

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 17, 20, 30, 103, 180, 570, 954, and 3500

[Docket No. FR-5265-F-01]

RIN 2501-AD46

HUD Office of Hearings and Appeals; Conforming Changes To Reflect Office Address and Staff Title Changes, and Notification of Retention of Chief Administrative Law Judge

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations to reflect the office address and staff title changes regarding HUD's Office of Hearings and Appeals (OHA). This rule makes conforming changes to HUD regulations to reflect that the title of "Chief Docket Clerk" has been changed to "Docket Clerk" and that the address of the OHA has been changed. Additionally, the preamble to this rule corrects a preamble statement in the preamble of a previously published OHA final rule regarding the elimination of the position of Chief Administrative Law Judge in OHA. That position has not been eliminated.

DATES: *Effective Date:* February 25, 2009.

FOR FURTHER INFORMATION CONTACT:

David T. Anderson, Director, Office of Hearings and Appeals, Department of Housing and Urban Development, 451 7th Street, SW., Room B-133, Washington, DC 20410-0001; telephone number 202-254-0000 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

As the result of section 847 of the 2000 National Defense Authorization Act of Fiscal Year 2006 (Pub. L. 109-163, approved January 6, 2006), HUD terminated its Board of Contract Appeals (BCA). At the same time, HUD established the Office of Hearings and Appeals (OHA) to perform the nonprocurement contract dispute functions previously performed by the HUD BCA. OHA was established within the Office of the Secretary and, under the director of OHA, consists of two divisions: The Office of Administrative Law Judges and the Office of Appeals. Since establishing OHA, the office has been physically relocated, has a new

mailing address, and has undergone some staff changes.

II. This Final Rule

This final rule updates HUD's regulations in 24 CFR parts 17, 20, 30, 103, 180, 570, 954, and 3500 to reflect the office address change and staff title changes regarding HUD's OHA. These HUD regulations contain outdated references to the title of "Chief Docket Clerk" and refer to the former address of the OHA. This final rule updates the HUD regulations to reflect these changes.

III. HUD Chief Administrative Law Judge—Correction to Preamble Statement in HUD's March 13, 2008 Final Rule

On March 13, 2008 (73 FR 13722), HUD published a final rule revising its regulations to reflect the organization of OHA. The preamble to that final rule contained two incorrect references regarding the position of HUD's Chief Administrative Law Judge (Chief ALJ). Specifically, the preamble provided that the position of the Chief ALJ "has been eliminated" and that the title and position of the Chief ALJ "are now obsolete since the establishment of OHA." The March 13, 2008 final rule was technical in nature, reflecting the establishment of the OHA and the new supervisory role of the Director of OHA over the entire office. HUD did not intend, however, for the preamble language to convey the impression that the Director of OHA had assumed duties or responsibilities reserved for the Chief ALJ. Although the regulatory amendments made by the March 13, 2008 final rule (and which became effective on April 14, 2008) are correct, HUD wishes to rectify the statements contained in the preamble of that rule, so as to avoid any confusion regarding the organization of the OHA and the position of the Chief ALJ. Through publication of this final rule, HUD clarifies that the position of the Chief ALJ continues to be a part of the staffing plan of the OHA.

IV. Justification for Final Rulemaking

Generally, HUD publishes a rule for public comment before publishing 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 comment. In this case, HUD has determined that prior public

comment is unnecessary because this rule is exclusively concerned with the internal organization of OHA. Specifically, the regulatory amendments made by the final rule are technical and nonsubstantive in nature, since they are limited to updating the terminology used in HUD's regulations governing administrative hearings and to correcting an outdated address.

V. Findings and Certifications

Environmental Impact

This final 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 final 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 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 30

Administrative practice and procedure, Grant programs—housing and community development, Loan programs—housing and community development, Mortgages, Penalties.

