

Office of the Secretary, HUD

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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.

[61 FR 50213, Sept. 24, 1996, as amended at 73 FR 76832, Dec. 17, 2008]

§ 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

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

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

EDITORIAL NOTE: Nomenclature changes to part 30 appear at 87 FR 8197, Feb. 14, 2022.

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 those applicable to hearings in accordance with the Administrative Procedure Act, as set forth in 24 CFR part 26.

[74 FR 2751, Jan. 15, 2009]

§ 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) *Maximum penalty.* The maximum penalty is \$23,727 for each violation.

(c) 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.

(d) 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.

(e) Under § 30.68, a civil money penalty may be imposed for violations, or for those parts of continuing violations, occurring on or after January 7, 2002.

[61 FR 50215, Sept. 24, 1996, as amended at 66 FR 63441, Dec. 6, 2001; 82 FR 24524, May 30, 2017; 88 FR 9748, Feb. 15, 2023]

§ 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

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ALJ, Department, HUD, and Secretary are defined in 24 CFR part 5.

Ability to pay. Determined based on an assessment of the respondent's resources available both presently and prospectively from which the Department could ultimately recover the total award, which may be predicted based on historical evidence.

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. For purposes of §§ 30.35 and 30.36, *knowing* or *knowingly* is defined at 12 U.S.C. 1735f-14(g).

Material or Materially. Having the natural tendency or potential to influence, or when considering the totality of the circumstances, 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.

Sponsored third-party originator. A sponsored third-party originator as defined at § 202.8 of this title.

[61 FR 50215, Sept. 24, 1996, as amended at 74 FR 2751, Jan. 15, 2009; 77 FR 51468, Aug. 24, 2012; 82 FR 24524, May 30, 2017]

§ 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.

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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 \$23,727 for each violation.

[61 FR 50215, Sept. 24, 1996, as amended at 72 FR 5588, Feb. 6, 2007; 81 FR 38935, June 15, 2016; 82 FR 24524, May 30, 2017; 83 FR 32793, July 16, 2018; 84 FR 9453, Mar. 15, 2019; 85 FR 13044, Mar. 6, 2020; 86 FR 14373, Mar. 16, 2021; 87 FR 24420, Apr. 26, 2022; 88 FR 9748, Feb. 15, 2023]

§ 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 is \$23,727 for each violation.

[61 FR 50215, Sept. 24, 1996, as amended at 72 FR 5588, Feb. 6, 2007; 81 FR 38935, June 15, 2016; 82 FR 24524, May 30, 2017; 83 FR 32793, July 16, 2018; 84 FR 9453, Mar. 15, 2019; 85 FR 13044, Mar. 6, 2020; 86 FR 14373, Mar. 16, 2021; 87 FR 24420, Apr. 26, 2022; 88 FR 9748, Feb. 15, 2023]

§ 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).

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(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 § 203.664 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 a property or a claim for insurance benefits, in accordance with §§ 203.365, 203.366, or 203.368, or a claim for insurance benefits in accordance with § 206.127 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 § 203.330 of this title;

(10) Fails to service FHA insured mortgages, in accordance with the requirements of 24 CFR parts 201, 203, 206, 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 engage in loss mitigation as provided in § 203.605 of this title.

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

(c)(1) *Amount of penalty.* The maximum penalty is \$11,864 for each violation, up to a limit of \$2,372,677 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

(2) *Maximum penalty for failing to engage in loss mitigation.* The penalty for a violation of paragraph (a)(14) of this section shall be three times the amount of the total mortgage insurance benefits claimed by the mortgagee with respect to any mortgage for which the mortgagee failed to engage in such loss mitigation actions.

[61 FR 50215, Sept. 24, 1996, as amended at 63 FR 9742, Feb. 26, 1998; 68 FR 12788, Mar. 17, 2003; 70 FR 21578, Apr. 26, 2005; 72 FR 5588, Feb. 6, 2007; 74 FR 2751, Jan. 15, 2009; 74 FR 14725, Apr. 1, 2009; 78 FR 4059, Jan. 18, 2013; 81 FR 38935, June 15, 2016; 82 FR 24524, May 30, 2017; 82 FR 7117, Jan. 19, 2017; 83 FR 32793, July 16, 2018; 84 FR 9453, Mar. 15, 2019; 85 FR 13044, Mar. 6, 2020; 86 FR 14373, Mar. 16, 2021; 87 FR 24420, Apr. 26, 2022; 88 FR 9748, Feb. 15, 2023]

§ 30.36 Other participants in FHA programs.

