD;
- (3) May direct the taking of a corrective action; and
- (4) May require a meeting in a designated HUD office with the principal owners or officers, or both, of the MAP lender to discuss the specified problems and violations, and possible corrective actions.

(c) *Relationship to other sanctions.* The issuance of a warning letter is not

subject to the MAP Lender Review Board procedures in accordance with § 200.1535, and is not a prerequisite to the probation, or suspension, or termination of MAP privileges.

§ 200.1510 Probation.

(a) *In general.* Only the MAP Lender Review Board (or Board) may place a lender on probation, in accordance with the procedures of § 200.1535.

(b) *Effect of probation.* (1) Probation is intended to be corrective in nature and not punitive. As a result, release from probation is conditioned upon the lender meeting a specific requirement or requirements, such as replacement of a staff member. A lender's failure to take prompt corrective action after being placed on probation may be the basis for a recommendation of either suspension or termination. Any such recommendation shall, when possible, go to a MAP Lender Review Board composed of the same members who issued the original probation.

(2) During the probation period, a MAP lender:

- (i) Shall be removed from the MAP-Approved Lender list posted on HUD's Web site;
- (ii) May not submit, and HUD may not accept, materials after the close of business of the date of the probation letter for a new application under MAP for multifamily mortgage insurance from HUD; and
- (iii) May continue to process any existing application for multifamily mortgage insurance submitted to a Multifamily Hub or Program Center before the date of the probation letter.

(3) The MAP Lender Review Board may impose a higher level of review of the lender's underwriting by HUD;

(4) Probation is nationwide in effect.

(c) *Duration of probation.* (1) Probation continues until all specific corrective actions required by the MAP Lender Review Board (for example, exclusion of a specific staff member from work on MAP loans) are taken by the MAP lender. When all corrective actions have been taken, the MAP lender shall notify the Board. Once the Board is satisfied that the corrective actions have occurred, the probation period shall end.

(2) A false statement that corrective action has been taken constitutes a false certification and may constitute a violation of 18 U.S.C. 1001.

(3) When probation is lifted, the lender's name shall be promptly reinstated on the MAP-Approved Lender list posted on HUD's Web site.

§ 200.1515 Suspension of MAP privileges.

(a) *In general.* Only the MAP Lender Review Board may suspend a lender's

eligibility for MAP, in accordance with the procedures of § 200.1535.

(b) *Effect of suspension.* (1) A suspension may impose any conditions that may be imposed by probation.

(2) During the suspension period a MAP lender:

(i) Shall be removed from the MAP-approved lender list posted on HUD's Web site;

(ii) May not submit, and the HUD field office may not accept, materials after the close of business of the date of the suspension letter for a new application for multifamily mortgage insurance from HUD; and

(iii) May continue to process any existing application for multifamily mortgage insurance submitted to a Multifamily Hub or Program Center before the date of the suspension letter.

(3) The MAP Lender Review Board may impose a higher level of review of the lender's underwriting by HUD;

(4) Suspension is nationwide in effect.

(c) *Duration of suspension.* (1)

Suspension may not exceed 12 months, except where conditions are imposed. If both a time period and conditions are imposed, a suspension shall terminate only when:

(i) The time period of the suspension has expired;

(ii) The MAP lender has submitted a certification of compliance with those conditions to the Board; and

(iii) The Board has notified the MAP lender it has received the certification of compliance and is satisfied that the corrective actions have occurred.

(2) When suspension is lifted, the lender's name shall be promptly reinstated on the MAP-Approved Lender list posted on HUD's Web site.

§ 200.1520 Termination of MAP privileges.

(a) *In general.* Except as provided in paragraph (b) of this section, only the MAP Lender Review Board may terminate a lender's MAP privileges, in accordance with the procedures of § 200.1535.

(b) *Administrative termination.* HUD will notify a lender of immediate termination of MAP privileges when either of the following circumstances is present:

(1) Failure by the MAP lender to maintain its status as an FHA-approved lender; or

(2) Failure by the MAP lender to maintain a minimum level of MAP lender activity, as evidenced by failure to submit either a pre-application package or firm commitment application at least once every 12 months.

(c) *Effect of termination.* (1) The terminated lender shall be removed

from the MAP-Approved Lender list on HUD's Web site.

(2) A terminated lender may not submit, and the HUD field office may not accept, materials after the close of business of the date of the termination letter for new multifamily mortgage insurance from HUD.

(3) Any MAP pre-application or MAP application in process may no longer be processed under MAP by the terminated Lender. The lender will either:

(i) Immediately transfer the transaction to the traditional application processing (TAP) procedure. HUD will completely reprocess all stages of the transaction; or

(ii) Immediately transfer the project to a new MAP lender. The new MAP lender must completely reprocess all stages of the transaction. At no time can the new MAP lender assign the pre-application, the firm application, the mortgage insurance commitment, or the insured construction loan back to the original MAP lender.

