

U.S. Department of Housing and Urban Development  
H O U S I N G

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Field Office Managers/Chiefs Issued: September 25, 1992  
Directors of Housing  
Directors, Housing Development Divisions  
Directors, Housing Management Divisions

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1. This Transmits Handbook 4060. 2 REV-2, Mortgagee Review Board
  2. Explanation of Material Transmitted: This Handbook incorporates the provisions of the HUD Reform Act of 1989 as it relates to the Department's Mortgagee Review Board including the Board's authority to impose civil money penalties with respect to mortgagees and Title I lenders. The Handbook also incorporates major revisions to the Mortgagee Review Board regulations, 24 CFR part 25.
  3. Filing Instructions: Insert:  
Remove Handbook 4060.2 REV-1 Handbook 4060.2 REV-2 dtd 9/92

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Assistant Secretary for Housing  
- Federal Housing Commissioner

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Handbook 4060.2 REV-2  
U.S. Department of Housing and Urban Development  
Washington, D.C. 20410

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Program Participants  
and Departmental  
Staff

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September 1992 Mortgagee Review  
Board

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FOREWORD

This Handbook covers the operations of the Department's Mortgagee Review Board. It provides basic information on the functions of the Board, and the procedures the Department will follow to sanction HUD-FHA approved mortgagees and Title I lenders that don't comply with the Department's requirements.

The Handbook incorporates the provisions of the HUD Reform Act

of 1989 (12 USC 1708) and the implementing regulations set forth in 24 CFR Part 25, which establish the Board within the Federal Housing Administration (FHA). This Handbook also provides information on the Board's authority to impose civil money penalties, as authorized by the Act, as they relate to mortgagees and Title I lenders.

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CHAPTER 1. ORGANIZATION AND FUNCTIONS

- 1-1 Authority. The Mortgagee Review Board is established by statute under the HUD Reform Act of 1989 (12 USC 1708). The regulations governing the Board's activities are in 24 CFR Part 25.
- 1-2 Purpose. The Board is the sole organization within HUD that is authorized to take administrative action against HUD-FHA approved mortgagees and Title I lenders that violate HUD-FHA requirements, or the non-discrimination requirements of the Equal Credit Opportunity Act, The Fair Housing Act, or Executive Order 11063.
- A. The Board is authorized to impose civil money penalties on mortgagees and Title I lenders that violate the Department's requirements under the provisions of 24 CFR Part 30.
  - B. The Board may approve the initiation of a suspension or debarment action against a mortgagee under the provisions of 24 CFR Part 24.
- 1-3 Composition. The Board consists of the following voting members or their designees:
- A. Assistant Secretary for Housing-Federal Housing Commissioner, Chairperson
  - B. General Counsel
  - C. President, Government National Mortgage Association
  - D. Chief, Financial Officer of HUD
  - E. Assistant Secretary for Administration
  - F. Assistant Secretary for Fair Housing and Equal Opportunity (in cases involving violations of the Department's nondiscrimination requirements)

The Inspector General and the Director, Office of Lender Activities and Land Sales Registration, or their designees, serve as non-voting advisors to the Board.

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- 1-4 Functions, Duties and Powers. The Board exercises the authority

of the Secretary in taking administrative action against mortgagees and Title I lenders. The Board is also authorized to impose civil money penalties on mortgagees and lenders that violate the Department's requirements:

- A. Impartially reviews documentation when any report, audit, monitoring review, investigation or other information before the Board discloses that a basis for administrative action against a mortgagee or Title I lender exists.
- B. Determines if administrative sanctions and/or the imposition of civil money penalties is warranted.
- C. Imposes appropriate administrative sanctions to protect the interest of HUD-FHA and the public. Imposes civil money penalties for knowing and material violations of HUD-FHA requirements.

In determining what administrative sanction is appropriate, the Board considers among other factors:

- 1) The seriousness and the extent of the violations
- 2) The degree of fault on the part of the mortgagee or Title I lender
- 3) Any mitigating factors

In determining the amount of a civil money penalty to be imposed the Board considers among other factors:

- 1) The gravity of the offense
- 2) Any history of prior offenses
- 3) The program participant's ability to pay the penalty
- 4) Injury to the public because of the violation
- 5) Any benefits received by the program participant
- 6) Potential benefit to other persons
- 7) Deterrence of future violations
- 8) The degree of the mortgagee's or Title I lender's culpability.