(a) *General.* The Assistant Secretary for Housing-Federal Housing Commissioner (or his/her designee) may initiate a civil money penalty action against any principal, officer, or employee of a mortgagee or lender, or other participants in either a mortgage insured under the National Housing Act or any loan that is covered by a contract of insurance under title I of the National Housing Act, or a provider of assistance to the borrower in connection with any such mortgage or loan, including:

(1) Sellers;

(2) Borrowers;

(3) Closing agents;

(4) Title companies;

(5) Real estate agents;

(6) Mortgage brokers;

(7) Appraisers;

(8) Sponsored third-party originators;

(9) Dealers;

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- (10) Consultants;
- (11) Contractors;
- (12) Subcontractors; and
- (13) Inspectors.

(b) *Knowing and material violations.* The Assistant Secretary for Housing-Federal Housing Commissioner or his/her designee may impose a civil penalty on any person or entity identified in paragraph (a) of this section who knowingly and materially:

(1) Submits false information to the Secretary in connection with any mortgage insured under the National Housing Act (12 U.S.C. 1701 *et seq.*), or any loan that is covered by a contract of insurance under title I of the National Housing Act;

(2) Falsely certifies to the Secretary or submits a false certification by another person or entity to the Secretary in connection with any mortgage insured under the National Housing Act or any loan that is covered by a contract of insurance under title I of the National Housing Act; or

(3) Is a loan dealer and fails 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 title I of the National Housing Act.

(c) *Amount of penalty.* The maximum penalty is \$11,864 for each violation, up to a limit of \$2,372,677 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

[65 FR 9087, Feb. 23, 2000, as amended at 72 FR 5588, Feb. 6, 2007; 77 FR 51468, Aug. 24, 2012; 78 FR 4059, Jan. 18, 2013; 81 FR 38935, June 15, 2016; 82 FR 24524, May 30, 2017; 83 FR 32793, July 16, 2018; 84 FR 9453, Mar. 15, 2019; 85 FR 13044, Mar. 6, 2020; 86 FR 14373, Mar. 16, 2021; 87 FR 24420, Apr. 26, 2022; 88 FR 9748, Feb. 15, 2023]

§ 30.40 Loan guarantees for Indian housing.

(a) *General.* The Assistant Secretary for Public and Indian Housing (or his/her designee) 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.

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

(c) *Amount of penalty.* The maximum penalty is \$11,864 for each violation, up to a limit of \$2,372,677 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

[61 FR 50215, Sept. 24, 1996, as amended at 65 FR 9087, Feb. 23, 2000; 68 FR 12788, Mar. 17, 2003; 72 FR 5588, Feb. 6, 2007; 78 FR 4059, Jan. 18, 2013; 81 FR 38935, June 15, 2016; 82 FR 24524, May 30, 2017; 83 FR 32793, July 16, 2018; 84 FR 9453, Mar. 15, 2019; 85 FR 13044, Mar. 6, 2020; 86 FR 14373, Mar. 16, 2021; 87 FR 24420, Apr. 26, 2022; 88 FR 9748, Feb. 15, 2023]

§ 30.45 Multifamily and section 202 or 811 mortgagors.

(a) *Definitions.* The following definitions apply to this section only:

(1) *Agent employed to manage the property that has an identity of interest and identity of interest agent.* An entity:

(i) That has management responsibility for a project;

(ii) In which the ownership entity, including its general partner or partners (if applicable) and its officers or directors (if applicable), has an ownership interest; and

(iii) Over which the ownership entity exerts effective control.

(2) *Effective control.* The ability to direct, alter, supervise, or otherwise influence the actions, policies, decisions, duties, employment, or personnel of the management agent.

(3) *Entity.* An individual corporation; company; association; partnership; authority; firm; society; trust; state, local government or agency thereof; or any other organization or group of people.

(4) *Multifamily property.* Property that includes 5 or more living units and that has a mortgage insured, co-insured, or held pursuant to the National Housing Act (12 U.S.C. 1702 *et seq.*).

(5) *Ownership interest.* Any direct or indirect interest in the stock, partnership interests, beneficial interests (for a trust) or other medium of equity participation. An indirect interest includes equity participation in any entity that holds a management interest (e.g. general partner, managing member of an LLC, majority stockholder,

trustee) or minimum equity interest (e.g., a 25% or more limited partner, 10% or more stockholder) in the ownership entity of the management agent.

