

§ 28.45

(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 ac-

24 CFR Subtitle A (4-1-00 Edition)

tion 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.

30.36 Other participants in FHA programs.

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