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CHAPTER 2. RESPONSIBILITIES AND PROCEDURES

- 2-1 Office of Lender Activities and Land Sales Registration. Serves as staff to the Mortgagee Review Board. (See Handbook 1130.1 REV-4).
- A. Is the contact point within HUD for Headquarters and Field Offices on all matters concerning the Board.
  - B. Develops the agenda and policy issues for Board meetings.
  - C. Collects, analyzes, prepares and submits to the Board all data and exhibits together with options or recommendations as to administrative sanctions and/or the imposition of civil money penalties against HUD-FHA approved mortgagees and Title I lenders.
  - D. Coordinates Board activities with other HUD offices and government agencies.
  - E. Notifies mortgagees and Title I lenders of administrative sanctions and/or the imposition of civil money penalties by the Board.
  - F. Refers cases for Board consideration resulting from mortgagee and Title I lender on-site monitoring reviews.
  - G. Notifies mortgagees when sanctions and/or civil money penalties are being considered by the Board.
  - H. Keeps the official minutes of the Board and the case files on all Board actions.
  - I. Under a delegation of authority from the Board, identifies and withdraws approval of mortgagees and Title I lenders that fail to:
    - 1) Submit acceptable annual audited report of financial condition
    - 2) Meet HUD net worth requirements for continued approval, as reported by their CPA or IPA
    - 3) Pay required annual recertification fees
  - J. Negotiates settlement agreements with mortgagees and Title I lenders in conjunction with the Office of General Counsel.
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2-2 Office of Inspector General

- A. Refers mortgagees and Title I lenders for Board consideration as a result of audits or investigations.
- B. As requested by the Board, does audits or investigations of approved mortgagees and Title I lenders.

2-3 Office of General Counsel

- A. Assesses legal sufficiency of cases to be considered by the Board.
- B. Helps the Office of Lender Activities and Land Sales Registration prepare correspondence and notices about Board decisions.
- C. Provides assistance in settlement negotiations.
- D. Represents HUD in hearings requested by mortgagees and Title I lenders against whom the Board has acted.

2-4 Requests for Mortgagee Review Board Action. A Headquarters program office may refer a mortgagee or Title I lender to the Board for consideration of administrative sanctions and/or civil money penalties where there is adequate evidence of serious violations of HUD requirements. A HUD Field Office manager may do the same, after consulting the appropriate Headquarters program office.

- A. Any referral must be sent to the Director, Office of Lender Activities & Land Sales Registration.
- B. The referral must contain a written report which includes:
  - 1) a full factual background description of the violations
  - 2) specific citations of the Department's requirements that have been violated
  - 3) all available supporting documentation that evidences the violations



- C. If guidance is needed, contact the Office of Lender Activities & Land Sales Registration.
  - D. Individual consumer complaints are not appropriate for referral to the Board.
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Chapter 3. ADMINISTRATIVE ACTIONS

- 3-1. General. The Board is authorized to take an administrative action and/or impose a civil money penalty against a mortgagee or Title I Lender under the regulations set forth in 24 CFR Parts 25 and 30.
- 3-2. Types of Mortgagee and Title I Lender Sanctions. Depending on the nature and the extent of the violations, the Board may impose one or more of the following administrative sanctions.
- A. Reprimand. The Board issues a letter of Reprimand informing the mortgagee or lender of a violation of HUD requirements. Failure to comply may result in other sanctions in this section. A letter of reprimand is effective upon receipt by the mortgagee or lender.
- B. Probation. This is for a specified period of time but not more than six months while HUD evaluates compliance. During probation, additional reasonable requirements may be imposed as an aid in evaluating performance. They may include:
- 1) HUD supervision of the mortgagee's or lender's activities including removal of authority to participate in the Direct Endorsement program.
  - 2) periodic reporting to HUD.
  - 3) sending HUD internal audits, audits by an Independent Public Accountant, or other audits.
- Probation is effective when the mortgagee or lender receives the Board's probation notice.
- C. Suspension. This is temporary and used when there is adequate evidence the public interest or HUD's best interest would not be served by providing HUD-FHA insurance on new mortgages or Title I loans pending the completion of any:

- 2) investigation
- 3) other review
- 4) administrative or legal proceedings

A suspension is for a specified period of time but not less than six months. The Board may extend the suspension if it determines the extension is in the public interest. Suspension is effective when the mortgagee or lender receives the Board's suspension notice.

