

§ 1735f-14. Civil money penalties against mortgagees, lenders, and other participants in FHA programs

(a) In general

(1) Authority

If a mortgagee approved under the¹ chapter, a lender holding a contract of insurance under subchapter I, or a principal, officer, or employee of such mortgagee or lender, or other person or entity participating in either an insured mortgage or subchapter I loan transaction under this chapter or providing assistance to the borrower in connection with any such loan, including sellers of the real estate involved, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents and dealers, knowingly and materially violates any applicable provision of subsection (b), the Secretary may impose a civil money penalty on the mortgagee or lender, or such other person or entity, in accordance with this section. The penalty under this paragraph shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions. The penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.

(2) Amount of penalty

The amount of the penalty, as determined by the Secretary, may not exceed \$5,000 for each violation, except that the maximum penalty for all violations by any particular mortgagee or lender or such other person or entity during any 1-year period shall not exceed \$1,000,000. Each violation of a² the provisions of subsection (b)(1) shall constitute a separate violation with respect to each mortgage or loan application. In the case of a continuing violation, as determined by the Secretary, each day shall constitute a separate violation.

In the case of the mortgagee's failure to engage in loss mitigation activities, as provided in subsection (b)(1)(I), the penalty shall be in the amount of three times the amount of any insurance benefits claimed by the mortgagee with respect to any mortgage for which the mortgagee failed to engage in such loss mitigation actions.

(b) Violations for which a penalty may be imposed

(1) Violations

The Secretary may impose a civil money penalty under subsection (a) for any knowing and material violation by a mortgagee or lender or any of its owners, officers, or directors, as follows:

(A) Except where expressly permitted by statute, regulation, or contract approved by the Secretary, transfer of a mortgage insured under this chapter to a mortgagee not

approved by the Secretary, or transfer of a loan to a transferee that is not holding a contract of insurance under subchapter I of this chapter.

(B) Failure of a nonsupervised mortgagee, as defined by the Secretary—

(i) to segregate all escrow funds received from a mortgagor for ground rents, taxes, assessments, and insurance premiums; or

(ii) to deposit these funds in a special account with a depository institution whose accounts are insured by the Federal Deposit Insurance Corporation through the Deposit Insurance Fund, or by the National Credit Union Administration.

(C) Use of escrow funds for any purpose other than that for which they were received.

(D) Submission to the Secretary of information that was false, in connection with any mortgage insured under this chapter, or any loan that is covered by a contract of insurance under subchapter I of this chapter.

(E) With respect to an officer, director, principal, or employee—

(i) hiring such an individual whose duties will involve, directly or indirectly, programs administered by the Secretary, while that person was under suspension or withdrawal by the Secretary; or

(ii) retaining in employment such an individual who continues to be involved, directly or indirectly, in programs administered by the Secretary, while that person was under suspension or withdrawal by the Secretary.

(F) Falsely certifying to the Secretary or submitting to the Secretary a false certification by another person or entity.

(G) Failure to comply with an agreement, certification, or condition of approval set forth on, or applicable to—

(i) the application of a mortgagee or lender for approval by the Secretary; or

(ii) the notification by a mortgagee or lender to the Secretary concerning establishment of a branch office.

(H) Violation of any provisions of subchapter I or II of this chapter, or any implementing regulation, handbook, or mortgagee letter that is issued under this chapter.

(I) Failure to engage in loss mitigation actions as provided in section 1715u(a) of this title.

(J) Failure to perform a required physical inspection of the mortgaged property.

(K) Violation of section 1708(d) of this title.

(L) Use of "Federal Housing Administration", "Department of Housing and Urban Development", "Government National Mortgage Association", "Ginnie Mae", the acronyms "HUD", "FHA", or "GNMA", or any official seal or logo of the Department of Housing and Urban Development, except as authorized by the Secretary.

(2) Additional violations

The Secretary may impose a civil money penalty under subsection (a) for any knowing

¹ So in original. Probably should be "this".