24 CFR Part 103

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

24 CFR Part 180

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

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 954

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 3500

Consumer protection, Housing, Mortgages, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons stated in the preamble, HUD amends Title 24 of the Code of Federal Regulations to read as follows:

PART 17—ADMINISTRATIVE CLAIMS

■ 1. The authority citation for 24 CFR part 17 continues to read as follows:

Authority: 5 U.S.C. 5514; 28 U.S.C. 2672; 31 U.S.C. 3711, 3716–3718, 3721; 42 U.S.C. 3535(d).

■ 2. In § 17.140, revise the first sentence 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 Hearings and Appeals, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room B–133, Washington, DC 20410, on official work days between the hours of 8:45 a.m. and 5:15 p.m.

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■ 3. 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 Office of Appeals, U.S. Department of Housing and Urban Development, SW., Room B–133, Washington, DC 20410.

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PART 20—OFFICE OF HEARINGS AND APPEALS

■ 4. The authority citation for 24 CFR part 20 continues to read as follows:

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

■ 5. In § 20.3, revise paragraph (a) and redesignate the current paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and add a new paragraph (b) to read as follows:

§ 20.3 Location, organization, and officer qualifications.

(a) *Mailing address.* The Office of Hearings and Appeals is located at the U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room B–133, Washington, DC 20410.

(b) *Location.* For deliveries, the Office of Hearings and Appeals is physically located at 409 Third Street, SW., Suite 201, Washington, DC 20024. 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 202–619–7304.

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PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

■ 6. The authority citation for 24 CFR part 30 continues to read as follows:

Authority: 12 U.S.C. 1701q–1, 1703, 1723i, 1735f–14, and 1735f–15; 15 U.S.C. 1717a; 28 U.S.C. 2461 note; 42 U.S.C. 1437z–1 and 3535(d).

■ 7. Revise the first sentence of § 30.90(b) to read as follows:

§ 30.90 Response to the complaint.

* * * * *

(b) *Filing with the administrative law judges.* HUD shall file the complaint and response with the Docket Clerk, Office of Administrative Law Judges, in accordance with § 26.37 of this title.

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PART 103—FAIR HOUSING—COMPLAINT PROCESSING

■ 8. The authority citation for 24 CFR part 103 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3619.

■ 9. Revise § 103.405 (b)(1) to read as follows:

§ 103.405 Issuance of charge.

* * * * *

(b) * * *

(1) Obtain a time and place for hearing from the Docket Clerk for the Office of Administrative Law Judges;

* * * * *

■ 10. Revise the second sentence of § 103.410(b) to read as follows:

§ 103.410 Election of civil action or provision of administrative proceeding.

* * * * *

(b) * * * The notice of election must be filed with the Docket Clerk in the Office of Administrative Law Judges and served on the General Counsel, the Assistant Secretary, the respondent, and the aggrieved persons on whose behalf the complaint was filed. * * *

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PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

■ 11. The authority citation for 24 CFR 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.

■ 12. Revise § 180.100(c) by removing the definition of “*Chief Docket Clerk*” and adding, in alphabetical sequence, the definition of “*Docket Clerk*” to read as follows:

§ 180.100 Definitions.

* * * * *

(c) * * *

Docket Clerk is the docket clerk for HUD's Office of Hearings and Appeals, 451 7th Street, SW., Room B-133, Washington, DC 20410. The telephone number is 202-254-0000 and the facsimile number is 202-619-7304.

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■ 13. Revise § 180.105(e) to read as follows:

§ 180.105 Scope of rules.

* * * * *

(e) All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in any proceeding may be inspected in the Docket Clerk's office during regular business hours.

■ 14. Revise the first sentence of § 180.400(b)(1) to read as follows:

§ 180.400 Service and filing.

* * * * *

(b) *Filing*—(1) Method. All documents shall be filed with the Docket Clerk. * * *

* * * * *

■ 15. In § 180.405, revise paragraph (c) and the last sentence of paragraph (d) to read as follows:

§ 180.405 Time computations.

