

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 14, 15, 17, 20, 24, 25, 26, and 180**

[Docket No. FR-5137-F-01]

RIN 2501-AD32

HUD Office of Hearings and Appeals Conforming Amendments; and Technical Correction to Part 15 Regulations**AGENCY:** Office of the Secretary, HUD.**ACTION:** Final rule.

SUMMARY: This final rule revises HUD's regulations to reflect the statutorily mandated termination of the HUD Board of Contract Appeals. As required by the National Defense Authorization Act for Fiscal Year 2006 (2006 NDA Act), the contract-related functions of the HUD Board of Contract Appeals have been transferred to the new Civilian Board of Contract Appeals. This final rule also describes the organization, address, and officer qualifications of the new Office of Hearings and Appeals (OHA) and its two divisions, which will carry out the nonprocurement functions performed by the former HUD Board of Contract Appeals. This rule also makes conforming changes to other HUD regulations to reflect this organizational change. Additionally, this rule makes a technical correction to HUD's Freedom of Information Act (FOIA) regulations to include reference to Regional Counsel, which was inadvertently omitted from a previously published rule.

DATES: *Effective Date:* October 22, 2007.**FOR FURTHER INFORMATION CONTACT:**

Questions regarding the establishment and organization of the OHA should be directed to David T. Anderson, Director, Office of Hearings and Appeals, Department of Housing and Urban Development, 1707 H Street, NW., Eleventh Floor, Washington, DC 20006; telephone number (202) 254-0000 (this is not a toll-free number). Questions regarding the technical correction to the part 15 regulations should be directed to Allen Villafuerte, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10258, Washington, DC 20410-0500; telephone number (202) 708-0300, extension 5095 (this is not a toll-free number). Hearing-or speech-impaired individuals may access these telephone numbers via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:**I. Background**

Section 847 of the 2006 NDA Act (Pub. L. 109-163, approved January 6, 2006) (41 U.S.C. 438) established the Civilian Board of Contract Appeals within the General Services Administration and gave it jurisdiction to decide contract disputes from several civilian agencies. The 2006 NDA Act simultaneously terminated the Boards of Contract Appeals of eight federal agencies, excepting the boards of contract appeals of the Department of Defense, the Tennessee Valley Authority, and the U.S. Postal Service. As a result, the affected eight federal agencies, including HUD, no longer have a board of contract appeals as part of their organizational structure.

Because of the transfer of contract appeals adjudicatory responsibilities under the 2006 NDA Act, and to provide the nonprocurement contract dispute functions performed by the former HUD Board of Contract Appeals, HUD has established within the Office of the Secretary a new OHA (71 FR 76679, December 21, 2006). The OHA consists of two separate divisions, the existing Office of Administrative Law Judges and the new Office of Appeals. The Office of Appeals includes Administrative Judges who perform certain nonprocurement contract appeals functions that were provided by the Administrative Judges of the former HUD Board of Contract Appeals.

II. Final Rule

This final rule revises the regulations in 24 CFR part 20, which governed the establishment and operation of the former HUD Board of Contract Appeals. Specifically, this rule describes the OHA's organization, address, and officer qualifications. This rule also makes conforming changes to regulations in parts 14, 17, 20, 24, 25, 26, and 180 that reference the former HUD Board of Contract Appeals. It also reflects the new address of the Office of Administrative Law Judges throughout HUD's regulations.

In addition, this rule makes a technical amendment to HUD's FOIA regulations in 24 CFR part 15. HUD published a final rule on February 26, 2007 (72 FR 8580) to clarify the types of requests for HUD documents and employee testimony covered by the Department's document production and testimony approval regulations. In HUD's amendments to § 15.203 in the February 26, 2007, final rule, HUD inadvertently omitted reference to Regional Counsel in § 15.203(b). Section 15.203(b) in the February 26, 2007, final rule largely mirrors § 15.203(a) of the

part 15 regulations codified in the 2006 edition of title 24 of the Code of Federal Regulations. Section 15.203(a) of the 2006 codified regulations references Regional Counsel, and HUD intended to include the same reference in the new § 15.203(b) of the February 26, 2007, final rule. This rule provides for such inclusion.

III. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's regulations on rulemaking at 24 CFR part 10. Part 10, however, allows in § 10.1 for omission of notice and public comment in cases of statements of policy, interpretive rules, rules governing the Department's organization or internal practices, or if a statute expressly provides for omission of notice and public comment. In this case, public comment is unnecessary because the majority of this rule reflects the Department's organization resulting from the termination of the HUD Board of Contract Appeals, pursuant to the 2006 NDA Act. More specifically, this final rule removes regulations relating to the former HUD Board of Contract Appeals and describes the organization of the new OHA. It also reflects the reassignment of nonprocurement functions previously carried out by the former HUD Board of Contract Appeals elsewhere within the Department. Similarly, the correction to part 15 merely outlines the procedures used by the Department to be followed when a subpoena, order, or other demand of a court is issued to HUD for the disclosure of material or for the disclosure of information in its possession. This correction reflects current HUD practices. The amendment made by this part of this rule does not affect the rights or obligations of members of the public.