² So in original. The word "a" probably should not appear.

and material violation by a principal, officer, or employee of a mortgagee or lender, or other participants in either an insured mortgage or subchapter I loan transaction under this chapter or provision of assistance to the borrower in connection with any such loan, including sellers of the real estate involved, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents, and dealers for—

(A) submission to the Secretary of information that was false, in connection with any mortgage insured under this chapter, or any loan that is covered by a contract of insurance under subchapter I of this chapter;

(B) falsely certifying to the Secretary or submitting to the Secretary a false certification by another person or entity;

(C) failure by a loan correspondent or dealer to submit to the Secretary information which is required by regulations or directives in connection with any loan that is covered by a contract of insurance under subchapter I; or

(D) causing or participating in any of the violations set forth in paragraph (1) of this subsection.

(3) Prohibition against misleading use of Federal entity designation

The Secretary may impose a civil money penalty, as adjusted from time to time, under subsection (a) for any use of “Federal Housing Administration”, “Department of Housing and Urban Development”, “Government National Mortgage Association”, “Ginnie Mae”, the acronyms “HUD”, “FHA”, or “GNMA”, or any official seal or logo of the Department of Housing and Urban Development, by any person, party, company, firm, partnership, or business, including sellers of real estate, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents, and dealers, except as authorized by the Secretary.

(c) Agency procedures

(1) Establishment

The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (a). These standards and procedures—

(A) shall provide for the Secretary to make the determination to impose the penalty or to use an administrative entity (such as the Mortgagee Review Board, established pursuant to section 1708(c) of this title) to make the determination;

(B) shall provide for the imposition of a penalty only after the mortgagee or lender or such other person or entity has been given an opportunity for a hearing on the record; and

(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Final orders

If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determina-

tion. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

(3) Factors in determining amount of penalty

In determining the amount of a penalty under subsection (a), consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including those before December 15, 1989), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

(4) Reviewability of imposition of penalty

The Secretary’s determination or order imposing a penalty under subsection (a) shall not be subject to review, except as provided in subsection (d).

(d) Judicial review of agency determination

(1) In general

After exhausting all administrative remedies established by the Secretary under subsection (c)(1), a mortgagee or lender or such other person or entity against whom the Secretary has imposed a civil money penalty under subsection (a) may obtain a review of the penalty and such ancillary issues (such as any administrative sanctions under 24 C.F.R. parts 24 and 25) as may be addressed in the notice of determination to impose a penalty under subsection (c)(1)(A) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary’s determination or order be modified or be set aside in whole or in part.

(2) Objections not raised in hearing

The court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (c)(1) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of the additional evidence.

(3) Scope of review

The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5.

(4) Order to pay penalty

Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

(e) Action to collect penalty

If any mortgagee or lender or such other person or entity fails to comply with the Sec-

retary's determination or order imposing a civil money penalty under subsection (a), after the determination or order is no longer subject to review as provided by subsections (c)(1) and (d), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the mortgagee or lender or such other person or entity and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

(f) Settlement by Secretary

The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(g) "Knowingly" defined

For purposes of this section, a person acts knowingly when a person has actual knowledge of acts or should have known of the acts.

(h) Regulations

The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

(i) Deposit of penalties in insurance funds

Notwithstanding any other provision of law, all civil money penalties collected under this section shall be deposited in the appropriate insurance fund or funds established under this chapter, as determined by the Secretary.

(June 27, 1934, ch. 847, title V, § 536, as added Pub. L. 101-235, title I, § 107(a), Dec. 15, 1989, 103 Stat. 2000; amended Pub. L. 104-208, div. A, title II, § 2704(d)(13)(B), Sept. 30, 1996, 110 Stat. 3009-490; Pub. L. 105-65, title V, § 553, Oct. 27, 1997, 111 Stat. 1413; Pub. L. 105-276, title VI, § 601(g), (h), Oct. 21, 1998, 112 Stat. 2674; Pub. L. 108-447, div. I, title II, § 219(a), Dec. 8, 2004, 118 Stat. 3319; Pub. L. 109-171, title II, § 2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109-173, § 9(f)(2), Feb. 15, 2006, 119 Stat. 3618; Pub. L. 111-22, div. A, title II, § 203(f), May 20, 2009, 123 Stat. 1647.)

AMENDMENTS

2009—Subsec. (b)(1). Pub. L. 111-22, § 203(f)(1)(A)(i), inserted "or any of its owners, officers, or directors" after "mortgagee or lender" in introductory provisions.

