

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:)	
)	
Premium Capital Funding, LLC,)	HUDALJ 10-M-121-CMP/17
d/b/a Topdot Mortgage,)	OGC Case No. 09-9873-MR
)	
Respondent.)	
)	

DEFAULT JUDGMENT AND ORDER

I. Procedural History

On May 5, 2010, the United States Department of Housing and Urban Development (“HUD”) instituted this action by filing the Government’s Complaint for Civil Money Penalties (“Complaint” or “Compl.”) against Premium Capital Funding, doing business as Topdot Mortgage (“Respondent”), alleging 189 counts of failure to meet HUD/Federal Housing Administration (“FHA”) requirements, in violation of the National Housing Act, as amended (“NHA”), 12 U.S.C. §§ 1701 *et seq.* The Complaint includes a prayer for relief for civil money penalties in the aggregate amount of \$674,000, as authorized by 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35(a). The regulations governing this administrative proceeding are 24 C.F.R. Part 26, Subpart B, and 24 C.F.R. Part 30 (“Rules”).

The Complaint informed Respondent, *inter alia*, as follows:

**X. NOTICE OF HEARING RIGHTS AND PROCEDURES
WITH RESPECT TO CIVIL MONEY PENALTIES,
PURSUANT TO 24 C.F.R. § 30.85, et seq.**

Requesting a Hearing

1188. You [footnote omitted] have now been served with a Civil Money Penalties Complaint (“Complaint”) by the U.S. Department of Housing and Urban Development.

1189. You have the opportunity for a hearing on the record on any material fact in the Complaint, or on the appropriateness of the penalty sought.

1190. If you desire a hearing, which will be before an independent Administrative Law Judge, you must submit a request for a hearing to the Office of Administrative Law Judges and HUD no later than fifteen (15) days following receipt of this Complaint, as required by regulation. This fifteen day period for requesting a hearing is mandated by 24 C.F.R. § 30.90(a) and cannot be extended.

Filing a Response

1191. In the event you request a hearing, you must also serve upon HUD, and file with the Office of Administrative Law Judges, a written answer (the "Response") to the Complaint within thirty (30) days of receipt of the Complaint, unless such time is extended by the Administrative Law Judge for good cause.

[specific instructions omitted]

Effect of Failure to Respond to this Complaint

1195. Failure to respond to this Complaint as identified above may result in the imposition of the penalty in the amount sought.

Compl. ¶¶ 1188-1191, 1195.

After the Complaint was served, Respondent filed no request for hearing nor response to the Complaint. On May 3, 2010, HUD filed the Government's Motion for Default Judgment ("Motion" or "Mot.") pursuant to 24 C.F.R. §§ 26.38, 26.41 and 30.90(c), requesting that a default decision be issued against Respondent and that relief be ordered in accordance with the prayer for relief set forth in the Complaint. The Certificate of Service of the Motion indicates that the Motion was served by electronic transmission (e-mail) and first-class mail on May 3, 2010, on "Counsel for Respondent." *See* Certificate of Service of Government's Motion for Default Judgment. HUD states that "[d]ue to an oversight, the Motion was not served on Respondent at the time" *See* Supplemental Certificate of Service of Government's Motion for Default Judgment, n.1.

On August 30, 2010, HUD Administrative Law Judge J. Jeremiah Mahoney issued an Order to Show Cause to Mr. David Brown, President of Premium Capital Funding, LLC, ordering Respondent to show cause by September 17, 2010, why HUD's Motion should not be granted. No response to the Order to Show Cause has been filed to date. On October 18, 2010 Judge Mahoney issued a Notice of Disqualification removing himself as the adjudicator of the case and the undersigned was designated to preside in this matter on October 22, 2010.

On November 10, 2010, HUD served the Motion on Mr. Brown at two addresses via United Parcel Service (“UPS”) overnight and first-class mail. To date, Respondent has not filed a response to the Motion.

II. Applicable Procedural Rules

The Rules at Part 30 provide that a complaint for civil money penalties must be served by “first class mail, personal delivery, or other means.” 24 C.F.R. § 30.85(d). In pertinent part, Part 30 further provides that “[i]f 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 Administrative Law Judges no later than 15 days following receipt of the complaint, as required by statute.” 24 C.F.R. § 30.90(a). Also, “[i]n any case in which respondent has requested a hearing, the respondent shall serve upon HUD and file with the Office of Administrative Law Judges 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.” 24 C.F.R. § 30.90(b). The Rules provide that “[i]f no response is submitted, then HUD may file a motion for default judgment, together with a copy of the complaint, in accordance with [the Rules at Part 26].” 24 C.F.R. § 30.90(c). In turn, Part 26 provides as follows:

§ 26.41 Default.

