

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

ACCEPTANCE CAPITAL MORTGAGE
CORPORATION,

Respondent.

19-JM-0142-CM-012

January 9, 2020

RULING ON SUMMARY JUDGMENT

This matter is before the Court upon a *Complaint* filed by the U.S. Department of Housing and Urban Development (“HUD”) against Acceptance Capital Mortgage Corporation (“Respondent”) pursuant to 12 U.S.C. § 1735f-14, as implemented by 24 C.F.R. part 30. The *Complaint* seeks to impose civil money penalties in the amount of \$68,000 against Respondent for allegedly violating its obligations as a HUD-approved mortgagee participating in HUD’s Title II Single Family Mortgage Insurance Program under the National Housing Act, 12 U.S.C. §§ 1701 *et seq.*

The *Complaint* was issued on June 18, 2019. On July 3, 2019, Respondent timely filed a request for hearing pursuant to 12 U.S.C. § 1735f-14(c)(1)(B) and 24 C.F.R. § 30.90(a). Thereafter, the matter was docketed and set for hearing before this Court.

On December 6, 2019, HUD filed a *Motion for Summary Judgment*. Respondent has not filed any response to the motion. On December 17, 2019, the parties jointly filed a notice titled *Consent to Judgment* through which they notified the Court that Respondent had consented to liability and to civil money penalties in the amount of \$68,000, effective December 31, 2019, after which date Respondent would not raise any further defenses or appeals. Because Respondent has consented to liability, the Court will grant summary judgment as stated below.

LEGAL FRAMEWORK

The Title II Single Family Mortgage Insurance Program. Title II of the National Housing Act authorizes HUD, through the Federal Housing Administration (“FHA”), to provide mortgage insurance for certain eligible single-family residential loans. See 12 U.S.C. § 1709; 24 C.F.R. part 203. A mortgagee or lender must obtain and maintain approval from

the FHA to participate in the Title II Single Family Mortgage Insurance Program. 12 U.S.C. § 1709(b)(1); see generally 24 C.F.R. parts 202, 203. The Respondent in this case was an approved mortgagee participating in the Title II Single Family Mortgage Insurance Program¹ as a “non-supervised mortgagee,” as defined by HUD Handbook 4000.1 § I.A.2.b.i. See also 24 C.F.R. § 202.7.

Civil Money Penalties. Section 536 of the National Housing Act authorizes HUD to impose civil money penalties against an approved mortgagee, lender, or other participant in an FHA program for certain knowing and material violations of program requirements. See 12 U.S.C. § 1735f-14; 24 C.F.R. § 30.35. Violations include, *inter alia*, submitting a false certification to HUD; failing to comply with any agreement, certification, or condition of approval relating to the FHA mortgage insurance program; and violating any provision of Titles I or II of the National Housing Act or any implementing regulation or handbook issued under the Act. See 12 U.S.C. § 1735f-14(b)(1)(F)-(H). HUD may impose a maximum civil money penalty in the amount of \$8,500 for each such violation occurring on or after February 19, 2013, and before August 16, 2016. 30 C.F.R. § 30.35(c); 78 Fed. Reg. 4057, 4059 (Jan. 18, 2013); 81 Fed. Reg. 38934 (June 15, 2016).

Before imposing a civil money penalty, HUD must file a complaint that gives the respondent an opportunity to request a hearing on the record. 12 U.S.C. § 1735f-14(c)(1)(B); 24 C.F.R. § 30.85. Hearings are conducted before an Administrative Law Judge in accordance with the Administrative Procedure Act and HUD’s implementing regulations found in 24 C.F.R. part 26. 24 C.F.R. §§ 30.1, 30.95.

Summary Judgment. The procedural regulations governing this matter permit a party to file for summary judgment on all or part of the claim. 24 C.F.R. § 26.40(f). The Federal Rules of Civil Procedure, which are not binding but provide pertinent guidance, state that a court shall grant summary judgment if the moving party shows that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. Pro. 56(a).

DISCUSSION

HUD’s *Complaint* and *Motion for Summary Judgment* charge Respondent with committing eight violations under section 536(b) of the National Housing Act, 12 U.S.C. § 1735f-14(b).