* * * * *

(c) *Entry of orders*. In computing any time period involving the date of the ALJ's issuance of an order or decision, the date of issuance is the date of service by the Docket Clerk.

(d) * * * Documents are not filed until received by the Docket Clerk.

* * * * *

■ 16. In § 180.410, revise paragraph (a) and paragraph (b)(2) to read as follows:

§ 180.410 Charges under the Fair Housing Act.

(a) *Filing and service*. Within 3 days after the issuance of a charge, the General Counsel shall file the charge with the Docket Clerk and serve copies (with the additional information required under paragraph (b) of this section) on all respondents and aggrieved persons.

(b) * * *

(2) Such election must be made not later than 20 days after receipt of service of the charge by serving written notice of such on the Docket Clerk, each respondent, each aggrieved person on whose behalf the charge was issued, the

Assistant Secretary, and the General Counsel.

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■ 17. Revise § 180.415(a) to read as follows:

§ 180.415 Notice of proposed adverse action regarding federal financial assistance in non-Fair Housing Act matters.

(a) *Filing and service*. Within 10 days after a recipient/applicant has requested a hearing, as provided for in 24 CFR parts 1, 6, 8, or 146, the General Counsel shall file a notice of proposed adverse action with the Docket Clerk and serve copies (with the additional information required under paragraph (b) of this section) on all respondents and complainants.

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PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 18. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301-5320.

■ 19. Revise § 570.496(d)(1)(iii) to read as follows:

§ 570.496 Remedies for noncompliance; opportunity for hearing.

* * * * *

(d) * * *

(1) * * *

(iii) That the respondent has 14 days from receipt of the notice within which to provide a written request for a hearing to the Docket Clerk, Office of Administrative Law Judges, and the address and telephone number of the Docket Clerk;

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PART 954—INDIAN HOME PROGRAM

■ 20. The authority citation for 24 CFR part 954 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701-12839.

■ 21. In § 954.602, revise paragraph (b)(1)(iii) and the first sentence of paragraph (b)(2) to read as follows:

§ 954.602 Notice and opportunity for hearing; sanctions.

* * * * *

(b) * * *

(1) * * *

(iii) That the respondent has 14 days from receipt of the notice within which to provide a written request for a hearing to the Docket Clerk, Office of

Administrative Law Judges, and the telephone number of the Docket Clerk;

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(2) *Initiation of hearing*. The respondent shall be allowed 14 days from receipt of the notice within which to notify the Docket Clerk, Office of Administrative Law Judges, of its request for a hearing. * * *

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PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

■ 22. The authority citation for 24 CFR part 3500 continues to read as follows:

Authority: 12 U.S.C. 2601 *et seq.*; 42 U.S.C. 3535(d).

■ 23. In § 3500.17, revise the second sentence of paragraph (n)(3) introductory text, paragraph (n)(3)(vi), the first sentence of paragraph (n)(4)(i), and paragraph (n)(6)(ii) to read as follows:

§ 3500.17 Escrow accounts

* * * * *

(n) * * *

(3) * * * A copy of the Notice of Intent must be filed with the Docket Clerk, Office of Administrative Law Judges, at the address provided in the Notice of Intent. * * *

* * * * *

(vi) The name, address, and telephone number of the representative of the Department, and the address of the Docket Clerk, Office of Administrative Law Judges, should the servicer decide to appeal the penalty.

(4) *Appeal procedures*. (i) *Answer*. To appeal the imposition of a penalty, a servicer shall, within 30 days after receiving service of the Notice of Intent, file a written Answer with the Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, at the address provided in the Notice of Intent. * * *

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(6) * * *

(ii) The petition must be filed within 30 days after the decision is filed with the Docket Clerk, Office of Administrative Law Judges.

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Dated: January 15, 2009.

Roy A. Bernardi,
Deputy Secretary.

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