(6) *Section 202 or 811 property.* Property that includes 5 or more living units and that has a mortgage held pursuant to a direct loan or capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) or capital advances under section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013).

(b) *Violation of agreement—(1) General.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against a mortgagor of a section 202 or 811 property or a mortgagor, general partner of a partnership mortgagor, or any officer or director of a corporate mortgagor of a multifamily property who:

(i) 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; and

(ii) Knowingly and materially fails to comply with any of the commitments listed in paragraph (b)(1)(i) of this section.

(2) *Maximum penalty.* The maximum penalty for each violation under paragraph (b) of this section is the amount of loss that the Secretary would experience at a foreclosure sale, or a sale after foreclosure, of the property involved.

(c) *Other violations.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against any of the following who knowingly and materially take any of the actions listed in 12 U.S.C. 1735f-15(c)(1)(B):

(1) Any mortgagor of a multifamily property;

(2) Any general partner of a partnership mortgagor of such property;

(3) Any officer or director of a corporate mortgagor;

(4) 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

(5) 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.

(d) *Acceptable management.* For purposes of this rule, management acceptable to the Secretary under 12 U.S.C. 1735f-15(c)(1)(B)(xiv) shall include:

(1) Fiscal management in accordance with HUD regulations and requirements;

(2) Handling of vacancies and tenanting in accordance with HUD regulations and requirements;

(3) Handling of rent collection in accordance with HUD regulations and requirements;

(4) Maintenance in accordance with HUD regulations and requirements;

(5) Compliance with HUD regulations and requirements on tenant organization; and

(6) Any other matters that pertain to proper management in accordance with HUD regulations and requirements.

(e) *Civil money penalty.* A consistent pattern of violations of HUD program requirements, or a single violation that causes serious injury to the public or tenants, can be a basis for an action to assess a civil money penalty.

(f) *Section 202 or 811 projects.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against any mortgagor of a section 202 or 811 property who knowingly and materially takes any of the actions listed in 12 U.S.C. 1701q-1(c)(1).

(g) *Maximum penalty.* The maximum penalty for each violation under paragraphs (c) and (f) of this section is \$59,316.

(h) *Payment of penalty.* No payment of a civil money penalty levied under this section shall be payable out of project income.

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(i) *Exceptions.* The Secretary may not impose penalties under this section for a violation, if a material cause of the violation is the failure of the Secretary, an agent of the Secretary, or a public housing agency to comply with an existing agreement.

[66 FR 63441, Dec. 6, 2001, as amended at 68 FR 12788, Mar. 17, 2003; 72 FR 5588, Feb. 6, 2007; 74 FR 2751, Jan. 15, 2009; 78 FR 4059, Jan. 18, 2013; 81 FR 38935, June 15, 2016; 82 FR 24524, May 30, 2017; 83 FR 32793, July 16, 2018; 84 FR 9453, Mar. 15, 2019; 85 FR 13044, Mar. 6, 2020; 86 FR 14373, Mar. 16, 2021; 87 FR 24420, Apr. 26, 2022; 88 FR 9748, Feb. 15, 2023]

§ 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, 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 \$11,864 for each violation, up to a limit of \$2,372,677 during any one-year period. Each violation shall constitute a separate violation with respect to each pool of mortgages.

[61 FR 50215, Sept. 24, 1996, as amended at 68 FR 12788, Mar. 17, 2003; 72 FR 5588, Feb. 6, 2007; 78 FR 4059, Jan. 18, 2013; 81 FR 38935, June 15, 2016; 82 FR 24524, May 30, 2017; 83 FR 32793, July 16, 2018; 84 FR 9453, Mar. 15, 2019; 85 FR 13044, Mar. 6, 2020; 86 FR 14373, Mar. 16, 2021; 87 FR 24420, Apr. 26, 2022; 88 FR 9748, Feb. 15, 2023]

§ 30.60 Dealers or sponsored third-party originators.

(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 sponsored third-party originator that violates section 2(b)(7) of the National Housing Act (12

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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 sponsored third-party originator 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 \$11,864 for each violation, up to a limit for any particular person of \$2,372,677 during any one-year period.