- D. Withdrawal of Approval. The Board may withdraw HUD-FHA approval for a reasonable, specified period of time, not less than one year commensurate with the seriousness of the grounds for the withdrawal. A withdrawal may be permanent for egregious or willful violations. A mortgagee or lender may file a new application for approval after the period of withdrawal has expired. The withdrawal of approval is effective:

- 1) Upon receipt of notice by the mortgagee or lender if the Board determines that continuation of approval pending a hearing would not be in the public interest or best interests of the Department.
- 2) At the expiration on the 30-day period within which a hearing may be requested, if the mortgagee or lender does not request a hearing.
- 3) Upon receipt of a final determination subsequent to an administrative hearing under 24 CFR Part 26.

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3-3. How suspension or Withdrawal of HUD Approval Affects Mortgagees. While the sanction is in effect:

- A. Insurance on mortgages accepted for insurance is not affected, except for cases involving fraud or proven misrepresentation by the holding mortgagee.
- B. Insured mortgages may not be originated or purchased by a mortgagee whose approval has been suspended or withdrawn.

- C. The mortgagee may not submit new applications to HUD-FHA for insurance and should assign outstanding conditional commitments to a HUD-FHA approved mortgagee.
- D. The Department will not endorse any mortgage unless prior to the date of suspension or withdrawal a firm commitment has been issued or unless a Direct Endorsement underwriter has approved the mortgagor for the mortgage.
- E. The mortgagee is not relieved from any obligation to pay all amounts due HUD.
- F. Any action taken by HUD to impose or rescind suspension or withdrawal of approval does not settle or resolve any criminal or civil liability of the mortgagee.
- G. The mortgagee may service HUD-FHA insured mortgages.

3-4. How suspension or Withdrawal of HUD Approval Affects Title I Lenders.

- A. Suspension. During this period a lender may not originate or purchase Title I loans under its existing Title I Contract of Insurance or apply to HUD for a new contract.

- B. Withdrawal of Approval. Approval grants rights that are separate from the Contract of Insurance, which the lender executes with HUD after it has been approved. Withdrawal of approval:
  - 1) Restricts the lender's future eligibility to enter into a contract with HUD.
  - 2) Will result in separate action by HUD to cancel a lender's existing contract, excluding it from further participation in the Title I program. (Contract cancellation is not an administrative sanction, but a contractual right of the Department).
- C. The effects of a cancellation of the Contract of Insurance are as follows:
  - 1) A lender cannot obtain insurance coverage for

new loans under the terminated contract or purchase Title I loans originated by an approved lender.

- 2) The insurance reserve on loans previously accepted for insurance is not adversely affected except for loans involving fraud or misrepresentation. (24 CFR 202.5(c)(1)).
- 3) The lender is not relieved of any liability to pay future insurance premiums or other obligations owed HUD.
- 4) Claim payments made to the lender are final and incontestable, in the absence of fraud or misrepresentation, unless HUD has demanded repurchase of a loan within two years from the date the claim was certified for payment (Section 2(g) of the National Housing Act, 12 U.S.C. Section 1703(g)).

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- 5) Insurance reserves earned by the lender as of the date of termination, under the terminated contract, remain to its credit unless exhausted by filing of claims.

3-5. Settlement Agreements. The Board may at any time enter into a settlement agreement with a mortgagee or Title I lender to resolve grounds for a sanction or civil money penalty. Agreements may provide for:

- A. Cessation of any violation
- B. Correction or mitigation of the effects of any violation
- C. Repayment of money wrongfully or incorrectly paid to the mortgagee or lender by a borrower or by HUD
- D. Actions to collect sums of money wrongfully or incorrectly paid by the mortgagee or lender to a third party
- E. Indemnification of HUD for insurance claims on mortgages and Title I loans originated or serviced in violation of HUD requirements
- F. Implementing a Quality Control Plan or other

corrective measure acceptable to HUD

- G. Compromise or Modification of any civil money penalty
- H. Modification of the Length of any administrative action

such other provisions the Board deems to be appropriate.

