§ 81.83 Civil money penalties.

(a) Imposition. The Secretary may impose a civil money penalty on a GSE that has failed:

(1) To submit, within the time prescribed in §81.22, a housing plan that substantially complies with 12 U.S.C. 4566(c), as implemented by §81.22;

(2) To make a good-faith effort to comply with a housing plan submitted and approved by the Secretary; or

(3) To submit any of the information required under sections 309(m) or (n) of the Fannie Mae Charter Act, sections 307(e) or (f) of the Freddie Mac Act, or subpart E of this part.

(b) Amount of penalty. The amount of the penalty shall not exceed:

(1) For any failure described in paragraph (a)(1) of this section, $35,000 for each day that the failure occurs; and

(2) For any failure described in paragraphs (a)(2) or (a)(3) of this section, $16,000 for each day that the failure occurs.

(c) Factors in determining amount of penalty. In determining the amount of a penalty under this section, the Secretary shall consider the factors in 12 U.S.C. 4585(c)(2) including the public interest.

(d) Procedures—(1) Notice of Intent. The Secretary shall notify the GSE in writing of the Secretary’s determination to impose a civil money penalty by issuing a Notice of Intent to Impose Civil Money Penalties (“Notice of Intent”). The Notice of Intent shall provide:

(i) A concise statement of the facts constituting the alleged misconduct;

(ii) The amount of the civil money penalty;

(iii) Notice of the GSE’s right to a hearing on the record;

(iv) The procedures to follow to obtain a hearing;

(v) A statement of the consequences of failing to request a hearing; and

(vi) The date the penalty shall be due unless the GSE contests the matter.

(2) To appeal the Secretary’s decision to impose a civil money penalty, the GSE shall, within 20 days of service of the Notice of Intent, file a written Answer with the Chief Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, at the address provided in the Notice of Intent.

(3) Administrative law judge. A HUD ALJ shall preside over any hearing conducted under this section, in accordance with §81.84 and, to the extent the provisions are not inconsistent with any of the procedures in this part or FHESFA, with 24 CFR part 26, subpart B.

(4) Issuance of order. If the GSE consents to the issuance of the order or the ALJ finds, on the hearing record, that a preponderance of the evidence establishes the conduct specified in the notice of charges, the ALJ may issue an order imposing a civil money penalty.

(5) Consultation with the Director. In the Secretary’s discretion, the Director of OFHEO may be requested to review any Notice of Intent, determination, order, or interlocutory ruling arising from a hearing.

(e) Action to collect penalty. The Secretary may request the Attorney General of the United States to bring an action to collect the penalty, in accordance with 12 U.S.C. 4585(d). Interest on, and other charges for, any unpaid penalty may be assessed in accordance with 31 U.S.C. 3717.

(f) Settlement by Secretary. The Secretary may compromise, modify, or remit any civil money penalty that may be, or has been, imposed under this section.

§ 81.84 Hearings.

(a) Applicability. The hearing procedures in this section apply to hearings on the record to review cease-and-desist orders, civil money penalties, and new programs disapproved based upon a determination by the Secretary that
such programs are not in the public interest, in accordance with 12 U.S.C. 4542(c)(4)(B).

(b) Hearing requirements. (1) Hearings shall be held in the District of Columbia.

(2) Hearings shall be conducted by a HUD ALJ authorized to conduct proceedings under 24 CFR part 26, subpart B.

(c) Timing. Unless an earlier or later date is requested by a GSE and the request is granted by the ALJ, a hearing shall be fixed for a date not earlier than 30 days, nor later than 60 days, after:

(1) Service of the notice of charges under § 81.82;

(2) Service of the Notice of Intent to Impose Civil Money Penalty(ies) under § 81.83; or

(3) Filing of a request for a hearing under § 81.54(b).

(d) Procedure. Hearings shall be conducted in accordance with the procedures set forth in 24 CFR part 26, subpart B to the extent that such provisions are not inconsistent with any of the procedures in this part or FHEFSSA.

(e) Service—(1) To GSE. Any service required or authorized to be made by the Secretary under this subpart G may be made to the Chief Executive Officer of a GSE or any other representative as the GSE may designate in writing to the Secretary.

(2) How service may be made. A serving party shall use one or more of the following methods of service:

(i) Personal service;

(ii) Delivering the papers to a reliable commercial courier service, overnight delivery service, or the U.S. Post Office for Express Mail Delivery; or

(iii) Transmission by electronic media, only if the parties mutually agree. The serving party shall mail an original of the filing after any proper service using electronic media.

