

CHAPTER SEVEN: PROGRAM COMPLIANCE

7.1 GENERAL

While one of HUD's key objectives is building a constructive working relationship with owner/agents, Loan/Asset Management staff need to be prepared to take actions to compel owners to meet their responsibilities if they fail to fulfill their obligations to HUD. These actions include enacting sanctions against owners/agents who violate the provisions of their agreement/contract with HUD. Strong actions, such as sanctions, will only be taken when owners/agents do not work with HUD to correct problems at their projects.

This chapter reviews HUD's authority to enforce compliance, describes the major types of violations that can occur, discusses the sanctions available to Field Offices in the event violations occur, presents the procedures Loan/Asset Management staff should follow when they believe a violation has occurred, and outlines additional enforcement actions that can be taken in the event of continued noncompliance by owners/agents.

7.2 AUTHORITY

The statutes establishing the programs for HUD-insured and HUD-assisted properties provide HUD with the authority to impose civil and criminal penalties in the event owners and/or their agents violate program requirements.

Further, the Management Certification, Forms HUD-9839-a, b, or c establishes that the management agent agrees to comply with all applicable requirements and advises the agent that HUD may impose civil and criminal penalties in the event the agent commits certain violations.

7.3 COMPLIANCE VIOLATIONS

a. Compliance violations occur when owners/agents fail to meet their responsibilities set forth in the HUD regulatory agreement or assistance contract governing the property. The applicable HUD Handbooks describe these responsibilities in greater detail. Chapter 6, Section 1 of this handbook summarizes the principal owner/agent responsibilities and references other handbooks as appropriate.

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b. Types of Violations. Compliance violations fall into five major categories.

(1) Failure to Adequately Maintain the Physical Condition of the Property. If an owner/agent has received proper notice of a deficient physical condition and failed to take the necessary action to correct the problem, the owner/agent may be considered in violation of the applicable HUD agreement/contract.

EXAMPLE: A physical inspection of a Section 8 Substantial Rehabilitation project revealed electrical hazards and inadequate heating. If the owner agent failed to take the corrective actions specified in the notice from HUD within the required time period, the owner agent would be in violation of the project's HAP Contract.

(2) Failure to Follow Proper Management Practices. If an owner/agent receives an unsatisfactory rating during a HUD management review and does not take the necessary actions to improve management performance at the project, the owner/agent may be considered in violation of the applicable HUD agreement/contract.

EXAMPLE: The results of a management review conducted at a 236 project indicated that the owner/agent was not following proper resident selection and occupancy procedures. After 30 days, if no steps had been taken to correct deficient practices, the owner/agent would be in violation of the regulatory agreement for the property.

(3) Financial Management Practices Inconsistent with HUD Requirements. If a review of a project's financial documents reveals that the owner's/agent's procedures for handling its financial operations are not consistent with HUD requirements, the owner/agent may be considered in violation of the applicable HUD agreement/contract.

EXAMPLE: A review of the audited financial statements for a 221 (d)(3) BMIR project reveals that the agent incorrectly allocated salary and fringe benefit costs for supervisory personnel to the project account. If the agent fails to return the improperly allocated funds to the project account, the agent would be in violation of the project's regulatory agreement.

(4) Failure to Follow Proper Record-Keeping and Reporting Requirements. If the owner/agent fails to maintain project books and records in a reasonable condition for proper audit under HUD requirements or an owner/agent does not provide the required reports to HUD, the owner/agent may be considered in violation of the applicable HUD agreement/contract.

EXAMPLE: If the management agent of a 221(d)(4) project failed to keep the necessary financial records and was unable to submit a properly audited annual financial statement, the agent would be in violation of the project's regulatory agreement.

(5)Failure to Observe Fair Housing/Equal Opportunity Requirements. If the owner/agent is found to have discriminated against applicants or tenants on the grounds of race, color, creed, national origin, gender, age, or familial status, the owner/agent may be considered in violation of the applicable HUD agreement/contract.