Counts 1 through 4 allege that, in 2014, 2015, and 2016, Respondent knowingly and materially failed to timely notify HUD of four state sanctions it had received, in violation of 24 C.F.R. § 202.5(f); HUD Handbook 4060.1 REV-2, ¶¶ 6-1 and 6-26; and HUD Handbook

¹ The *Complaint* also alleges that Respondent participated in HUD’s Title I insurance program, which covers loans for property improvements and the purchase of manufactured housing. See generally 24 C.F.R. part 201. However, Title I is not otherwise discussed in the *Complaint*.

4000.1, §§ I.A.7.a.ii and I.A.7.u.² Under 12 U.S.C. § 1735f-14(b)(1)(H), an FHA-approved mortgagee such as Respondent may be subject to a civil money penalty for violating the cited regulation and Handbook provisions. In addition, under 12 U.S.C. § 1735f-14(b)(1)(G), a mortgagee may be subject to a civil money penalty for failing to comply with any agreement, certification, or condition relating to its FHA approval.

Counts 5 and 6 allege that Respondent knowingly and materially submitted two false annual certifications to HUD for fiscal years 2015 and 2016, in violation of 24 C.F.R. § 202.5(m) and HUD Handbook 4000.1, § I.A.8.b.³ Under 12 U.S.C. § 1735f-14(b)(1)(H), an FHA-approved mortgagee may be subject to a civil money penalty for violating the cited regulation and Handbook provision. In addition, 12 U.S.C. § 1735f-14(b)(1)(G) provides that a mortgagee may be subject to a civil money penalty for failing to comply with any agreement, certification, or condition relating to its FHA approval, and 12 U.S.C. § 1735f-14(b)(1)(F) provides that a mortgagee may be subject to a civil money penalty for submitting a false certification to HUD.

Count 7 alleges that Respondent knowingly and materially failed to maintain the minimum required adjusted net worth for the Title II program and failed to timely notify the FHA of its net worth deficiency during fiscal year 2015, in violation of 24 C.F.R. § 202.5(n); HUD Handbook 4060.1 REV-2, ¶¶ 2-5 and 6-21; and HUD Handbook 4000.1, §§ I.A.3.c. and I.A.7.g.⁴ Under 12 U.S.C. § 1735f-14(b)(1)(H), an FHA-approved mortgagee may be subject to a civil money penalty for violating the cited regulation and Handbook provisions. In addition, under 12 U.S.C. § 1735f-14(b)(1)(G), a mortgagee may be subject to a civil money penalty for failing to comply with any agreement, certification, or condition relating to its FHA approval.

Count 8 alleges that, by including unacceptable assets in its net worth calculation for fiscal year 2015, Respondent knowingly and materially failed to submit acceptable audited

² The cited regulation and Handbook provisions require an FHA-approved mortgagee to timely notify HUD of any business changes affecting its approval status, including the fact that it has been subject to sanction by a state. In addition, 12 U.S.C. § 1735f-10 requires an approved mortgagee to immediately notify HUD in writing of the application of any state sanctions or penalties against it. In this case, HUD alleges that Respondent was subject to four sanctions imposed by the states of Indiana, Oklahoma, and Ohio. In its September 27, 2019 *Answer* to the *Complaint*, Respondent admitted that it failed to notify HUD of these sanctions through LEAP (the Lender Electronic Assessment Portal), but indicated HUD was already aware of the sanctions.

³ The cited regulatory and Handbook provisions require an FHA-approved mortgagee, as part of its annual recertification of eligibility for continued participation in the FHA program, to certify that it has not been sanctioned by any state in which it will originate FHA-insured mortgages. The *Complaint* alleges that Respondent failed to disclose three state sanctions to HUD during recertification, which Respondent admitted in its *Answer*.

⁴ The cited regulatory and Handbook provisions require FHA-approved mortgagees to maintain a certain specified net worth, as computed under the HUD OIG Handbook 2000.04 (“Consolidated Audit Guide”), and to immediately notify HUD if it falls below the required minimum. In this case, according to HUD, Respondent was required to have an adjusted net worth of \$1,484,277 at the end of fiscal year 2015. The *Complaint* alleges that, although Respondent asserted at that time that its adjusted net worth was \$1,509,231, its actual adjusted net worth, when properly calculated, was only \$867,759. In its *Answer*, Respondent admitted its failure to maintain the required minimum adjusted net worth, but asserted it did not have actual notice it was below the minimum.

financial statements and supplementary reports to HUD, in violation of 24 C.F.R. §§ 202.5(n), 202.7(b)(1), and 202.7(b)(3)(i)(A); HUD Handbook 4060.1 REV-2, ¶ 2-5; HUD Handbook 4000.1, §§ I.A.3.c. and I.A.8.d; and HUD OIG Handbook 2000.04 REV-2, ¶ 7-5(G).⁵ Under 12 U.S.C. § 1735f-14(b)(1)(H), an FHA-approved mortgagee may be subject to a civil money penalty for violating the cited regulations and Handbook provisions. In addition, under 12 U.S.C. § 1735f-14(b)(1)(G), a mortgagee may be subject to a civil money penalty for failing to comply with any agreement, certification, or condition relating to its FHA approval.