(4) HUD will not endorse any MAP loan processed by the terminated lender unless a firm commitment was issued before the date of termination.

(i) Firm commitments involving new construction or substantial rehabilitation must be immediately transferred to a new MAP lender. At no time can the new MAP lender assign the firm mortgage insurance commitment, or the insured construction loan, back to the original MAP lender.

(ii) Firm commitments issued for Section 223(f) projects may be transferred before final endorsement to any approved FHA lender or kept in the lender's portfolio.

(iii) For those construction loans that have been initially endorsed, the MAP lender will lose its MAP privileges for construction loan administration. HUD will assume all the construction loan administration duties it normally performs for TAP processing.

(iv) The original lender may service a transferred loan once it is finally endorsed.

(5) Termination is nationwide in effect.

(6) When a MAP lender loses its MAP lender status as a result of termination, the Lender's status to process transactions using TAP is unaffected, provided that the Lender has maintained its status as an FHA-approved multifamily lender.

(d) *Reinstatement.* An application for reinstatement of MAP authority may not be made until at least 12 months after the date of termination. The requirements for reinstatement shall be the same as for initial qualification, and the applicant must show that the

problems that led to termination have been resolved.

§ 200.1525 Settlement agreements.

(a) HUD staff, as authorized, may negotiate a settlement agreement with a MAP lender before or after the issuance of a warning letter or referral to the MAP Lender Review Board. Once a matter has been referred to the MAP Lender Review Board, only the Board may approve a settlement agreement.

(b) Settlement agreements may provide for:

(1) Cessation of any violation;

(2) Correction or mitigation of the effects of any violation;

(3) Removal of lender staff from positions involving origination, underwriting and/or construction loan administration;

(4) Actions to collect sums of money wrongfully or incorrectly paid by the MAP lender to a third party;

(5) Implementation or revision of a quality control plan or other corrective measure acceptable to HUD; and

(6) Modification of the duration or provisions of any administrative sanction deemed to be appropriate by HUD.

(c) A MAP lender's compliance with a settlement agreement is evidenced by the lender certifying its compliance with the conditions of the agreement, and HUD's determination that the lender is in compliance with the conditions of the agreement.

(d) Failure by a MAP lender to comply with a settlement agreement may result in a probation, or suspension, or termination of MAP privileges, or referral to the Mortgagee Review Board.

§ 200.1530 Bases for sanctioning a MAP lender.

It is HUD policy that approved MAP lenders are expected to comply at all times with HUD's underwriting and construction loan administration requirements and not to take any action that presents a risk to HUD's insurance funds. A MAP lender's improper underwriting and construction loan administration activities may lead to a warning letter or other sanction from HUD. Examples of such activities include, but are not limited to, the following:

(a) *Minor offenses that may be the basis for a warning letter include:*

(1) Failure to provide required exhibits or the submission of incomplete or inaccurate exhibits. Although the MAP lender will be permitted to correct minor errors or provide additional information, substantial inaccuracies or lack of

significant information will result in a return of the application and retention of any fee collected;

(2) Repeated failure to complete processing to firm commitment unrelated to an underwriting analysis that demonstrates that the process should not proceed to firm commitment;

(3) Preparation of an underwriting summary that is not supported by the appropriate documentation and analysis;

(4) Failure to notify the HUD processing office promptly of changes in the mortgage loan application for a firm commitment submitted, such as changes in rents, numbers of units, or gross project area;

(5) Failure to meet MAP closing requirements or construction loan administration requirements;

(6) Business practices that do not conform to those generally accepted by prudent lenders or that show irresponsibility; and

(7) Failure to cooperate with a Lender Qualifications and Monitoring Division review by HUD.

(b) *Serious offenses that might be a basis for a warning letter or probation, suspension, or termination include:*

(1) Receipt of multiple warning letters over any one-year period. In determining which sanction to pursue as a result of prior warning letters, HUD will consider the facts and circumstances surrounding those warning letters and the corrective actions, if any, undertaken by the lender;

(2) Fraud or material misrepresentation in the lender's participation in FHA multifamily programs;

(3) Lender collusion with, or influence upon, third party contractors to modify reports affecting the contractor's independent evaluation;

(4) A violation of MAP procedures by a third party contractor, which the MAP lender knew, or should have known, was occurring and which, if performed by the MAP lender itself, would constitute a ground for a sanction under this chapter;

(5) Evidence that a lender's inadequate or inaccurate underwriting was a cause for assignment of an FHA-insured mortgage and claim for insurance benefits to HUD;

(6) Identity-of-interest violations as defined by Chapter 2 of the MAP Guide;