EXAMPLE: A review of tenant selection records reveals that a management agent of a Section 8 project not designed exclusively for the elderly was giving preference to households without children.

c. Detecting Violations

1. The monitoring and follow-up activities described in Chapter 6 of this handbook are the primary methods for identifying when violations have occurred. Again, these activities are:

- (a) Physical inspections;
- (b) Management reviews; and
- (c) Financial reviews.

2. Loan/Asset Management staff may also discover violations through less formal sources. These sources include:

- (a) Reports from project residents or a local tenant organization;
- (b) Information provided by a state or local government entity, such as a public housing authority or social service agency;
- (c) Complaints from neighborhood organizations; or
- (d) Information from the mortgagee for the project.

If the information provided by these sources indicates that a violation may exist, Loan/Asset Management staff should take the necessary steps to gather any additional details needed to properly assess whether a violation has occurred.

7.4 TYPES OF SANCTIONS

a. HUD Field Office staff may pursue removal of the agent or appropriate civil and/or criminal penalties as sanctions for violations of HUD Regulatory Agreements and insured housing program requirements. These sanctions are listed below. Sanctions that may be used in cases of subsidy contract violations are listed in the subsidy contract for the project.

b. Removal of an Agent. HUD Field Office staff may request that the owner terminate the agent's contract.

(1) When an agent is removed, all records and assets are to be turned over to the owner immediately, but in no event more than 30 days after the date of termination.

(2) If the agent is liable under state law for unpaid bills, then the agent may withhold the money required to pay these expenses.

c. Civil Penalties. HUD Field Office staff may seek to impose the following civil penalties as appropriate.

(1) A penalty of up to \$25,000 for violations of the project's Regulatory Agreement.

(2) A penalty of up to \$25,000 for violations of an agreement to use non-project funds for specific project needs (e.g., payments to the replacement reserve account) as a condition of a transfer of physical assets (TPA), a Flexible Subsidy loan, a modification of the mortgage terms, or a workout agreement.

(3) A penalty up to double the value of the assets and project income that the court determines was used in violation of the project's Regulatory Agreement or any applicable regulation.

(4) Referral to the Attorney General with a recommendation for civil action, including mandatory or injunctive relief, for non-compliance with fair housing statutes.

SPECIAL NOTE: Civil money penalties cannot be collected for violations that are caused by the Department.

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d. Criminal Penalties. HUD Field Office staff may seek to impose the following criminal penalties as appropriate.

(1)A fine of up to \$250,000 or imprisonment of not more than five years for willfully using or authorizing the use of any part of the project's rent, assets, proceeds, income, or other funds for purposes other than meeting actual or necessary expenses during a period when the mortgage note is in default or the project is in a non-surplus cash position.

(2)A fine of not more than \$10,000, imprisonment of not more than five years, or both for knowingly and willfully falsifying, concealing, or making any false, fictitious, or fraudulent statements. This penalty also applies to the acts of making a false document or using a document while knowing it to contain any false, fictitious, or fraudulent information.

(3)A fine of not more than \$5,000, imprisonment of up to two years, or both for:

(a)Knowingly making or signing false statements; or

(b)Willfully overvaluing any security, asset, or income for purposes of obtaining any HUD-insured loan or advance of credit; or

(c)Willfully overvaluing any security, asset, or income for purposes of obtaining any extension or renewal of any loan, advance of credit or mortgage or acceptance, release, or substitution of any security on such loan.

7.5 PROCEDURES FOR RESPONDING TO VIOLATIONS

a. Advise Owner/Agent of Possible Violations. If information obtained from monitoring activities or other sources indicates that a violation may have occurred, Loan/Asset Management staff must notify the owner/agent in writing.

(1)For HUD-insured projects, the notice should:

(a)State the specific violation that may have occurred and cite the paragraph of the Regulatory Agreement, other agreement, contract, certification, or warranty that may have been violated.