(a) General. The respondent may be found in default, upon motion, for failure to file a timely response to the Government's complaint. The motion shall include a copy of the complaint and a proposed default order, and shall be served upon all parties. The respondent shall have 10 days from such service to respond to the motion.

(b) Default order. The ALJ shall issue a decision on the motion within 15 days after the expiration of the time for filing a response to the default motion. If a default order is issued, it shall constitute the final agency action.

(c) Effect of default. A default shall constitute an admission of all facts alleged in the Government's complaint and a waiver of respondent's right to a hearing on such allegations. The penalty proposed in the complaint shall be set forth in the default order and shall be immediately due and payable by respondent without further proceedings.

24 C.F.R. § 26.41. Motions may be served “by delivery, first-class mail, overnight delivery, facsimile transmission, or electronic means.” 24 C.F.R. § 26.30(b). When service is made by overnight delivery or first-class mail, “service is complete upon deposit in the mail.” *Id.*

III. Motion for Default

In its Motion, HUD states that Respondent and Respondent's counsel received the Complaint on March 4, 2010, and March 2, 2010, respectively. Mot. ¶ 4. HUD presents in support thereof two U.S. Postal Service ("USPS") certified mail receipts and two USPS "Track and Confirm" delivery confirmation documents featuring receipt numbers matching those on the certified mail receipts. Mot. Ex. 3. These show delivery of the parcel addressed to Respondent at 125 Jericho Turnpike, Suite 400, Jericho, New York, and Respondent's counsel in Washington, D.C., on the dates alleged. *Id.* HUD also presents the Declaration of Nilda Gallegos ("Declaration" or "Decl."), dated May 3, 2010, in which Ms. Gallegos states that on February 26, 2010, she served a copy of the Complaint via USPS certified mail to the last known addresses of Respondent and Respondent's counsel, and that she had "not received a request for a hearing from Respondent." Mot. Ex. 2. Further, in a November 24, 2009 letter, Respondent responded to HUD's Pre-Penalty Notice, which HUD had sent (pursuant to 24 C.F.R. § 30.70) to Respondent's last known address of 125 Jericho Turnpike, Suite 400, Jericho, New York. Compl. ¶ 14.

The Rules at Part 30 do not require proof of service of a complaint, however, Exhibit 3 to the Motion shows not only that a parcel was mailed in an appropriate manner to Respondent, but also that Respondent received such parcel. Respondent was properly served with the Complaint in accordance with the Rules. Likewise, the Motion, having been served by overnight delivery and first-class mail to Respondent's last known address, was properly served. To date, this Tribunal has not received any response to the Complaint or Motion from Respondent.

The undersigned has discretion to decide whether to grant or deny a request for default judgment, as the Rules state that a respondent who fails to file a timely response "*may be found in default.*" 24 C.F.R. § 26.41(a) (emphasis added). It has been held that default judgment is disfavored by law, and that all doubts should be resolved in favor of determination on the merits. *Sec'y o/b/o Davis v. Ucci*, HUDALJ 02-94-0016-8 (March 17, 1995). However, in the present case, given the evidence of proper service of the Complaint and Motion, and Respondent's complete failure to respond to the Complaint, the Order to Show Cause, and the Motion, a finding of default is warranted.

It is concluded that Respondent is in default for failure to file a response to the Complaint within the time limits set out in 24 C.F.R. § 30.90. Respondent's default constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing on such allegations. 24 C.F.R. § 26.41.

Accordingly, the Government's Motion for Default Judgment is **GRANTED**, based upon the entire record and the following Findings of Fact and Conclusions of Law.