(7) Payment by, or receipt of a payment by, a MAP lender of any kickback or other consideration, directly or indirectly, which would affect the lender's independent evaluation, or represent a conflict of interest, in

connection with any FHA-insured mortgage transaction;

(8) Failure to comply with any agreement, certification, undertaking, or condition of approval listed in a MAP lender's application for approval;

(9) Noncompliance with any requirement or directive of the MAP Lender Review Board;

(10) Violation of the requirements of any contract with HUD, or violation of the requirements in any statute or regulation;

(11) Submission of false information, or a false certification, to HUD in connection with any MAP mortgage transaction;

(12) Failure of a MAP lender to respond in a timely manner to inquiries from the MAP Lender Review Board in accordance with this subpart;

(13) Indictment or conviction of a MAP lender or any of its officers, directors, principals or employees for an offense that reflects on the responsibility, integrity, or ability of the lender to participate in the MAP initiative;

(14) Employing or retaining an officer, partner, director, or principal at the time when the person was suspended, debarred, ineligible, or subject to an LDP under 24 CFR part 24, or otherwise prohibited from participation in HUD programs, when the MAP lender knew or should have known of the prohibition;

(15) Employing or retaining 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 that person was suspended, debarred, ineligible, or subject to an LDP under 24 CFR part 24 or otherwise prohibited from participation in HUD programs, when the MAP lender knew or should have known of the prohibition;

(16) Failure to cooperate with an audit or investigation by the HUD Office of Inspector General or an inquiry by HUD into the conduct of the MAP lender's FHA-insured loans; and

(17) Failure to fund MAP mortgage loans or any misuse of mortgage loan proceeds.

§ 200.1535 MAP Lender Review Board.

(a) *Authority.* (1) *Sanctions.* The MAP Lender Review Board (or Board) is authorized to impose appropriate sanctions on a MAP lender after:

(i) Conducting an impartial review of all information and documentation submitted to the Board; and

(ii) Making factual determinations that there has been a violation of MAP requirements.

(2) *Settlement agreements.* The Board is authorized to approve settlement

agreements in accordance with § 200.1525 of any matter pending before the Board.

(3) *Extensions.* The Board is authorized to extend, on its own initiative or for good cause at the written request of a MAP lender, any time limit otherwise applicable under this section. Notice of any such extension shall be timely provided to a MAP lender.

(b) *Notice of violation.* Before the Board reviews a matter for consideration of a sanction, the Board's Chairman will issue written notice of violation to the MAP lender's contact person as listed on the Multifamily MAP Web site. The notice is sent by overnight delivery and must be signed for by an employee of the MAP lender upon receipt. The notice:

(1) Informs the lender that the Board is considering a specific violation;

(2) States the specific facts alleged concerning the violation, with citation to the HUD requirements that have been violated;

(3) Includes as attachments copies of all documents evidencing the violation and upon which the Board will rely in reaching a decision;

(4) Provides the lender with the opportunity to request in writing, within 15 business days after the date of the issuance of the notice, to:

(i) Meet for an informal conference with the Board in person or by video conference using HUD facilities at Headquarters or one of HUD's field offices; and

(ii) Present written evidence and any other relevant information at the conference;

(5) Requires a written response to be submitted to the Board by a date specified within the notice;

(6) Provides the street address, e-mail address, or facsimile (fax) number for purposes of receiving the lender's request for an informal conference and written response; and

(7) Is made part of the administrative record of the Board's decision of the matter.

(c) *Response to notice.* (1) The MAP lender's written response required by the notice of violation may not exceed 15 double-spaced typewritten pages and must include an executive summary, a statement of the facts, an argument and a conclusion. The response and supporting documentation must be submitted in triplicate.

(2) Failure to respond by the dates specified within the notice may result in a determination by the Board without conducting an informal conference with the MAP lender and without

consideration of any written response submitted by the MAP lender.

(d) *Informal conference.* (1) The Board will schedule an informal conference and notify the lender of the time and place of the conference, if one is requested.

(2) At the conference, the Board will meet with the lender or its designees and HUD staff to review documentary evidence and presentations by both sides.

(3) Oral statements made at the informal meeting will not be considered as part of the administrative record of the Board's determination, except:

(i) The Board may note for the record and consider voluntary admissions, made by the lender or a representative of the lender, of any element of the violation charged;

(ii) Statements substantiated by any additional documents or evidence submitted in accordance with paragraphs (e)(1) or (e)(3) of this section; and

(iii) Transcripts prepared and submitted in accordance with paragraph (e)(2) of this section.

(e) *Post-conference submissions.* (1) Any additional documents, evidence, or written arguments relevant to the notice of violation and the informal conference that the lender or HUD staff wish to present to the Board, must be presented within five business days after date of the informal conference.