HUD's *Complaint* contains detailed factual allegations supporting the charged violations. In its *Motion for Summary Judgment*, HUD asserts it is entitled to judgment against Respondent because the material facts are not in dispute and show that Respondent committed eight violations under 12 U.S.C. § 1735f-14(b)(1) by knowingly and materially failing to timely notify HUD of four state sanctions; submitting two false certifications pertaining to the unreported state sanctions; failing to meet and maintain the required minimum net worth and to timely notify HUD of this failure; and failing to submit acceptable audited financial statements and supplementary reports. Respondent has not filed any response to the *Motion for Summary Judgment*, and has now consented to liability. Accordingly, the Court finds Respondent liable for eight violations under 12 U.S.C. § 1735f-14(b)(1)(F)-(H), as alleged in the *Complaint* and *Motion for Summary Judgment*.

HUD seeks to impose the maximum civil money penalty of \$8,500 for each of the eight violations, for a total penalty of \$68,000. In accordance with the civil money penalty statute and implementing regulations, HUD considered the following factors when determining what amount to propose: (1) the gravity of the offenses; (2) Respondent's history of prior offenses; (3) Respondent's ability to pay; (4) the injury to the public; (5) the benefits received by Respondent; (6) the extent of the potential benefit to other persons; (7) the deterrence of future violations; (8) the degree of Respondent's culpability; and (9) "such other matters as justice may require," under which factor HUD considered that failure to impose a penalty could erode public confidence in the integrity of the FHA program; that the FHA requirements are necessary to protect the fiscal soundness of the FHA insurance programs; and that the public must be assured that FHA program participants will adhere to the reporting requirements. See 12 U.S.C. § 1735f-14(c)(3); 24 C.F.R. § 30.80.

The *Complaint* and *Motion for Summary Judgment* explain, in detail, the considerations that went into HUD's penalty determination. Respondent has now consented to liability in the amount of \$68,000. Accordingly, the Court finds Respondent liable in the amount of \$68,000.

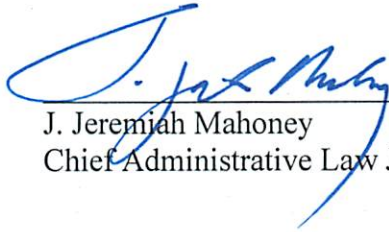
ORDER

HUD's *Motion for Summary Judgment* is **GRANTED**.

⁵ The cited regulatory and Handbook provisions require an FHA-approved mortgagee to maintain the requisite net worth and to submit financial data to HUD that complies with certain financial reporting requirements, including the requirements of HUD OIG Handbook 2000.04. According to HUD, Respondent's financial data did not comply with the OIG Handbook because Respondent knowingly miscalculated its adjusted net worth.

Respondent is hereby **ORDERED** to pay to HUD and the Secretary civil money penalties in the amount of \$68,000. Such penalties are due and payable immediately without further proceeding.

So **ORDERED**,



J. Jeremiah Mahoney
Chief Administrative Law Judge

Notice of Appeal Rights: This *Ruling on Summary Judgment* constitutes the Court's initial decision under 24 C.F.R. § 26.50. Either party may appeal the initial decision to the Secretary within thirty (30) days of the date of its issuance, in accordance with the requirements detailed in 24 C.F.R. § 26.52. Appeal documents may be served upon the Secretary by mail, facsimile, or electronic means at the following address:

U.S. Department of Housing and Urban Development
Attn: Secretarial Review Clerk
451 7th Street S.W., Room 2130
Washington, D.C. 20410
Facsimile: (202) 708-0019
Email: secretarialreview@hud.gov

Finality of Decision: If no timely appeal is filed, this *Ruling on Summary Judgment* becomes the final agency decision pursuant to 24 C.F.R. § 26.50(c). Final agency actions may be appealed to the appropriate United States court pursuant to 5 U.S.C. §§ 701-706.