Failure by a mortgagee or lender to comply with a settlement agreement may result in a suspension or withdrawal of HUD-FHA approval.

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3-6. Cease and Desist Order. The Board may request the Secretary to issue a Cease and Desist Order to a mortgagee including a branch office, subsidiary, director, officer employee, agent or any other person participating in the mortgagee's operations. A Cease and Desist Order may be issued where there is reasonable cause to believe that a mortgagee:

- A. is violating, has violated or is about to violate a law, rule regulation or written condition imposed by the Board and,
- B. the violations could result in a significant cost to the Federal Government or to the public.

A Cease and Desist Order is immediately effective upon service and requires the mortgagee to take effective affirmative action to prevent the violations from occurring pending the compliance of Board action. The Cease and Desist Order remains effective for a period of not more than 30 days. A mortgagee may upon the issuance of a Cease and Desist Order, request a hearing before a Departmental Hearing Officer within 10 days after the order is issued. An opportunity for a hearing will be provided within 20 days after this Order has been served. A mortgagee may also seek an injunction against a Cease and Desist Order in the appropriate United States District Court.

3-7. Grounds for Mortgagee Administrative Actions. The following violations by a mortgagee may result in administrative action by the Board.

- A. Transfer of an insured mortgage to a nonapproved

mortgagee, except pursuant to 24 CFR section 203.433 or 203.435.

- B. Failure of a nonsupervised mortgagee to segregate all escrow funds received from mortgagors for ground rents, taxes, assessments and insurance premiums;

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or failure to deposit these funds in a special account with a financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration except as otherwise provided in writing by HUD.

- C. Use of escrow funds for any purpose other than that for which they were received.
  - D. Termination of a mortgagee's supervision by a government agency.
  - E. Failure of a nonsupervised mortgagee or loan correspondent to submit the required annual audit report of its financial condition:
    - prepared in accordance with instructions issued by the secretary
    - within 90 days of the close of its fiscal year or such longer period as the Assistant Secretary for Housing-Federal Housing Commissioner may authorize in writing before the end of the 90 days.
  - F. Payment by a mortgagee of any fee, kickback or other consideration, directly or indirectly, in connection with any insured mortgage transaction (24 CFR Section 25.9(f) and 203.1(b)).
  - G. Failure to comply with any agreement, certification, undertaking, or condition of approval listed on either a mortgagee's application for approval or on an approved mortgagee's branch office notification.
  - H. Failure of an approved mortgagee to meet or maintain the net worth in assets required by 24 CFR Part 203.
  - I. Noncompliance with an order of the Mortgagee Review Board, the Secretary or hearing officer.
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- J. Violation on the requirements of any contract with HUD or violation of the requirements in any statute, regulation, handbook, mortgage letter, or other written rule or instruction.
- K. Submission of false information to HUD in connection with any HUD/FHA insured mortgage transaction.
- L. Failure of mortgagee to respond to inquiries from The Mortgage Review Board.
- M. Indictment or conviction of a mortgagee or any of its officers, directors, principals or employees for an offense that reflects on the responsibility, integrity, or ability of the mortgagee to participate in HUD-FHA programs.
- N. Employing or retaining an officer, partner, director, or principal at the time when the person was suspended, debarred, ineligible, or subject to a limited Denial of Participation (LDP) under 24 CFR Part 24, or otherwise prohibited from participation in HUD programs, where the mortgagee knew or should have known of the prohibition.
- Employing or retaining an employee who is not an officer, partner, director or principal and who is or will be working on HUD-FHA program matters at a time when that person was suspended, debarred, ineligible, or subject to a Limited Denial of Participation under 24 CFR Part 24 or otherwise prohibited from participation in HUD programs, where the mortgagee knew or should have known of the prohibition.
- O. Violation by an approved mortgagee of the nondiscrimination requirements of the Equal Credit Opportunity Act, 15 U.S.C. Section 1691 et seq., The Fair Housing Act, Executive Order 11063 (27 F.R. 11527) and applicable regulations.
- P. Business practices that don't conform to those generally accepted by prudent lenders or that show irresponsibility.