IV. Findings and Certifications*Impact on Small Entities*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule does not establish special procedures that would need to be complied with by small entities. This rule does not change the procedures that all entities, small and large, must follow in the course of certain hearings and appellate review processes. Accordingly, the undersigned certifies that this final rule would not

have a significant economic impact on a substantial number of small entities.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, nor does it 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 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications, if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

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

List of Subjects

24 CFR Part 14

Claims, Equal access to justice, Lawyers, Reporting and recordkeeping requirements.

24 CFR Part 15

Classified information, Courts, Freedom of information, Government employees, Reporting and recordkeeping requirements.

24 CFR Part 17

Administrative practice and procedure, Claims, Government employees, Income taxes, Wages.

24 CFR Part 20

Administrative practice and procedure, Government contracts, Organization and functions (Government agencies).

24 CFR Part 24

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

24 CFR Part 25

Administrative practice and procedure, Loan programs—housing and community development, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

24 CFR Part 26

Administrative practice and procedure.

24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Individuals with disabilities, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 14, 15, 17, 20, 24, 25, 26, and 180, as follows:

PART 14—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN ADMINISTRATIVE PROCEEDINGS

■ 1. The authority citation for part 14 is revised to read as follows:

Authority: 5 U.S.C. 504(c)(1); 42 U.S.C. 3535(d).

§ 14.50 [Amended]

■ 2. In 24 CFR 14.50, in the definition of *Adjudicative officer*, remove the words "Board of Contract Appeals" and add, in their place, the words "Office of Appeals".

PART 15—PUBLIC ACCESS TO HUD RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND TESTIMONY AND PRODUCTION OF INFORMATION BY HUD EMPLOYEES

■ 3. The authority citation for part 15 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

■ 4. Revise paragraph (b) of § 15.203 to read as follows:

§ 15.203 Making a demand for production of material or provision of testimony.

* * * * *

(b) Whenever a demand is made upon the Department or an employee of the

Department for the production of material or provision of testimony, the employee shall immediately notify the Associate General Counsel for Litigation, or the appropriate Regional Counsel, or other designee. The appropriate Regional Counsel shall mean the Regional Counsel for the Regional Office having delegated authority over the project or activity with respect to which the information is sought. The Associate General Counsel for Litigation, the appropriate Regional Counsel, or other designee shall maintain a record of all demands served upon the Department and refer the demand to the appropriate designee for processing and determination.

PART 17—ADMINISTRATIVE CLAIMS

■ 5. The authority citation for part 17 continues to read as follows:

Authority: 5 U.S.C. 5514, 28 U.S.C. 2672; 31 U.S.C. 3711, 3716–18, 3721; and 42 U.S.C. 3535(d).

■ 6. The authority citation for subpart C continues to read as follows:

Authority: 5 U.S.C. 5514; 31 U.S.C. 3701, 3711, 3716–3720E; and 42 U.S.C. 3535(d).

■ 7. Revise § 17.140 to read as follows:

§ 17.140 Miscellaneous provisions: correspondence with the Department.

The employee shall file an original and one copy of a request for a hearing with the Clerk, Office of the Chief Administrative Law Judge, 1707 H Street, NW., Eleventh Floor, Washington, DC 20006, on official work days between the hours of 8:45 a.m. and 5:15 p.m. All other correspondence shall be submitted to the Department Claims Officer, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Documents may be filed by personal delivery or mail. All documents shall be printed, typewritten, or otherwise processed in clear, legible form and on letter-size paper.

■ 8. Revise § 17.152 to read as follows:

§ 17.152 Review within the Department of a determination that an amount is past-due and legally enforceable.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past-due or not legally enforceable. The debtor should send a copy of the Notice of Intent with a letter notifying the Office of Appeals within 25 calendar days from the date of the Department's Notice of Intent that he or she intends to present evidence. (See

§ 17.161(a) for address of the Office of Appeals.) Failure to give this advance notice will not jeopardize the debtor's right to present evidence within the 65 days provided for in paragraph (b) of this section. If the Office of Appeals has additional procedures governing the review process, a copy of the procedures will be mailed to the debtor after his request for review is received and docketed by the Office of Appeals.

(b) *Submission of evidence.* The debtor may submit evidence showing that all or part of the debt is not past-due or not legally enforceable, along with the notification requested by paragraph (a) of this section, but in any event the evidence must be submitted to the Office of Appeals within 65 calendar days from the date of the Department's Notice of Intent. Failure to submit evidence within 65 calendar days will result in a dismissal of the request for review by the Office of Appeals.

(c) *Review of the record.* After a timely submission of evidence by the debtor, an Administrative Judge from the Office of Appeals will review the evidence submitted by the Department that shows that all or part of the debt is past-due and legally enforceable. (Administrative Judges are appointed in accordance with 41 U.S.C. 607(b)(1).) The Administrative Judge shall make a determination based upon a review of the written record, except that the Administrative Judge may order an oral hearing if he or she finds that:

(1) An applicable statute authorizes or requires the Secretary to consider waiver of the indebtedness and the waiver determination turns on credibility or veracity; or

(2) The question of indebtedness cannot be resolved by review of the documentary evidence.