IV. Findings of Fact and Conclusions of Law

1. The Secretary of the Department of Housing and Urban Development (“HUD”) has authority under the National Housing Act (“Act”), 12 U.S.C. § 1735f-14(b)(1), to impose a civil money penalty on any mortgagee or lender with a mortgage insured by HUD pursuant to the Act, who knowingly and materially violates any provision of Title II of the Act or any implementing regulation, handbook, or Mortgage Letter that is issued under the Act. Compl. ¶ 4; 12 U.S.C. § 1735f-14(b)(1). The Secretary has delegated the authority to initiate such a civil money penalty action to the Mortgage Review Board (“the Board”), which was established within HUD’s Office of the Assistant Secretary for Housing - Federal Housing Commissioner. 24 C.F.R. § 30.35(a); 12 U.S.C. § 1708(c)(1).
2. Respondent, Premium Capital Funding, LLC, d/b/a/ Topdot Mortgage, Mortgagee No. 23689-0001-0, was, at all times relevant to the Complaint, a corporation registered to do business in New York, and a HUD/FHA-approved mortgagee, as defined in 24 C.F.R. § 202.2. Respondent’s last known business address is 125 Jericho Tpke., Suite 400, Jericho, New York 11753. Compl. ¶ 2; Mot. Ex. 1.
3. On April 21, 2006, HUD approved Respondent as a Non-Supervised Mortgagee, as defined in 24 C.F.R. § 202.7, and Respondent obtained Direct Endorsement approval pursuant to 24 C.F.R. §§ 203.3 and 203.5 and Direct Lender Program approval. Compl. ¶ 73. When Respondent executed its Application for Approval with HUD, it agreed to comply with HUD regulations and other requirements. Comp. ¶ 74.
4. HUD has established requirements for the origination and underwriting of FHA-insured loans in 24 C.F.R. Parts 202 and 203, and in HUD Handbooks 4000.4 REV-1, 4000.2 REV-3, 4060.1 REV-2, and 4155.1 REV-5. Compl. ¶ 75.
5. HUD’s Special Work Assessment Team reviewed Respondent’s HUD/FHA-insured mortgage loan origination activities and determined that Respondent had violated numerous HUD/FHA requirements. Compl. ¶ 13; Mot. Ex. 1.
6. Prior to issuance of the Complaint, in a letter dated October 1, 2009, constituting a Pre-Penalty Notice as required by 24 C.F.R. § 30.70, the Board notified Respondent that it was considering taking administrative action and imposing civil money penalties “based on violations of HUD/FHA requirements by [Respondent] . . . which were discovered during a review of [Respondent’s] HUD/FHA loan origination activities during the week of March 18, 2009.” Compl. ¶ 14; Mot. Ex. 1.
7. Respondent responded to the Notice in a letter dated November 24, 2009. Compl. ¶ 16. The Board determined to seek civil money penalties against Respondent in the amount of \$674,000. Compl. ¶ 17.

Counts 1-39

8. Pursuant to 24 C.F.R. §§ 202.5(h) and 203.5(c), mortgagees and Direct Endorsement mortgagees are required to maintain and implement a quality control plan that incorporates underwriting procedures that evidence due diligence and that meets HUD's requirements, which are prescribed at HUD Handbook 4060.1, REV-2, Chapter 7.
9. Mortgagees approved to originate Home Equity Conversion Mortgages ("HECMs") must include in their quality control programs a provision requiring the review of HECMs to ensure that homeowners receive the appropriate counseling and that any referral fees paid are reasonable for the service provided and are appropriately disclosed. Compl. ¶ 119. Respondent had notice of this requirement via HUD Handbook 4060.1, REV-2, Chapter 7, paragraph 7-9(C).
10. Respondent was approved to originate HECMs. Compl. ¶ 121. Respondent's quality control plan failed to include any reference to HECM borrowers receiving counseling or ensuring that referral fees are reasonable. Compl. ¶ 122.
11. Respondent knowingly, as defined under 12 U.S.C. § 1735f-14(g), violated HUD regulations as set forth in 24 C.F.R. §§ 202.5(h) and 203.5(c), by not including the HECM provisions required by HUD Handbook 4060.1, REV-2, Chapter 7, paragraph 7-9(C) in its quality control plan. Respondent's violation was material, as defined by 24 C.F.R. § 30.10. Compl. ¶¶ 8-12, 132.
12. Respondent's knowing and material violation of failing to include the required HECM provisions in its quality control plan constitutes grounds for imposing a civil money penalty pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35(a). Compl. ¶ 133.
13. Respondent had notice via HUD Handbook 4060.1, REV-2, Chapter 7, paragraph 7-3(D) that mortgagees are required to take prompt action to deal appropriately with any material findings from quality control reviews, which may include the issuance of a final report identifying corrective actions to be taken, a timetable for their completion, and any planned follow-up activities. Compl. ¶¶ 123-126.
14. Respondent's independent contractor identified thirty-eight (38) loans as grade 4, which means they did not meet FHA guidelines. Compl. ¶ 127; *see* Compl. at 21. Respondent failed to take any action in response to the contractor's findings with respect to nine (9) of those loans. Compl. ¶ 128. Respondent issued responses with respect to twenty-two (22) of those loans before the contractor completed its review of those loans and published its findings. Compl. ¶ 129. Respondent's responses to the contractor's review of seven (7) of those loans did not address the contractor's material findings, nor did they include a timetable for completion or planned follow-up activities. Compl. ¶ 130.