Subsec. (b)(1)(H). Pub. L. 111-22, § 203(f)(1)(A)(ii), substituted "subchapter I or II of this chapter, or any implementing regulation, handbook, or mortgagee letter that is issued under this chapter." for "subchapter I, II, or IX-A (as such subchapter existed immediately before December 15, 1989) of this chapter or any implementing regulation or handbook that is issued under this chapter."

Subsec. (b)(1)(K), (L). Pub. L. 111-22, § 203(f)(1)(A)(iii), added subpars. (K) and (L).

Subsec. (b)(2)(D). Pub. L. 111-22, § 203(f)(1)(B), added subpar. (D).

Subsec. (b)(3). Pub. L. 111-22, § 203(f)(1)(C), amended par. (3) generally. Prior to amendment, text read as follows: "Before taking action to impose a civil money penalty for a violation under paragraph (1)(D) or (F), or paragraph (2)(A), (B), or (C), the Secretary shall inform the Attorney General of the United States."

Subsec. (g). Pub. L. 111-22, § 203(f)(2), substituted "For purposes of this section, a person acts knowingly when a person has actual knowledge of acts or should have known of the acts." for "The term 'knowingly' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section."

2006—Subsec. (b)(1)(B)(ii). Pub. L. 109-173 substituted "Deposit Insurance Fund" for "Bank Insurance Fund for banks and through the Savings Association Insurance Fund for savings associations".

Pub. L. 109-171 repealed Pub. L. 104-208, § 2704(d)(13)(B). See 1996 Amendment note below.

2004—Subsec. (b)(1)(J). Pub. L. 108-447 added subpar. (J).

1998—Subsec. (a)(2). Pub. L. 105-276, § 601(g), inserted second paragraph.

Subsec. (b)(1)(I). Pub. L. 105-276, § 601(h), which directed the addition of subpar. (I) after subpar. "(h)", was executed by adding subpar. (I) after subpar. (H), to reflect the probable intent of Congress.

1997—Pub. L. 105-65, § 553(a), amended section catchline generally, substituting "mortgagees, lenders, and other participants in FHA programs" for "mortgagees and lenders".

Subsec. (a)(1). Pub. L. 105-65, § 553(b)(1), substituted "If a mortgagee approved under the chapter, a lender holding a contract of insurance under subchapter I, or a principal, officer, or employee of such mortgagee or lender, or other person or entity participating in either an insured mortgage or subchapter I loan transaction under this chapter or providing assistance to the borrower in connection with any such loan, including sellers of the real estate involved, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents and dealers, knowingly and materially violates any applicable provision of subsection (b), the Secretary may impose a civil money penalty on the mortgagee or lender, or such other person or entity, in accordance with this section. The penalty under this paragraph shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions." for "Whenever a mortgagee approved under this chapter, or a lender holding a contract of insurance under subchapter I of this chapter, knowingly and materially violates any of the provisions of subsection (b), the Secretary may impose a civil money penalty on the mortgagee or lender in accordance with the provisions of this section."

Subsec. (a)(2). Pub. L. 105-65, § 553(b)(2), inserted "or such other person or entity" after "lender" in first sentence and substituted "the provisions of subsection (b)(1)" for "provision of subsection (b)(1)" in second sentence.

Subsec. (b)(2). Pub. L. 105-65, § 553(c)(1), (2), added par. (2) and redesignated former par. (2) as (3).

Subsec. (b)(3). Pub. L. 105-65, § 553(c)(1), (3), redesignated par. (2) as (3) and substituted "or (F), or paragraph (2)(A), (B), or (C)" for "or paragraph (1)(F)".

Subsec. (c)(1)(B). Pub. L. 105-65, § 553(d)(1), inserted "or such other person or entity" after "lender".

Subsec. (d)(1). Pub. L. 105-65, § 553(d)(2), inserted "or such other person or entity" after "lender" and substituted "parts 24 and 25" for "part 25".

Subsec. (e). Pub. L. 105-65, § 553(d)(3), inserted "or such other person or entity" after "lender" in two places.

1996—Subsec. (b)(1)(B)(ii). Pub. L. 104-208, § 2704(d)(13)(B), which directed the amendment of section 526(b)(1)(B)(ii) of the National Housing Act by substituting "Deposit Insurance Fund" for "Bank Insurance Fund for banks and through the Savings Association Insurance Fund for savings associations" and which substitution was probably intended by Congress to be made in subsec. (b)(1)(B)(ii) of this section, section 536 of the National Housing Act, was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109-173, set out as a note under section 24 of this title.