(b)Indicate that the violation, if established, may subject the owner/agent to administrative sanctions, civil money penalties, and/or criminal penalties.

(c)Request that the owner/agent respond in writing to the allegation. In the response, the owner/agent should admit or deny that the violation has taken place, and provide a justification for the actions in question.

(d)Allow the owner a reasonable amount of time to investigate the allegation and submit a response.

(2)For HUD-assisted projects, Loan/Asset Management staff should follow the procedures included in HUD Handbook 4350.5.

b.Establishing the Presence of a Violation

(1)In determining whether a violation has taken place, Loan/Asset Management staff should thoroughly review all explanations and supporting documentation submitted by the owner.

(2)If necessary, interview the owner/agent and or any other project representatives associated with the alleged violation to gather additional information. All contact should be documented with a letter confirming that the conversation took place and reviewing the information provided.

(3)If there is any doubt about whether a violation has taken place, Loan/Asset Management staff should discuss the matter with Field Counsel, the Office of General Counsel, or Headquarters Desk Officers in the Office of Housing Management.

(4)If the owner's/agent's response fails to provide adequate explanation and justification that the circumstances associated with the allegation do not constitute a violation as stated in the notice to the owner, Loan/Asset Management staff should make the determination that the owner/agent has committed the alleged violation.

(5)If the owner's/agent's response provides sufficient evidence that the alleged violation did not occur, Loan/Asset Management staff should document in the project file the evidence that led to this determination. Loan/Asset Management staff should also prepare a letter to the owner/agent indicating that in light of the owner's/agent's response, no further action is being taken at this time.

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c.Issuing a Notice of Violation. If the Field Office determines

that the violation did occur, Loan/Asset Management staff must send the owner/agent a letter indicating that the response provided was inadequate and explaining why. The letter must also state that:

(1)HUD has declared the owner/agent in violation of the identified provision of the statute, Regulatory Agreement, other agreement, assistance contract, certification, or warranty.

(2)The owner/agent must remedy the violation within the specified reasonable period of time.

(3)If the violation is not corrected within the required time period, the owner/agent will face possible administrative sanctions, or civil and/or criminal penalties.

(4)The owner/agent is required to respond in writing to this notice within 10 working days. The response must state the corrective action the owner will take and agree to provide certified, written confirmation that these actions have been properly executed once the violation has been remedied.

d.Verifying Corrective Actions

(1)Upon receiving the owner's/agent's certification that the violation has been corrected, Loan/Asset Management staff must take any steps necessary to verify within a reasonable period of time that the correction has been made.

NOTE: Loan management staff must independently verify that a violation has been corrected even if the owner/agent submits a third party certification of compliance.

(2)If the corrections have been made to HUD's satisfaction, Loan/Asset Management staff should notify the owner/agent of this determination once compliance has been verified.

e.Continued Noncompliance. Field Offices will use their authority to impose sanctions whenever necessary to enforce program requirements.

(1)If a compliance certification is not received within the time period set forth in the violation notice, Loan/Asset Management staff should take steps to assess the extent to which the owner/agent has worked to correct the violation.

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(2)After reviewing owner/agent progress in addressing the violation, Loan/Asset Management staff should consider

whether sanctions will be necessary to compel the owner/agent to take the necessary corrective actions.

(3)Field Office staff should submit recommendations for prosecution to obtain civil and criminal penalties to the Regional Counsel. While administrative sanctions do not require action by the Regional Counsel, Field Offices may wish to have the counsel review the matter.

7.6 ADDITIONAL ENFORCEMENT ACTIONS

a.In cases of extended noncompliance, HUD will consider taking the following enforcement actions.

(1)Initiate legal action to place the property in receivership.

(2)Terminate the project's assistance contracts.

(3)Take steps to have the property declared in default of the mortgage and initiate foreclosure proceedings.

b.These actions may be taken without further notice to the owner/agent.