

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the cost of investigation;

(6) The relationship of the civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the respondent has engaged in a pattern of the same or similar misconduct;

(9) Whether the respondent attempted to conceal the misconduct;

(10) The degree to which the respondent has involved others in the misconduct or in concealing it;

(11) If the misconduct of employees or agents is imputed to the respondent, the extent to which the respondent's practices fostered or attempted to preclude the misconduct;

(12) Whether the respondent cooperated in or obstructed an investigation of the misconduct;

(13) Whether the respondent assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the respondent's sophistication with respect to it, including the extent of the respondent's prior participation in the program or in similar transactions;

(15) Whether the respondent has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly;

(16) The need to deter the respondent and others from engaging in the same or similar misconduct; and

(17) Any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

(c) *Stays ordered by the Department of Justice.* If at any time the Attorney General of the United States or an Assistant Attorney General designated by the Attorney General notifies the Secretary in writing that continuation of

HUD's case may adversely affect any pending or potential criminal or civil action related to the claim or statement at issue, the ALJ or the Secretary shall stay the process immediately. The case may be resumed only upon receipt of the written authorization of the Attorney General.

§28.45 Settlements.

(a) HUD and the respondent may enter into a settlement agreement at any time prior to the issuing of a notice of final determination under §26.50 of this title.

(b) Failure of the respondent to comply with a settlement agreement shall be sufficient cause for resuming an action under this part, or for any other judicial or administrative action.

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

Subpart A—General

Sec.

30.1 Purpose and scope.

30.5 Effective dates.

30.10 Definitions.

30.15 Application of other remedies.

Subpart B—Violations

30.20 Ethical violations by HUD employees.

30.25 Violations by applicants for assistance.

30.30 Urban Homestead violations.

30.35 Mortgagees and lenders.

30.40 Loan guarantees for Indian housing.

30.45 Multifamily and Section 202 mortgages.

30.50 GNMA issuers and custodians.

30.55 Interstate Land Sales violations.

30.60 Dealers or loan correspondents.

30.65 Failure to disclose lead-based paint hazards.

Subpart C—Procedures

30.70 Prepenalty notice.

30.75 Response to prepenalty notice.

30.80 Factors in determining appropriateness and amount of civil money penalty.

30.85 Complaint.

30.90 Response to the complaint.

30.95 Hearings.

30.100 Settlements.

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

SOURCE: 61 FR 50215, Sept. 24, 1996, unless otherwise noted.

Subpart A—General

§ 30.1 Purpose and scope.

Unless provided for elsewhere in this title or under separate authority, this part implements HUD's civil money penalty provisions. The procedural rules for hearings under this part are set forth in 24 CFR part 26, subpart B.

§ 30.5 Effective dates.

(a) Under § 30.20, a civil money penalty may be imposed for violations occurring on or after May 22, 1991.

(b) Under §§ 30.25, 30.35, 30.45, 30.50, 30.55, and 30.60, a civil money penalty may be imposed for any violations that occur on or after December 15, 1989.

(c) Under § 30.30, a civil money penalty may be imposed with respect to any property transferred for use under section 810 of the Housing and Community Development Act of 1974, as amended (12 U.S.C. 1706e), after January 1, 1981, to a state, a unit of general local government, or a public agency or qualified community organization designated by a unit of general local government, or a transferee of any such entity.

(d) Under § 30.40, concerning loan guarantees for Indian housing, a civil money penalty may be imposed for violations occurring on or after October 28, 1992.

(e) Under § 30.65, a civil money penalty may be imposed for violations occurring on or after the following dates:

(1) September 6, 1996, for owners of more than four residential dwellings; or

(2) December 6, 1996, for owners of one to four residential dwellings.

§ 30.10 Definitions.

Since this part is primarily procedural, terms not defined in this section shall have the meanings given them in relevant program regulations. Comprehensive definitions are in 24 CFR part 4 (HUD Reform Act). The terms *ALJ*, *Department*, *HUD*, and *Secretary* are defined in 24 CFR part 5.

Agent. Any person, including an officer, director, partner, or trustee, who acts on behalf of another person.

Dealer. A seller, contractor or supplier of goods or services having a direct or indirect financial interest in

the transaction between the borrower and the lender, and who assists the borrower in preparing the credit application or otherwise assists the borrower in obtaining the loan from the lender.

Knowing or Knowingly. Having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under subpart B of this part or under 24 CFR part 4.

Loan correspondent. A lender or loan correspondent as defined at § 202.2 of this title.

Material or Materially. In some significant respect or to some significant degree.

Person. An individual, corporation, company, association, authority, firm, partnership, society, State, local government or agency thereof, or any other organization or group of people.