(d) *Previous decision by the Office of Appeals.* The debtor is not entitled to a review of the Department's intent to offset it if, in a previous year, the Office of Appeals has issued a decision on the merits that the debt is past-due and legally enforceable, *except* when the debt has become legally unenforceable since the issuance of that decision or when the debtor can submit newly discovered material evidence that the debt is presently not legally enforceable.

■ 9. Revise § 17.161(a) to read as follows:

§ 17.161 Correspondence with the Department.

(a) All correspondence from the debtor to the Office of Appeals concerning the right to review as described in § 17.152 shall be addressed to the HUD Office of Appeals, 1707 H

Street, NW, Eleventh Floor, Washington, DC 20006.

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■ 10. Revise § 17.170(b) to read as follows:

* * * * *

(b) *Hearing official.* Any hearing required to establish the Secretary's right to collect a debt through administrative wage garnishment shall be conducted by an Administrative Judge of the Office of Appeals.

■ 11. Revise part 20 to read as follows:

PART 20—OFFICE OF HEARINGS AND APPEALS

Sec.

20.1 Establishment of the Office of Hearings and Appeals.

20.3 Location, organization, and officer qualifications.

20.5 Jurisdiction of Office of Appeals.

Authority: 42 U.S.C. 3535(d).

§ 20.1 Establishment of the Office of Hearings and Appeals.

There is established in the Office of the Secretary the Office of Hearings and Appeals.

§ 20.3 Location, organization, and officer qualifications.

(a) *Location.* The Office of Hearings and Appeals is located at 1707 H Street, NW, Eleventh Floor, Washington, DC 20006. The telephone number of the Office of Hearings and Appeals is (202) 254-0000. Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339. The facsimile number is (202) 254-0011.

(b) *Organization.* The Office of Hearings and Appeals consists of two divisions: the Office of Administrative Law Judges and the Office of Appeals. Its administrative activities are supervised by the Director of the Office of Hearings and Appeals.

(c) *Officer qualifications.* The Director, Administrative Judges, and Administrative Law Judges of the Office of Hearings and Appeals shall be attorneys at law duly licensed by any state, commonwealth, territory, or the District of Columbia.

§ 20.5 Jurisdiction of Office of Appeals.

The Office of Appeals shall, consistent with statute and regulation, have jurisdiction over matters assigned to it by the Secretary or designee. Determinations shall have the finality provided by the applicable statute, regulation, or agreement.

PART 24—GOVERNMENT DEBARMENT AND SUSPENSION (NONPROCUREMENT)

■ 12. The authority citation for part 24 continues to read as follows:

Authority: 41 U.S.C. 701 *et seq.*; 42 U.S.C. 3535(d); Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

§ 24.947 [Amended]

■ 13. In 24 CFR 24.947, remove the words "Board of Contract Appeals" and add, in their place, the words "Office of Appeals".

PART 25—MORTGAGEE REVIEW BOARD

■ 14. The authority citation for 24 CFR part 25 continues to read as follows:

Authority: 12 U.S.C. 1708(c), 1708(d), 1709(s), 1715b, and 1735f-14; 42 U.S.C. 3535(d).

■ 15. In § 25.3, revise the definition of Hearing officer to read as follows:

§ 25.3 Definitions.

* * * * *

Hearing officer. An Administrative Law Judge authorized by the Secretary, or by the Secretary's designee, to issue findings of fact or other appropriate findings under § 25.8(d)(2).

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PART 26—HEARING PROCEDURES

■ 16. The authority citation for part 26 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

§ 26.2 [Amended]

■ 17. In 24 CFR 26.2(a), remove the words "Board of Contract Appeals" and add, in their place, the words "Office of Appeals".

■ 18. In § 26.28, revise the definition of Chief Docket Clerk to read as follows:

§ 26.28 Definitions.

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Chief Docket Clerk means the Chief Docket Clerk of the Office of Administrative Law Judges at the following address: 1707 H Street, NW., Eleventh Floor, Washington, DC 20006.

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PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

■ 19. The authority citation for part 180 continues to read as follows:

Authority: 29 U.S.C. 794; 42 U.S.C. 2000d-1 3535(d), 3601-3619; 5301-5320, and 6103.

■ 20. In § 180.100(c), revise the definition of Chief Docket Clerk to read as follows:

§ 180.100 Definitions.

* * * *

(c) * * *

Chief Docket Clerk is the docket clerk for HUD's Office of Administrative Law Judges, 1707 H Street, NW., Eleventh Floor, Washington, DC 20006. The telephone number is (202) 254-0000 and the facsimile number is (202) 254-0011.

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Dated: August 13, 2007.

Roy A. Bernardi,

Deputy Secretary.

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