15. Respondent knowingly, as defined under 12 U.S.C. § 1735f-14(g), violated HUD regulations in 24 C.F.R. § 202.5(h), by failing to take the appropriate action in response to quality control reviews, as required by HUD Handbook 4060.1, REV-2, Chapter 7, paragraph 7-3. Respondent's violation was material, as defined by 24 C.F.R. § 30.10. Compl. ¶¶ 8-12, 135-137.
16. Respondent's knowing and material violations with respect to quality control review of thirty-eight (38) loans constitute grounds for imposing civil money penalties pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35(a). Compl. ¶ 138.

Counts 40-58

17. Respondent had notice through HUD Handbook 4060.1, REV-2, Chapter 7, paragraphs 7-6(D) and (E) that mortgagees are required to perform quality control reviews for each early payment default loan going into default within the first six payments, and to have a quality control program that provides for the review and confirmation of information contained in loan applications, including income and asset reverification and credit report and appraisal reviews on all loans selected for review. Compl. ¶¶ 142-143.
18. Respondent failed to perform a complete quality control review of ten (10) loans because Respondent never reviewed or confirmed the information contained in the loan application nor completed an income and asset reverification or credit report and appraisal review. Compl. ¶ 145. Respondent failed to perform any quality control reviews of nine (9) loans that became sixty days past due within the first six mortgage payments. Compl. ¶ 146.
19. Respondent knowingly, as defined under 12 U.S.C. § 1735f-14(g), violated HUD regulations in 24 C.F.R. § 202.5(h), by failing to conduct quality control reviews of certain loans as required by HUD Handbook 4060.1, REV-2, Chapter 7, paragraphs 7-6(D) and (E). Respondent's violations were material, as defined by 24 C.F.R. § 30.10. Compl. ¶¶ 8-12, 147-149.
20. Respondent's knowing and material violations with respect to quality control review of nineteen (19) loans constitute grounds for imposing civil money penalties pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35(a). Compl. ¶ 150.

Counts 59-61

21. Respondent had notice through HUD Handbook 4155.1, REV-5, Chapter 3, and HUD Handbook 4060.1, REV-3, Chapter 3, paragraphs 3-4 and 3-5, that mortgagees are required to have sufficient information to support its decision to approve mortgage loans,

ask borrowers questions to elicit details about their financial situation, and resolve any discrepancies or inconsistencies in application documentation before approving the loan. Compl. ¶¶ 153-157.

22. Respondent failed to resolve discrepancies in the applications and related documentation for three (3) loans and submitted the loans for HUD insurance endorsement without explanatory statements or supplementary documentation. Compl. ¶¶ 159-169.
23. Respondent knowingly, as defined under 12 U.S.C. § 1735f-14(g), violated HUD regulations in 24 C.F.R. §§ 203.5(c) and (d), and § 203.34, by failing to gather sufficient information and resolve discrepancies in three (3) loan applications and related documentation before submitting them to HUD for approval, as required by FHA regulations in HUD Handbook 4155.1, REV-5, Chapter 3, and HUD Handbook 4060.1, REV-3, Chapter 3, paragraphs 3-4 and 3-5. Compl. ¶¶ 153-154. Respondent's violations were material, as defined by 24 C.F.R. § 30.10. Compl. ¶¶ 8-12, 171-173.
24. Respondent's knowing and material violations with respect to discrepancies in the information listed in three (3) mortgage loan applications constitute grounds for imposing civil money penalties pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35(a). Compl. ¶ 174.