- Q. Failure to cooperate with an audit or investigation by the HUD Office of Inspector General or an inquiry by HUD into the conduct of the mortgagee's FHA-insured business.
- R. Violation by an approved mortgagee of the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2601 et seq.
- S. Without regard to the date of insurance of the mortgagee, failure to service an insured mortgage as required by HUD.
- T. Failure to administer properly an assistance payment contract under Section 235 of the National Housing Act.
- U. Failure to pay the application and annual fees required by 24 CFR Section 203.2(k).
- V. Failure of a coinsuring mortgagee:
- 1) to properly perform underwriting, servicing or property disposition according to HUD instructions and standards.
  - 2) to make full payment to an investing mortgagee as required by 24 CFR Part 204, Part 251 and Part 255.
  - 3) to fulfill responsibilities under a contract for coinsurance.
  - 4) to comply with restrictions concerning the transfer of a coinsured mortgage to any agency not approved under 24 CFR Part 250.
  - 5) to maintain additional net worth requirements as applicable.
- W. Any other reasons the board, Secretary or hearing officer determine serious enough to justify a sanction.

- X. Failure to remit, or timely remit mortgagee insurance premiums, late charges or interest penalties to the Department.
- Y. Failure to properly perform underwriting, servicing, or property disposition functions in accordance with HUD-FHA requirements.
- Z. Failure to fund mortgage loans or any other misuse of mortgage loan proceeds.
  - (aa) Permitting the use of "strawbuyer" mortgagors in an insured mortgage transaction where the mortgagee knew or should have known of the use of "strawbuyers".
  - (bb) Breach by a mortgagee of a fiduciary duty owed by it to any party including GNMA and the holder of any mortgage-backed security guaranteed by the GNMA with respect to an insured mortgage transaction.
  - (cc) Failure to pay any civil money penalty after all administrative appeals requested by the mortgagee have been exhausted.

3-8. Grounds for Title I Lender Administrative Actions. The following violations by a Title I Lender may result in an administrative action by the Board.

- A. Failure to remain in continuous compliance with the requirements for approval of lenders at 24 CFR Section 202.4.
- B. Submitting false information to HUD in connection with a loan.
- C. Failure to properly supervise and monitor dealers under 24 CFR Part 201.
- D. Exhausting the general insurance reserve established under 24 CFR Part 201.

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- E. Maintaining a high claim/loan ratio, representing an unacceptable risk to HUD.
  - F. Failing to cooperate with a HUD audit, investigation or request for information on conduct of lender's HUD-FHA insured business.

- G. Transferring a Title I loan to a lender not holding a Contract of Insurance.
- H. Failure to comply with the Equal Credit Opportunity Act (15 U.S.C. 1691), Fair Housing Act (42 U.S.C. 3601-3619) and Executive Order 11063.
- I. Non-compliance with the Government National Mortgage Association contractual and program requirements.
- J. Any other reason justified by the Mortgagee Review Board, HUD Secretary, Under Secretary or hearing officer. Reasons may include, but are not limited to:
  - failure to exercise prudent credit judgement, business practices, or servicing procedures.
  - noncompliance with HUD requirements or other laws or regulations.
- K. Failure to pay any civil money penalty after all administrative appeals requested by the Title I Lender have been exhausted.
- L. Violations of any of the applicable provisions stated in paragraph 3-7, or set forth in 24 CFR Part 202.

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CHAPTER 4. NOTIFICATIONS AND HEARINGS