Respondent. A person against whom a civil money penalty action is initiated.

§ 30.15 Application of other remedies.

A civil money penalty may be imposed in addition to other administrative sanctions or any other civil remedy or criminal penalty.

Subpart B—Violations

§ 30.20 Ethical violations by HUD employees.

(a) *General*. The General Counsel, or his or her designee, may initiate a civil money penalty action against HUD employees who improperly disclose information pursuant to section 103 of the HUD Reform Act of 1989 (42 U.S.C. 3537a(c)) and 24 CFR part 4, subpart B.

(b) *Maximum penalty*. The maximum penalty is \$11,000 for each violation.

§ 30.25 Violations by applicants for assistance.

(a) *General*. The General Counsel, or his or her designee, may initiate a civil money penalty action against applicants for assistance, as defined in 24 CFR part 4, subpart A, who knowingly and materially violate the provisions of subsections (b) or (c) of section 102 of the HUD Reform Act of 1989 (42 U.S.C. 3545).

(b) *Maximum penalty*. The maximum penalty for each violation is \$11,000.

§ 30.30 Urban Homestead violations.

(a) *General.* The Assistant Secretary for Community Planning and Development, or his or her designee, or the Director of the Office of Technical Assistance and Management may initiate a civil money penalty action against persons who knowingly and materially violate section 810 of the Housing and Community Development Act of 1974, as amended (12 U.S.C. 1706e), or the provisions of 24 CFR part 590, in the use or conveyance of property made available under the Urban Homestead Program.

(b) *Maximum penalty.* The maximum penalty is either twice the amount of the gross profit realized from any impermissible use or conveyance of the property, or the amount of section 810 funds used to reimburse HUD, the Department of Veterans Affairs, the Resolution Trust Corporation, or the Farmers Home Administration (or its successor agency under Public Law 103-354) for the property, whichever is greater. If the property is still held by the violator, the gross profit shall include any appreciation between the amount the violator paid for the property and its current value as determined by an independent, HUD-qualified appraiser.

§ 30.35 Mortgagees and lenders.

(a) *General.* The Mortgagee Review Board may initiate a civil money penalty action against any mortgagee or lender who knowingly and materially:

- (1) Violates the provisions listed in 12 U.S.C. 1735f-14(b);
- (2) Fails to comply with the requirements of § 201.27(a) of this title regarding approval and supervision of dealers;
- (3) Approves a dealer that has been suspended, debarred, or otherwise denied participation in HUD's programs;
- (4) Makes a payment that is prohibited under § 202.5(l).
- (5) Fails to remit, or timely remit, mortgage insurance premiums, loan insurance charges, or late charges or interest penalties;
- (6) Permits loan documents for an FHA insured loan to be signed in blank by its agents or any other party to the loan transaction unless expressly approved by the Secretary;

(7) Fails to follow the mortgage assignment procedures set forth in §§ 203.650 through 203.664 of this title or in §§ 207.255 through 207.258b of this title.

(8) Fails to timely submit documents that are complete and accurate in connection with a conveyance of property or a claim for insurance benefits, in accordance with §§ 203.365, 203.366, or 203.368 of this title;

(9) Fails to:

(i) Process requests for formal release of liability under an FHA insured mortgage;

(ii) Obtain a credit report, issued not more than 90 days prior to approval of a person as a borrower, as to the person's creditworthiness to assume an FHA insured mortgage;

(iii) Timely submit proper notification of a change in mortgagor or mortgagee as required by § 203.431 of this title;

(iv) Timely submit proper notification of mortgage insurance termination as required by § 203.318 of this title;

(v) Timely submit proper notification of a change in mortgage servicing as required by § 203.502 of this title; or

(vi) Report all delinquent mortgages to HUD, as required by § 203.332 of this title;

(10) Fails to service FHA insured mortgages, in accordance with the requirements of 24 CFR parts 201, 203, and 235;

(11) Fails to fund loans that it originated, or otherwise misuses loan proceeds;

(12) Fails to comply with the conditions relating to the assignment or pledge of mortgages;

(13) Fails to comply with the provisions of the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.), or the Fair Housing Act (42 U.S.C. 3601 et seq.);

(14) Fails to comply with the terms of a settlement agreement with HUD.

(b) *Continuing violation.* Each day that a violation continues shall constitute a separate violation.

(c) *Amount of penalty.* The maximum penalty is \$5,500 for each violation, up to a limit of \$1,100,000 for all violations committed during any one-year period.

§ 30.40

Each violation shall constitute a separate violation as to each mortgage or loan application.

[61 FR 50215, Sept. 24, 1996, as amended at 63 FR 9742, Feb. 26, 1998]

§ 30.40 Loan guarantees for Indian housing.