(2) No transcript of the informal conference will be made, unless the lender elects to have a transcript made by a certified court reporter at its own expense. If the lender elects to have a transcript made, the lender must provide three copies of the transcript to HUD within five business days after the date of the informal conference. The transcript will not become a part of the administrative record of the Board's decision unless it is submitted within the required five-day period frame.

(3) Following the receipt of any post-conference submissions, the Board may request or permit additional documents or evidence to be submitted within a period set by the Board for inclusion in the administrative record.

(f) *Board action.* (1) The Board will confer to consider the evidence included in the administrative record and make a final decision concerning the matter. Any record of confidential communications between and among Board members at this stage of the proceedings is privileged from disclosure and will not be regarded as a part of the administrative record of any matter.

(2) In determining what action is appropriate concerning the matter, the Board considers, among other factors:

(i) The seriousness and the extent of the violation;

(ii) Any history of prior offenses;

(iii) Deterrence of future violations;

(iv) Any inappropriate benefits received by the MAP lender;

(v) Potential inappropriate benefit to other persons; and

(vi) Any mitigating factors.

(3) Board decisions will be determined by majority vote.

(g) *Notice of action.* (1) The Board will issue its final decision within 10 business days after the date of the informal conference or the expiration of any period allowed for the submission of documents and evidence, whichever is later.

(2) The Board will notify the MAP lender of its final decision by overnight delivery of a written notice of the final decision to the MAP lender's contact person as listed on the Multifamily MAP Web site. The Board will also notify HUD field offices of its final decision.

(3) The final decision finds that a violation either does, or does not, exist. If a violation is found to exist, the final decision:

(i) States the violation and any factual findings of the Board;

(ii) States the nature and duration of the sanction;

(iii) Informs the MAP lender of its right to an appeal conference and identifies the appeals official to be contacted; and

(iv) May add to or modify the violation as stated in the initial notice of violation.

§ 200.1540 Imminent harm notice of action.

The Board may issue an imminent harm notice of action to terminate a MAP lender, or to place a MAP lender on probation or suspension without advance notice to the MAP lender in those instances where the Board

determines there exists a need to protect the financial interest of HUD from imminent harm. In all such instances, the Board shall notify the lender of the Board's decision promptly and give the reasons for the decision in accordance with § 200.1535(g)(2) and (3). The lender shall have the right to submit materials to the Board and to appear before the Board to seek prompt reconsideration of the Board's decision in accordance with the procedures of § 200.1535.

§ 200.1545 Appeals of MAP Lender Review Board decisions.

(a) *Request for appeal.* Whenever the Board imposes a sanction of probation, suspension or termination against a MAP lender, the lender may request, in writing, an appeal conference before the appeals official. The MAP lender must deliver the written request for an appeal to the appeals official within 10 business days after the date noted on the notice of action or the right to an appeal is deemed waived. Participation in the appeal process under this section is not a prerequisite to filing an action for judicial review under the Administrative Procedure Act.

(b) *Appeals Official.* The appeals official must be an individual who has not been previously involved with the proceedings or settlement discussions at issue.

(c) *Notice of action in effect.* The notice of action issued by the Board remains in effect while the appeal is pending.

(d) *Scheduling of appeal.* (1) Upon receipt of the request for an appeal, the appeals official will promptly notify the MAP lender of the time and place of the appeal conference. The appeal conference will be held within 10 business days after receipt of the MAP lender's appeal request, except as provided in paragraph (d)(2) of this section.

(2) A MAP lender may request, and the appeals official may agree, to have

an appeal conference held more than 10, but not more than 30 business days after the date the lender requests an appeal.

(e) *Scope of appeal.* The appeals official may consider information included in the administrative record and any new information presented at the appeal conference that is substantiated in accordance with paragraph (f) of this section. In addition, the appeals official may consider voluntary admissions by the lender or a representative of the lender of any element of the violation charged.

(f) *Additional documents.* (1) *Transcript.* No transcript of the appeal conference will be made, unless the MAP lender elects to have a transcript made by a certified court reporter at its own expense. If the lender elects to have a transcript made, it must provide three copies of the transcript to the appeals official within five business days after the date of the appeal conference.

(2) *Other documents.* Any additional, relevant documents or written arguments that the MAP lender wishes to present to the appeals official must be presented within five business days after the date of the appeal conference.

(g) *Determination of appeal.* Within 10 business days after the date of the appeal conference or the expiration of the period allowed for the submission of documents and written arguments, whichever is later, the appeals official will make a written determination to confirm, modify, or overturn the Board's decision and notice of action. If the appeals official overturns the Board's decision, the lender shall immediately return to an active status as a MAP lender and the written determination to overturn will be posted on HUD's MAP Web site.

Dated: November 23, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

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