[61 FR 50215, Sept. 24, 1996, as amended at 68 FR 12788, Mar. 17, 2003; 72 FR 5588, Feb. 6, 2007; 77 FR 51467, Aug. 24, 2012; 78 FR 4059, Jan. 18, 2013; 81 FR 38935, June 15, 2016; 82 FR 24524, May 30, 2017; 83 FR 32793, July 16, 2018; 84 FR 9453, Mar. 15, 2019; 85 FR 13044, Mar. 6, 2020; 86 FR 14373, Mar. 16, 2021; 87 FR 24420, Apr. 26, 2022; 88 FR 9748, Feb. 15, 2023]

§ 30.65 Failure to disclose lead-based paint hazards.

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

(b) *Amount of penalty.* The maximum penalty is \$21,018 for each violation.

[65 FR 50593, Aug. 18, 2000, as amended at 76 FR 36851, June 22, 2011; 79 FR 35042, June 19, 2014; 81 FR 38935, June 15, 2016; 82 FR 24524, May 30, 2017; 83 FR 32793, July 16, 2018; 84 FR 9453, Mar. 15, 2019; 85 FR 13044, Mar. 6, 2020; 86 FR 14373, Mar. 16, 2021; 87 FR 24420, Apr. 26, 2022; 88 FR 9748, Feb. 15, 2023]

§ 30.68 Section 8 owners.

(a) *Definitions.* The following definitions apply to this section only:

Agent employed to manage the property that has an identity of interest and identity of interest agent. An entity:

(1) That has management responsibility for a project;

(2) In which the ownership entity, including its general partner or partners (if applicable), has an ownership interest; and

(3) Over which the ownership entity exerts effective control.

Effective control. The ability to direct, alter, supervise, or otherwise influence the actions, policies, decisions, duties, employment, or personnel of the management agent.

Entity. An individual corporation; company; association; partnership; authority; firm; society; trust; state, local government or agency thereof; or any other organization or group of people.

Ownership interest. Any direct or indirect interest in the stock, partnership interests, beneficial interests (for a trust) or other medium of equity participation. An indirect interest includes equity participation in any entity that holds a management interest (e.g. general partner, managing member of an LLC, majority stockholder, trustee) or minimum equity interest (e.g., a 25% or more limited partner, 10% or more stockholder) in the ownership entity of the management agent.

(b) *General.* The Assistant Secretary for Housing—Federal Housing Commissioner, or his or her designee, or the Assistant Secretary for Public and Indian Housing, or his or her designee, may initiate a civil money penalty against any owner, any general partner of a partnership owner, or any agent employed to manage the property that has an identity of interest with the owner or the general partner of a part-

nership owner of a property receiving project-based assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) for a knowing and material breach of a housing assistance payments contract. Examples of covered violations include, but are not limited to, the following:

(1) Failure to provide decent, safe, and sanitary housing pursuant to section 8 of the United States Housing Act of 1937 and 24 CFR 5.703; or

(2) Knowing or willful submission of false, fictitious, or fraudulent statements or requests for housing assistance payments to the Secretary or to any department or agency of the United States.

(c) *Maximum penalty.* The maximum penalty for each violation under this section is \$46,102.

(d) *Payment of penalty.* No payment of a civil money penalty levied under this section shall be payable out of project income.

(e) *Exceptions.* The Secretary may not impose penalties under this section for a violation, if a material cause of the violation is the failure of the Secretary, an agent of the Secretary, or a public housing agency to comply with an existing agreement.

[66 FR 63442, Dec. 6, 2001, as amended at 74 FR 2751, Jan. 15, 2009; 78 FR 4059, Jan. 18, 2013; 81 FR 38935, June 15, 2016; 82 FR 24525, May 30, 2017; 83 FR 32793, July 16, 2018; 84 FR 9454, Mar. 15, 2019; 85 FR 13044, Mar. 6, 2020; 86 FR 14373, Mar. 16, 2021; 87 FR 24421, Apr. 26, 2022; 88 FR 9748, Feb. 15, 2023]

Subpart C—Procedures

§ 30.70 Prepenalty notice.

(a) Prior to determining whether to issue a complaint under § 30.85, 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:

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

(2) The specific violations alleged;

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

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

(5) 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; and

(6) That if a complaint is issued under § 30.85, the respondent may request a hearing before an administrative law judge in accordance with § 30.95.

(b) *Obligation to preserve documents.* Upon receipt of the prepenalty notice, the respondent is required to preserve and maintain all documents or data, including electronically stored data, within his or her possession or control that may relate to the violations alleged in the prepenalty notice. The Department shall also preserve such documents or data upon the issuance of the prepenalty notice.

[74 FR 2751, Jan. 15, 2009]

§ 30.75 Response to prepenalty notice.