Counts 62-75

25. Through HUD Handbook 4155.1, REV-5, Chapter 2, Section 2, paragraphs 2-6, 2-7(B), (C), (E), (F), (M), (O), 2-9(B) and Chapter 3, paragraph 3-1(E), Respondent had notice of the required procedures by which mortgagees must evaluate borrowers' credit history and their capacity to make payments on the loan and hold enough assets to close the mortgage, and generally prescribe the requirements for underwriting and qualifying borrowers. Specifically, a mortgagee is required to verify borrowers' employment for the most recent two full years, and verify and document any form of effective income used to qualify a borrower for a loan pursuant to the due diligence standards set forth in HUD Handbooks and the mandate to comply with them in 24 C.F.R. §§ 203.5(c) and (d). Compl. ¶¶ 177-181.
26. With respect to fourteen (14) loan applications Respondent submitted to HUD for FHA-insurance endorsement, Respondent failed to adequately document the borrowers' stable two-year employment history and/or other forms of effective income. Compl. ¶¶ 80, 177. Paragraphs 182 through 267 of the Complaint, which more fully describe the facts involved in these violations, are hereby incorporated herein by reference.
27. Respondent knowingly, as defined under 12 U.S.C. § 1735f-14(g), violated HUD regulations in 24 C.F.R. §§ 203.5(c) and (d), by failing to properly verify income and

compliance with minimum employment requirements pertaining to borrowers' applications for fourteen (14) loans before submitting them to HUD for endorsement, as prescribed by FHA regulations in HUD Handbook 4155.1, REV-5, Chapters 2 and 3. Compl. ¶¶ 80, 268. Respondent's violations were material, as defined by 24 C.F.R. § 30.10. Compl. ¶¶ 8-12, 269-272.

28. Respondent's knowing and material violations of failing to adequately document employment history and income information with respect to fourteen (14) mortgage loan applications constitute grounds for imposing civil money penalties pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35(a). Compl. ¶ 273.

Counts 76-125

29. Through HUD Handbook 4155.1, REV-5, Chapter 2, Section 2, paragraphs 2-12, 2-13, and Mortgagee Letter 05-16, Respondent had notice of the required procedure for calculating borrowers' debt-to-income ratio, by which mortgagees can determine whether borrowers meet homeownership expenses, and the requirement that the mortgagee remark whether there are sufficient compensating factors in cases where the ratios exceed HUD guidelines, before the loan is submitted to HUD for FHA-insurance endorsement, in order to meet the due diligence standards required by 24 C.F.R. §§ 203.5(c) and (d). Compl. ¶¶ 277, 279.
30. With respect to fifty (50) loans Respondent submitted to HUD for FHA-insurance endorsement, Respondent failed to document any significant compensating factors to justify approval of the loans, when the debt-to-income ratios for the loans' borrowers exceeded HUD's standards as set forth in FHA regulations. Compl. ¶¶ 81, 276. Paragraphs 281 through 665 of the Complaint, more fully describing the facts of these violations, are hereby incorporated herein by reference.
31. Respondent knowingly, as defined under 12 U.S.C. § 1735f-14(g), violated HUD regulations as set forth in 24 C.F.R. §§ 203.5(c) and (d) by failing to include or document significant compensating factors to support its justification for approving fifty (50) loans that were not otherwise eligible according to the standards of FHA regulations in HUD Handbook 4155.1, REV-5, Chapter 2, Section 2, and Mortgagee Letter 05-16. Compl. ¶¶ 81, 666. Respondent's violations were material, as defined by 24 C.F.R. § 30.10. Compl. ¶¶ 8-12, 667-668.
32. Respondent's knowing and material violations of failing to include compensating factors to justify debt-to-income ratios exceeding HUD standards with respect to fifty (50) loans constitute grounds for imposing civil money penalties pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35(a). Compl. ¶ 669.