- 4-1 Notice of Violation. At least 30 days before considering any matter where there is a possibility of a probation, suspension or withdrawal of approval, the Board will issue a written notice to the mortgagee or Title I lender that:
- A. Informs them the Board is considering an administrative action.
  - B. States the specific alleged violations.
  - C. Directs the mortgagee or lender to reply in writing to the Board within 30 days after receipt of the notice. Failure to reply may result in a determination by the Board without considering the mortgagee's or lender's comments.
  - D. The response must be addressed to the Chairperson, Mortgagee Review Board, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.
  - E. The response may not exceed 15 double-spaced typewritten pages and must include an executive summary, a statement of the facts, an argument and a conclusion. A more lengthy submission which includes documents and other exhibits may be submitted to the Board's staff for review.
- 4-2 Notice of Administrative Action. When the Board takes an action to issue a Letter of Reprimand, place a mortgagee or Title I lender on probation, or to suspend or withdraw a mortgagee's or lender's HUD-FHA approval, it will notify the mortgagee or lender of the Board's determination. Except for a Letter of Reprimand, the notice will:
- A. State the nature and duration of the administrative action.
  - B. State the violations and any findings of the Board.
  - C. Inform the mortgagee or lender of its right to a hearing under the regulations set forth in 24 CFR Part 26.
  - D. The Board may issue a supplemental notice to either add or modify the reasons for the administrative action.
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- 4-3 Hearing and Hearing Request. Whenever the Board imposes a probation, suspension or withdrawal of approval, a mortgagee or lender may request a hearing before a designated HUD Hearing Officer.
- A. The hearing regarding the violations will be held within 30 days of receiving the request from the mortgagee.
  - B. A mortgagee or lender may voluntarily agree to have a hearing held more than 30 days after it makes a request for the hearing and it is received by the Department.
  - C. A request for a hearing must be addressed to: Docket Clerk, Mortgagee Review Board, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.
  - D. If a hearing is held within the 30-day period of time, it will generally be held in Washington, D.C., unless undue hardship is otherwise shown by the mortgagee or lender.
  - E. After the mortgagee or lender has had a hearing, the Hearing Officer makes a written Determination. The Hearing Officer's Determination becomes final unless it is reversed or modified by the Secretary of HUD.
  - F. A Hearing Officer may not modify or otherwise disturb a Determination of the Board pending a final decision of a matter brought before the Hearing Officer.
  - G. In cases involving a probation, suspension, or withdrawal actions where a Hearing Officer makes a final Determination that there was no legal basis for the Board's decision to take administrative action, the Board's action will be stayed pending an appeal to the Secretary.
  - H. A mortgagee or lender may appeal a Determination or Order of a Hearing Officer to the Secretary or his or her designee.
    - 1) the Secretary or designee will issue a Determination within 15 days from receipt of the request either granting or denying the request.
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- 2) if the request is granted, the Secretary or designee will issue a written Determination within 45 days of receipt of briefs filed by the opposing parties.
- 4-4 Failure to Request a Hearing. If a mortgagee or lender does not request a hearing within 30 days of receiving the Board's notice of administrative action, the right to a hearing will be considered waived.
- 4-5 Publication in the Federal Register of Board Actions. The Board publishes in the Federal Register a description of, and the cause for, all administrative actions taken against mortgagees and Title I lenders.
- 4-6 Notification to Other Agencies of Board Actions. Whenever the Board takes an administrative action against a mortgagee or Title I lender, it provides notice of the action to other agencies as required by 24 CFR 25.11 and 25.14.

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Chapter 5. Civil Money Penalties

- 5-1. General. Department of Housing and Urban Development Reform Act of 1989 ( 12 U.S.C. 1708 ) authorizes the Mortgage Preview Board to impose civil money penalties on mortgagees and Title I lenders who knowingly and materially violate program statutes, regulations and Handbook requirements. A civil money penalty may be imposed in addition to any other administrative action taken by the Board, or any civil or criminal penalties. The regulations governing the imposition of civil money penalties are set forth in 24 CFR Part 30.
- 5-2. Offices of Lender Activities and Land Sales Registration. The Office of Lender Activities and Land Sales Registration serves as staff to The Board and is the designated contact point for all civil money penalty cases that are referred to The Board for action. ( See chapter 2 ).
- 5-3. Notice of Intent to Seek a Civil Money Penalty. Whenever the Board intends to seek a civil money penalty, it will issue a written notice to the program participant. ( See 24 CFR Sections 30.100 and 30.105 ). The notice informs the participant that:
- A. The Board is considering imposing a civil money penalty
  - B. States the specific violations that have been alleged
  - C. States the amount of the penalty that will be recommended
  - D. Provides an opportunity for the submission of a written response within 30 days from receipt of the notice.

Failure to respond to this notice will result in the Board considering a civil money penalty without any further notice to the participant.