(a) The response shall be in a format prescribed in the prepenalty notice. The response shall address the factors set forth in § 30.80 and include any arguments opposing the imposition of a civil money penalty that the respondent may wish to present.

(b) In any case where respondent seeks to raise ability to pay as an affirmative defense or argument in mitigation, the respondent shall provide documentary evidence as part of its response.

[74 FR 2751, Jan. 15, 2009]

§ 30.80 Factors in determining amount of civil money penalty.

After determining that a respondent has committed a violation as described in subpart B of this part that subjects the respondent to liability under this part, the officials designated in subpart B of this part shall consider the following factors to determine the amount of penalty to seek against a respondent, if any:

- (a) The gravity of the offense;
- (b) Any history of prior offenses;
- (c) The ability to pay the penalty, which ability shall be presumed unless

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specifically raised as an affirmative defense or mitigating factor by the respondent;

(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; and

(i) Such other matters as justice may require.

(j) In addition to the above factors, with respect to violations under §§ 30.45, 30.55, 30.60, and 30.68, the Assistant Secretary for Housing—Federal Housing Commissioner, or his or her designee, or the Assistant Secretary for Public and Indian Housing, or his or her designee, shall also consider:

(1) Any injury to tenants; and/or

(2) Any injury to lot owners.

(k) HUD may consider the factors listed in paragraphs (a) through (k) of this section to determine the appropriateness of imposing a penalty under § 30.35(c)(2); however, HUD cannot change the amount of the penalty under § 30.35(c)(2).

[74 FR 2751, Jan. 15, 2009, as amended at 82 FR 24525, May 30, 2017]

§ 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 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, government counsel shall issue a complaint to the respondent on behalf of the officials listed at subpart B of this part or the Mortgagee Review Board for violations under § 30.35. The complaint shall be

served upon respondent and simultaneously filed with the Office of Hearings and Appeals, and 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.

(e) Before taking an action under §§30.35 for violation of 12 U.S.C. §1735f-14(b)(1)(D) or (F), 30.36, or 30.50 for violation of 12 U.S.C. 1723i(b)(1)(G) or (I), the Secretary shall inform the Attorney General of the United States, which may be accomplished by providing a copy of the complaint. The Secretary shall include in the body of the complaint a statement confirming that this action was taken.

[61 FR 50215, Sept. 24, 1996, as amended at 74 FR 2752, Jan. 15, 2009]

§ 30.90 Response to the complaint.

(a) *Request for a hearing.* If the respondent desires a hearing before an administrative law judge, the respondent shall submit a request for a hearing to HUD and the Office of Hearings and Appeals no later than 15 days following receipt of the complaint, as required by statute. This mandated period cannot be extended.

(b) *Answer.* In any case in which the respondent has requested a hearing, the respondent shall serve upon HUD and file with the Office of Hearings and Appeals a written answer to the complaint within 30 days of receipt of the complaint, unless such time is extended by the administrative law judge

for good cause. The answer shall 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 should be less than the amount sought in the complaint, based on the factors listed at §30.80; and the name, address, and telephone number of the person who will act as the respondent's representative, if any.

(c) *Filing with the administrative law judges.* HUD shall file the complaint and response with the Docket Clerk, Office of Hearings and Appeals, in accordance with §26.38 of this chapter. If no response is submitted, then HUD may file a motion for default judgment, together with a copy of the complaint, in accordance with §26.41 of this title.

[61 FR 50215, Sept. 24, 1996, as amended at 74 FR 2752, Jan. 15, 2009; 74 FR 7313, Feb. 17, 2009; 74 FR 4635, Jan. 26, 2009; 78 FR 4060, Jan. 18, 2013]

§ 30.95 Hearings.

Hearings under this part shall be conducted in accordance with the procedures applicable to hearings in accordance with the Administrative Procedure Act, set forth in 24 CFR part 26.

[74 FR 2752, Jan. 15, 2009]

§ 30.100 Settlement of a civil money penalty action.

The officials listed at subpart B of this part, or their designees (or the Mortgagee Review Board, or designee, for violations under §30.35), are authorized to enter into settlement agreements resolving civil money penalty actions that may be brought under part 30.

[74 FR 2752, Jan. 15, 2009]

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

Subpart A—Disclosure of Known Lead-Based Paint Hazards Upon Sale or Lease of Residential Property

Sec.

35.80 Purpose.

35.82 Scope and applicability.