(a) *General.* The Secretary may initiate a civil money penalty action against any mortgagee or holder of a guarantee certificate who knowingly and materially violates the provisions of 12 U.S.C. 1715z-13a(g)(2) concerning loan guarantees for Indian housing;

(b) *Continuing violation.* Each day that a violation continues shall constitute a separate violation.

(c) *Amount of penalty.* The maximum penalty is \$5,000 for each violation, up to a limit of \$1,100,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

§ 30.45 Multifamily and Section 202 mortgagors.

(a) *General.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against any mortgagor of property that includes five or more living units and is subject to a mortgage insured, coinsured, or held by the Secretary, who knowingly and materially commits a violation listed at 12 U.S.C. 1735f-15 (b) or (c), or 12 U.S.C. 1701q-1 (b) or (c).

(b) *Maximum penalty.* The maximum penalty for each violation of 12 U.S.C. 1735f-15(b) and 12 U.S.C. 1701q-1(b) is the amount of loss that the Secretary incurs at a foreclosure sale, or a sale after foreclosure, with respect to the property involved. The maximum penalty for each violation of 12 U.S.C. 1735f-15(c) and 12 U.S.C. 1701q-1(c) is \$27,500.

§ 30.50 GNMA issuers and custodians.

(a) *General.* The President of GNMA, or his or her designee, may initiate a civil money penalty action against a GNMA issuer or custodian that knowingly and materially violates any provision of 12 U.S.C. 1723i(b), title III of the National Housing Act, or any implementing regulation, handbook,

24 CFR Subtitle A (4-1-99 Edition)

guaranty agreement, or contractual agreement, or participant letter issued by GNMA, or fails to comply with the terms of a settlement agreement with GNMA.

(b) *Continuing violation.* Each day that a violation continues shall constitute a separate violation.

(c) *Amount of penalty.* The maximum penalty is \$5,500 for each violation, up to a limit of \$1,100,000 during any one-year period. Each violation shall constitute a separate violation with respect to each pool of mortgages.

§ 30.55 Interstate Land Sales violations.

(a) *General.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against any person who knowingly and materially violates any provision of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.); the rules and regulations set forth at 24 CFR parts 1710, 1715, and 1720; or any order issued thereunder.

(b) *Continuing violation.* Each day that a violation continues shall constitute a separate violation.

(c) *Maximum penalty.* The maximum penalty is \$1,100 for each violation, up to a limit for any particular person of \$1,100,000 during any one-year period. Each violation shall constitute a separate violation as to each sale or lease or offer to sell or lease.

§ 30.60 Dealers or loan correspondents.

(a) *General.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against any dealer or loan correspondent who violates section 2(b)(7) of the National Housing Act (12 U.S.C. 1703). Such violations include, but are not limited to:

(1) Falsifying information on an application for dealer approval or re-approval submitted to a lender;

(2) Falsifying statements on a HUD credit application, improvement contract, note, security instrument, completion certificate, or other loan document;

(3) Failing to sign a credit application if the dealer or loan correspondent

assisted the borrower in completing the application;

(4) Falsely certifying to a lender that the loan proceeds have been or will be spent on eligible improvements;

(5) Falsely certifying to a lender that the property improvements have been completed;

(6) Falsely certifying that a borrower has not been given or promised any cash payment, rebate, cash bonus, or anything of more than nominal value as an inducement to enter into a loan transaction;

(7) Making a false representation to a lender with respect to the creditworthiness of a borrower or the eligibility of the improvements for which a loan is sought.

(b) *Continuing violation.* Each day that a violation continues shall constitute a separate violation.

(c) *Amount of penalty.* The maximum penalty is \$5,500 for each violation, up to a limit for any particular person of \$1,100,000 during any one-year period.

§30.65 Failure to disclose lead-based paint hazards.

(a) *General.* The Director of the Office of Lead Hazard Control, or his or her designee, may initiate a civil money penalty action against any person who knowingly violates 42 U.S.C. 4852d(b)(1).

(b) *Amount of penalty.* The maximum penalty is \$11,000 for each violation.

Subpart C—Procedures

§30.70 Prepenalty notice.

Whenever HUD intends to seek a civil money penalty, the official designated in subpart B of this part, or his or her designee (or the chairperson of the Mortgagee Review Board, or his or her designee, in actions under §30.35), shall issue a written notice to the respondent. This prepenalty notice shall include the following:

(a) That HUD is considering seeking a civil money penalty;

(b) The specific violations alleged;

(c) The maximum civil money penalty that may be imposed;

(d) The opportunity to reply in writing to the designated program official within 30 days after receipt of the notice; and

(e) That failure to respond within the 30-day period may result in issuance of a complaint under §30.85 without consideration of any information that the respondent may wish to provide.