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- 5-4. Factors in Determining the Amount of the Penalty. In deciding the amount of a civil money penalty to be imposed, the Board will consider the following ( See 24

CFR 30.215 ):

- A. The gravity of the offense
- B. Any history of prior offenses
- C. Ability to pay the penalty
- D. Injury to the public because of the violation
- E. Any benefits received by the mortgagee or lender
- F. Potential benefit to other persons
- G. Deterrence of future violations
- H. The degree of the mortgagee or lender culpability.

5-5. Amount of Penalty. The maximum amounts of penalties, as determined by the Board, may not exceed \$5,000 for each violation by a mortgagee or lender, except that the maximum penalty for all violations by any mortgagee or lender during any one year period may not exceed \$1 million. Each violation constitutes a separate violation with respect to each mortgage or Title I loan application, subject to the maximum penalty of \$1 million during any one year period ( See 24 CFR Section 30.220 and 30.345 ).

5-6. Violations for which Civil Money Penalties may be Imposed on Mortgagees and Title I Lenders. A civil money penalty may be imposed by the Board against a mortgagee or Title I Lender for knowing and material program violations that include ( See 24 CFR Section 30.320 ):

- A. Transfer of an insured mortgage to a mortgagee not approved by the Department or Title I loan to a lender not holding a contract of insurance.
- B. Failure by a nonsupervised mortgagee to segregate all escrow funds received from a mortgagor for ground rents, taxes, assessments and insurance premiums.

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- C. Failure by a nonsupervised mortgagee to deposit all escrow funds in a special account with a depository whose accounts are insured by an agency of the Federal Government.



- D. Use of escrow funds for any purpose other than that for which they were received.
  - E. Falsely certifying to the Department or submitting to the Department a false certification by another person.
  - F. Submitting false information to the Department in connection with any insured mortgage or Title I loan.
  - G. Failing to comply with any agreement, certification or condition set forth, or applicable to, the application of a mortgagee or Title I lender for approval by the Department.
  - H. Hiring or employing an individual such as an officer, director, principal or employee whose duties involve programs administered by the Department while that person is under suspension or withdrawal by the department.
  - I. Failure by a Title I lender to comply with the Department's requirements concerning approval or supervision of the dealers, or approving a dealer who has been suspended, debarred or otherwise denied participation in HUD programs.
  - J. Failure to remit, or timely remit, mortgage insurance premiums, loan insurance charges, late charges or interest penalties.
  - K. Failure to report all delinquent FHA insured mortgages to the Department.
  - L. Failure to comply with mortgage servicing requirements or Title I loan servicing requirements.
- 5-7. Settlements, A mortgagee or lender may at any time enter into a Settlement Agreement before or after a matter is referred to the Board for consideration of a civil money penalty ( See 24 CFR Section 30.1010).

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- 5-8. Opportunity for a hearing. Before a civil money penalty can be imposed, the mortgagee or lender will be given an opportunity for a hearing before an Administrative Law Judge. If a hearing is not requested, the Administrative Law Judge will issue a default judgment. Unless the mortgagee or lender can show that extraordinary

circumstances prevented it from making a hearing request, the determination of the Board for the imposition of a civil money penalty will become final and unappealable ( See 24 CFR Sections 30.800 through 30.1010 ).

5-9. Referrals of Civil Money Penalty Cases. HUD program and field offices may refer a mortgagee or lender for consideration of civil money penalties by the Board. A referral must be based upon adequate documentation that the mortgagee or lender has knowingly and materially engaged in violations of the Department's rules or requirements. Generally, the term "materially" means that the violations have a financial impact on the Department or may have influenced a Departmental decision or that have substantially injured the public. The term "knowingly" means that the mortgagee or lender had actual knowledge of the violations or was acting with deliberate ignorance or reckless disregard of the Department's requirements.

A. All referrals of mortgagees and lenders for civil money penalties must be sent to the Director, Office of Lender Activities and Land Sales Registration.

B. A referral for civil money penalties must contain a written report of the violations by the mortgagee or lender including:

- 1) a full factual background description of the violations
- 2) citations of the specific statutes, regulations or requirements that have been violated
- 3) all available supporting documentation evidencing the violations

5-10. Civil Money Penalties Handbook. A new Handbook on the Department's procedures for imposing civil money penalties under 24 CFR part 30, with respect to all HUD-FHA programs, is presently being developed. This Handbook will be available to HUD staff and program participants in the near future.