(f) Subpoena authority—(1) General. In the course of or in connection with any hearing, the Secretary and the ALJ shall have the authority to:

(i) Administer oaths and affirmations;

(ii) Take and preserve testimony under oath;

(iii) Issue subpoenas and subpoenas duces tecum; and

(iv) Revoke, quash, or modify subpoenas and subpoenas duces tecum issued under this paragraph (f).

(2) Witnesses and documents. The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State. A witness may be required to appear, and a document may be required to be produced, at:

(i) The hearing; and

(ii) Any place that is designated for attendance at a deposition or production of a document under this section.

(3) Enforcement. In accordance with 12 U.S.C. 4588(c), the Secretary may request the Attorney General of the United States to enforce any subpoena or subpoena duces tecum issued pursuant to this section. If a subpoenaed person fails to comply with all or any portion of a subpoena issued pursuant to this paragraph (f), the subpoenaing party or any other aggrieved person may petition the Secretary to seek enforcement of the subpoena. A party’s petition to the Secretary for enforcement of a subpoena in no way limits the sanctions that may be imposed by the ALJ on a party who fails to comply with a subpoena issued under this paragraph (f).

(4) Fees and expenses. Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States and may seek reasonable expenses and attorneys fees in any court having jurisdiction of any proceeding instituted under this section. Such expenses and fees shall be paid by the GSE or from its assets.

(g) Failure to appear. If a GSE fails to appear at a hearing through a duly authorized representative, the GSE shall be deemed to have consented to the issuance of the cease-and-desist order, the imposition of the penalty, or the disapproval of the new program, whichever is applicable.

(h) Public hearings. (1) All hearings shall be open to the public, unless the ALJ determines that an open hearing would be contrary to the public interest. Where a party makes a timely motion to close a hearing and the ALJ denies the motion, such party may file
§ 81.85 with the Secretary within 5 working days a request for a closed hearing, and any party may file a reply to such a request within 5 working days of service of such a motion. Such motions, requests, and replies are governed by §26.38 of this title. When a request for a closed hearing has been filed with the Secretary under this paragraph (h)(1), the hearing shall be stayed until the Secretary has advised the parties and the ALJ, in writing, of the Secretary’s decision on whether the hearing should be closed.

(2) Failure to file a timely motion, request or reply is deemed a waiver of any objection regarding whether the hearing will be public or closed. A party must file any motion for a closed hearing within 10 days after:

(i) Service of the notice of charges under §81.82;

(ii) Service of the Notice of Intent to Impose Civil Money Penalties under §81.83; or

(iii) Filing of a request for a hearing under §81.54(b).

(i) Decision of ALJ. After each hearing, the ALJ shall issue an initial decision and serve the initial decision on the GSE, the Secretary, any other parties, and the HUD General Counsel. This service will constitute notification that the case has been submitted to the Secretary.

(j) Review of initial decision—(1) Secretary’s discretion. The Secretary, in the Secretary’s discretion, may review any initial decision.

(2) Requested by a party. Any party may file a notice of appeal of an initial decision to the Secretary in accordance with §26.51(c) of this title. Any waiver of the limitations contained in §26.51(f) of this title on the number of pages for notices of appeal and responses, of the time limitation in §26.51(c) of this title for filing a notice of appeal of the initial decision, or any other waivers under this subpart shall not be subject to the publication requirements in 42 U.S.C. 3538(q).

(k) Final decision. (1) The initial decision will become the final decision unless the Secretary issues a final decision within 90 days after the initial decision is served on the Secretary.

(2) Issuance of final decision by Secretary. The Secretary may review any finding of fact, conclusion of law, or order contained in the initial decision of the ALJ and may issue a final decision in the proceeding. Any decision shall include findings of fact upon which the decision is predicated. The Secretary may affirm, modify, or set aside, in whole or in part, the initial decision or may remand the initial decision for further proceedings. The final decision shall be served on all parties and the ALJ.

(1) Decisions on remand. If the initial decision is remanded for further proceedings, the ALJ shall issue an initial decision on remand within 60 days of the date of issuance of the decision to remand, unless it is impractical to do so.

(m) Modification. The Secretary may modify, terminate, or set aside any order in accordance with 12 U.S.C. 4582(b).