Amendment by Pub. L. 109-171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109-171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104-208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE

Pub. L. 101-235, title I, §107(b), Dec. 15, 1989, 103 Stat. 2003, provided that: “The amendment made by subsection (a) [enacting this section] shall apply only with respect to—

“(1) violations referred to in the amendment that occur on or after the effective date of this section [Dec. 15, 1989]; and

“(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation referred to in the amendment that occurs on or after such date.”

REGULATIONS

Pub. L. 105-65, title V, §541, Oct. 27, 1997, 111 Stat. 1412, provided that:

“(a) ISSUANCE OF NECESSARY REGULATIONS.—Notwithstanding section 7(o) of the Department of Housing and Urban Development Act [42 U.S.C. 3535(o)] or part 10 of title 24, Code of Federal Regulations (as in existence on the date of enactment of this Act [Oct. 27, 1997]), the Secretary shall issue such regulations as the Secretary determines to be necessary to implement this subtitle [subtitle C (§§541-564) of title V of Pub. L. 105-65, enacting section 1437z-1 of Title 42, The Public Health and Welfare, amending this section, sections 1708, 1715z-4a, 1715z-19, and 1735f-15 of this title, section 1516 of Title 18, Crimes and Criminal Procedure, section 6103 of Title 26, Internal Revenue Code, and sections 503 and 1437z of Title 42, and enacting provisions set out as notes under section 1735f-15 of this title and sections 503 and 1437z-1 of Title 42] and the amendments made by this subtitle in accordance with section 552 or 553 of title 5, United States Code, as determined by the Secretary.

“(b) USE OF EXISTING REGULATIONS.—In implementing any provision of this subtitle, the Secretary may, in the discretion of the Secretary, provide for the use of existing regulations to the extent appropriate, without rulemaking.”

§ 1735f-15. Civil money penalties against multi-family mortgagors

(a) In general

The penalties set forth in this section shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions. The Secretary may not impose penalties under this section for violations a material cause of which are the failure of the Department, an agent of the Department, or a public housing agency to comply with existing agreements.

(b) Penalty for violation of agreement as condition of transfer of physical assets, flexible subsidy loan, capital improvement loan, modification of mortgage terms, or workout agreement

(1) Authority

Whenever a mortgagor of property that includes 5 or more living units and that has a mortgage insured, co-insured, or held pursuant to this chapter, who has agreed in writing, as a condition of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a workout agreement, to use nonproject income to make cash contributions for payments due under the note and mortgage, for payments to the reserve for replacements, to restore the project to good physical condition, or to pay other project liabilities, knowingly and materially fails to comply with any of these commitments, the Secretary may impose a civil money penalty on that mortgagor, on a general partner of a partnership mortgagor, or on any officer or director of a corporate mortgagor in accordance with the provisions of this section.

(2) Amount of penalty

The amount of the penalty, as determined by the Secretary, for a violation of this subsection may not exceed the amount of the loss the Secretary would experience at a foreclosure sale, or a sale after foreclosure, of the property involved.

(c) Other violations

(1)(A) Liable parties

The Secretary may also impose a civil money penalty under this section on—

(i) any mortgagor of a property that includes 5 or more living units and that has a mortgage insured, coinsured, or held pursuant to this chapter;

(ii) any general partner of a partnership mortgagor of such property;

(iii) any officer or director of a corporate mortgagor;

(iv) any agent employed to manage the property that has an identity of interest with the mortgagor, with the general partner of a partnership mortgagor, or with any officer or director of a corporate mortgagor of such property; or

(v) any member of a limited liability company that is the mortgagor of such property or is the general partner of a limited partnership mortgagor or is a partner of a general partnership mortgagor.

(B) Violations

A penalty may be imposed under this section upon any liable party under subparagraph (A) that knowingly and materially takes any of the following actions:

(i) Conveyance, transfer, or encumbrance of any of the mortgaged property, or permitting the conveyance, transfer, or encumbrance of such property, without the prior written approval of the Secretary.

(ii) Assignment, transfer, disposition, or encumbrance of any personal property of the