Counts 126-136

33. Through HUD Handbook 4155.1, REV-5, Chapter 2, Section 2, Respondent had notice of requirements describing how mortgagees must determine a borrower's capacity to repay a mortgage debt by calculating effective income and establishing income stability, before submitting the loan to HUD for FHA-insurance endorsement, in order to meet the due diligence standards required by 24 C.F.R. §§ 203.5(c) and (d). Section 2-7(A) provides that if overtime income is to be used to determine a borrower's eligibility, the lender must develop an average of overtime income for the past two years. Section 2-9 provides that if the borrower is self-employed, the lender must determine eligibility using the borrower's Federal tax returns from the last two years. Compl. ¶¶ 673-678.
34. With respect to eleven (11) loans Respondent submitted to HUD for FHA-insurance endorsement, Respondent failed to calculate properly the borrowers' effective income in accordance with procedures set forth in the FHA regulations to qualify borrowers for FHA-insured loans. Compl. ¶¶ 82, 672-673. Paragraphs 679 through 762 of the Complaint, more fully describing the facts of these violations, are hereby incorporated herein by reference.
35. Respondent knowingly, as defined under 12 U.S.C. § 1735f-14(g), violated HUD regulations in 24 C.F.R. §§ 203.5(c) and (d), by failing to calculate properly borrowers' effective income in accordance with Handbook 4155.1, REV-5, Chapter 2, Section 2, with respect to eleven (11) loans, and therefore, failing to properly qualify those mortgagors. Compl. ¶¶ 82, 763. Respondent's violations were material, as defined by 24 C.F.R. § 30.10. Compl. ¶¶ 8-12, 764-765.
36. Respondent's knowing and material violations of failing to calculate properly the effective income with respect to the borrowers of eleven (11) loans constitute grounds for imposing civil money penalties pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35(a). Compl. ¶ 766.

Counts 137-177

37. Through HUD Handbook 4155.1, REV-5, Chapter 2, Respondent had notice of the required procedures by which mortgagees must evaluate borrowers' credit history and their capacity to make payments and hold enough assets to close the mortgage, and generally prescribes the requirements for underwriting and qualifying borrowers that satisfy the due diligence standards mandated by 24 C.F.R. §§ 203.5(c), (d) and 203.34. Specifically, mortgagees are required to review borrowers' credit history, and if the credit is derogatory, explain any compensating factors, provide supporting documentation that show the loan should be made regardless, and include the borrowers' explanations in the mortgage application, in accordance with Handbook 4155.1, REV-5, Chapter 2. Compl.

¶¶ 769-775.

38. With respect to forty-one (41) loans Respondent submitted to HUD for FHA-insurance endorsement, Respondent failed to submit sufficient explanation and documentation to show the borrowers should be eligible for the loans in accordance with the standards and procedures set forth in the FHA regulations. Compl. ¶¶ 83, 769. Paragraphs 776 through 1088 of the Complaint, more fully describing the facts of these violations, are hereby incorporated herein by reference.
39. Respondent knowingly, as defined under 12 U.S.C. § 1735f-14(g), violated HUD regulations in 24 C.F.R. §§ 203.5(c), (d) and 203.34 by failing to include sufficient information related to the borrowers' payment capacity in forty-one (41) loans submitted to HUD in accordance with the FHA regulations in HUD Handbook 4155.1, REV-5. Compl. ¶¶ 83, 769. Respondent's violations were material, as defined by 24 C.F.R. § 30.10. Compl. ¶¶ 8-12; *see* ¶¶ 776-1088.
40. Respondent's knowing and material violations of failing to provide sufficient information to HUD with respect to forty-one (41) loans constitute grounds for imposing civil money penalties pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35(a). Compl. ¶ 83.

Counts 178-185

41. Through HUD Handbook 4155.1, REV-5, Chapters 2 and 3, Respondent had notice of the requirements for underwriting and qualifying borrowers that satisfy the due diligence standards mandated by 24 C.F.R. §§ 203.5(c), (d) and 203.34. Specifically, mortgagees cannot omit liabilities from the underwriting process without documenting the reasons for exclusion, and must include recurring charges extending ten months or more in the borrowers' debt-to-income ratios. Compl. ¶¶ 1091-1093.
42. With respect to eight (8) loans Respondent submitted to HUD for FHA-insurance endorsement, Respondent failed to document the reasons for omitting certain liabilities from the underwriting process. Compl. ¶¶ 84, 1090. Paragraphs 1094 through 1133 of the Complaint, more fully describing the facts of these violations, are hereby incorporated herein by reference.
43. Respondent knowingly, as defined under 12 U.S.C. § 1735f-14(g), violated HUD regulations in 24 C.F.R. §§ 203.5(c), (d) and 203.34 by failing to document the reasons for omitting borrowers' liabilities in its underwriting in eight (8) loans submitted to HUD according to the FHA regulations in HUD Handbook 4155.1, REV-5. Compl. ¶ 1134. Respondent's violations were material, as defined by 24 C.F.R. § 30.10. Compl. ¶¶ 1135-1136.