§30.75 Response to prepenalty notice.

The response shall be in a format prescribed in the prepenalty notice. The response shall include any arguments opposing the imposition of a civil money penalty that the respondent may wish to present.

§30.80 Factors in determining appropriateness and amount of civil money penalty.

In determining whether to seek a penalty, and the amount of such penalty, the officials designated in subpart B of this part shall consider the following factors:

(a) The gravity of the offense;

(b) Any history of prior offenses. For violations under §§30.25, 30.35, 30.45, 30.50, 30.55, and 30.60, offenses that occurred prior to December 15, 1989 may be considered;

(c) The ability to pay the penalty;

(d) The injury to the public;

(e) Any benefits received by the violator;

(f) The extent of potential benefit to other persons;

(g) Deterrence of future violations;

(h) The degree of the violator's culpability;

(i) With respect to Urban Homestead violations under §30.30, the expenditures made by the violator in connection with any gross profit derived; and

(j) Such other matters as justice may require.

(k) In addition to the above factors, with respect to violations under §§30.45, 30.55, and 30.60, the Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, shall also consider:

(1) Any injury to tenants; and/or

(2) Any injury to lot owners.

§30.85 Complaint.

(a) *General.* Upon the expiration of the period for the respondent to submit a response to the prepenalty notice, the official designated in subpart B of this part, or his or her designee (or the Mortgagee Review Board in actions

§ 30.90

under § 30.35) shall determine whether to seek a civil money penalty. Such determination shall be based upon a review of the prepenalty notice, the response, if any, and the factors listed at § 30.80. A determination by the Mortgagee Review Board to seek a civil money penalty shall be by a majority vote of the Board.

(b) If a determination is made to seek a civil money penalty, the official or his or her designee, or the Mortgagee Review Board, shall issue a complaint to the respondent. The complaint shall state the following:

(1) The factual basis for the decision to seek a penalty;

(2) The applicable civil money penalty statute;

(3) The amount of penalty sought;

(4) The right to submit a response in writing, within 15 days of receipt of the complaint, requesting a hearing on any material fact in the complaint, or on the appropriateness of the penalty sought;

(5) The address to which a response must be sent;

(6) That the failure to submit a response may result in the imposition of the penalty in the amount sought.

(c) A copy of this part and of 24 CFR part 26, subpart B shall be included with the complaint.

(d) *Service of the complaint.* The complaint shall be served on the respondent by first class mail, personal delivery, or other means. In cases of violations by mortgagees and lenders of 12 U.S.C. 1735f-14(b) (1)(D) or (1)(F), or by GNMA issuers or custodians of 12 U.S.C. 1723i(b) (1)(G) or (1)(I), a copy of the complaint shall be provided to the Attorney General.

§ 30.90 Response to the complaint.

(a) *General.* The respondent may submit to HUD a written response to the complaint within 15 days of its receipt. The response shall be considered a request for a hearing. The response should include the admission or denial of each allegation of liability made in the complaint; any defense on which the respondent intends to rely; any reasons why the civil money penalty is not warranted or should be less than the amount sought in the complaint; and the name, address, and telephone

24 CFR Subtitle A (4-1-99 Edition)

number of the person who will act as the respondent's representative, if any.

(b) *Filing with the administrative law judges.* HUD shall file the complaint and response with the Chief Docket Clerk, Office of Administrative Law Judges, in accordance with § 26.37 of this title. If no response is submitted, then HUD may file a motion for default judgment, together with a copy of the complaint, in accordance with § 26.39 of this title.

§ 30.95 Hearings.

Hearings under this part shall be conducted in accordance with the procedures at 24 CFR part 26, subpart B.

§ 30.100 Settlements.

The officials listed at subpart B of this part, or their designees (or the Mortgagee Review Board for violations under § 30.35), are authorized to enter into settlement agreements of civil money penalty claims. Settlement agreements may be executed at any time prior to the issuing of a notice of final determination under § 26.50 of this title, and may include sanctions for failure to comply with the terms of the agreement.

PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

Subpart A—Notifications to Purchasers and Tenants of HUD-Associated Housing Constructed Prior to 1978 of the Hazards of Lead-Based Paint Poisoning

Sec.

35.1 Purpose and scope.

35.3 Definitions.

35.5 Requirements.

Subpart B—Prohibition Against the Use of Lead-Based Paint in HUD-Associated Housing

35.10 Purpose and scope.

35.12 Definitions.

35.14 Requirements.

Subpart C—Elimination of Lead-Based Paint Hazards in HUD-Associated Housing

35.20 Purpose and scope.

35.22 Definitions.

35.24 Requirements.