44. Respondent's knowing and material violations of failing to document the reasons for omitting borrowers' liabilities in underwriting eight (8) loans constitute grounds for imposing civil money penalties pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35(a). Compl. ¶ 1137.

Count 186

45. Mortgagees shall have property appraised in accordance with the regulations set forth by the Secretary, and the appraisal shall be conducted by an appraiser on the FHA roster. 24 C.F.R. § 203.5(e). Through HUD Handbook 4150.2, CHG-1, Chapter 1, paragraph 1-1(A), Respondent had notice that an appraiser must be state-licensed or state-certified to be placed on the FHA roster. Chapter 5 of the same Handbook, paragraph 5-1(A)(2) requires that the appraisal be certified to HUD. Compl. ¶¶ 1141-1142.
46. With respect to one (1) loan Respondent submitted to HUD for FHA-insurance endorsement, Respondent failed to have an appraisal conducted by an appraiser listed on the FHA roster. Compl. ¶¶ 85, 1148. Paragraphs 1140 through 1148 of the Complaint, more fully describing the facts of this violation, are hereby incorporated herein by reference.
47. Respondent knowingly, as defined under 12 U.S.C. § 1735f-14(g), violated HUD regulation as set forth in 24 C.F.R. § 203.5(e) and Handbook 4150.2 by submitting one (1) loan for approval to HUD without certification that an appraisal was conducted by an approved appraiser. Compl. ¶ 1149. Respondent's violation was material, as defined by 24 C.F.R. § 30.10. Compl. ¶¶ 1150-1151.
48. Respondent's knowing and material violation of submitting a loan without a proper appraisal constitutes grounds for imposing civil money penalties pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35(a). Compl. ¶ 1152.

Count 187

49. Through HUD Handbook 4155.1, REV-5, Chapter 2, paragraph 2-2(B), Respondent had notice that when a mortgage loan applicant indicates on a loan application that he or she is not a U.S. citizen, the lender is required to determine residency status from borrower-provided documentation and submit evidence of lawful residency in the United States, before the loan is approved. Compl. ¶¶ 1156-1157.
50. With respect to one (1) loan Respondent submitted to HUD for FHA-insurance endorsement, Respondent failed to obtain and provide the requisite evidence of the borrower's legal resident status. Compl. ¶¶ 86, 1159-1161. Paragraphs 1159 through

1161 of the Complaint, more fully describing the facts of this violation, are hereby incorporated herein by reference.

51. Respondent knowingly, as defined under 12 U.S.C. § 1735f-14(g), violated HUD regulation as set forth in HUD Handbook 4155.1, REV-5, Chapter 2, paragraph 2-2(B) by submitting one (1) loan for approval to HUD without evidence that the borrower holds legal residency in the United States. Compl. ¶ 1162. Respondent's violation was material, as defined by 24 C.F.R. § 30.10. Compl. ¶¶ 1163-1164.
52. Respondent's knowing and material violation of submitting a loan without proper documentation of U.S. residency constitutes grounds for imposing civil money penalties pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35(a). Compl. ¶ 1165.

Counts 188-189

53. The maximum insurable mortgage amount is limited as described in 12 U.S.C. § 1709(b), 24 C.F.R. § 203.18, Mortgage Letter 05-43, and HUD Handbook 4155.1, REV-5, Chapter 1, paragraph 1-11. No loan that exceeds the maximum insurable amount is eligible for FHA insurance. *Id.*; Compl. ¶¶ 1169, 1172. Respondent had notice of these requirements. Compl. ¶¶ 1173.
54. Respondent submitted two (2) loans to HUD for FHA-insurance endorsement despite the loans exceeding HUD's requirements for the maximum insurable mortgage amount, and thereby causing the loans to be ineligible for insurance. Compl. ¶¶ 87, 1168. Paragraphs 1174 through 1181 of the Complaint, more fully describing the facts of this violation, are hereby incorporated herein by reference.
55. Respondent knowingly, as defined under 12 U.S.C. § 1735f-14(g), violated HUD regulation as set forth in HUD Handbook 4155.1, REV-5, Chapter 1, and 24 C.F.R. § 203.18, by submitting two (2) loans for approval to HUD after incorrectly calculating the maximum amount insurable for each loan, resulting in over-insured loans ineligible for FHA insurance. Compl. ¶ 1168. Respondent's violations were material, as defined by 24 C.F.R. § 30.10. Compl. ¶¶ 1183-1184.
56. Respondent's knowing and material violations of the maximum insurable mortgage amount as set forth in the Act and its implementing regulations constitute grounds for imposing civil money penalties pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35(a). Compl. ¶ 1185.

V. The Penalty

In determining the amount of penalty, the following factors must generally be considered: the gravity of the offense, any history of prior offenses, the ability to pay the penalty, injury to the public, any benefits received by the violator, extent of potential benefit to other persons, deterrence of future violations, the degree of the violator's culpability, and such other factors as justice may require. 12 U.S.C. § 1735f-14(c)(3); 24 C.F.R. § 30.80; Compl. ¶ 18. The maximum penalty is \$7,500 for each violation occurring on or after March 8, 2007, and each violation shall constitute a separate violation as to each mortgage or loan application. Compl. ¶ 7; 24 C.F.R. § 30.35(c).

Paragraphs 88-115 of the Complaint discuss the factors for determining penalties as applied to this case. HUD recommends a penalty of \$1,000 for Count 1, \$2,000 for Counts 2 through 39, \$2,000 for Counts 40 through 58, \$7,500 for Counts 59 through 61, \$7,500 for Counts 62 through 75, \$7,500 for Counts 76 through 125, \$7,500 for Counts 126 through 136,¹ \$7,500 for Counts 178 through 185, \$7,500 for Count 186, \$7,500 for Count 187, and \$7,500 for Counts 188 and 189. However, HUD notes that the aggregate civil money penalties recommended would exceed the maximum penalty per loan pursuant to 24 C.F.R. § 30.35(c)(1), and therefore seeks the imposition against Respondent of a total civil money penalty of \$674,000. Compl. ¶ 1187, n.1.

The Rules provide that upon a finding of default, “[t]he penalty proposed in the complaint shall be set forth in the default order and shall be immediately due and payable by respondent without further proceedings.” 24 C.F.R. § 26.41. Accordingly, payment of the \$674,000 penalty proposed by HUD in the Complaint is hereby imposed on Respondent pursuant to 12 U.S.C. § 1735f-14(b)(1) and 24 C.F.R. § 30.35.

¹ HUD fails to list the total penalty amount sought for the violations listed in Counts 137 through 177.

ORDER

1. The Government's Motion for Default Judgment is hereby **GRANTED**. Respondent **Premium Capital Funding, LLC, d/b/a Topdot Mortgage**, is hereby found in **DEFAULT**, and is deemed to have admitted all the allegations in the Complaint and waived its right to a hearing thereon.
2. Civil money penalties in the aggregate amount of **Six Hundred Seventy-Four Thousand Dollars (\$674,000)** are hereby assessed against Respondent, Premium Capital Funding, LLC, d/b/a Topdot Mortgage, Mortgagee No. 23689-0001-0, for the one hundred eighty-nine (189) violations of the National Housing Act for which Respondent was found liable herein. Such amount is due and payable immediately without further proceedings. 24 C.F.R. § 26.41(c).
3. In accordance with 24 C.F.R. § 26.41(b), this Order shall constitute the **final agency action**.



Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency²

Dated: December 7, 2010
Washington, D.C.

In accordance with 12 U.S.C. § 1735f-14(e)(2), "imposition of the penalty shall constitute a final and unappealable determination," except that review of the imposition of penalties may be had by filing, within twenty (20) days after entry of this Order, a petition with the appropriate United States Court of Appeals. 12 U.S.C. § 1735f-14(d). Further, if Respondent fails to comply with this Order, the Secretary may request the Attorney General of the United States to bring an action against it in an appropriate United States district court to obtain a monetary judgment. 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. 12 U.S.C. § 1735f-14(e).

² The Administrative Law Judges of the United States Environmental Protection Agency are authorized to hear cases pending before the United States Department of Housing and Urban Development pursuant to an Interagency Agreement effective for a period beginning March 4, 2010.