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CHAPTER 6. ENFORCEMENT

Section 1. General

- 6-1. Statutory. This chapter establishes various procedures to implement Section 107 of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101-235, approved December 15, 1989). Section 107 of that Act was implemented with the publication of a Final Rule in the Federal Register on May 22, 1991 (56 FR 99, 23662-23642). This Rule added a new Part 30, "Civil Money Penalties: Certain Prohibited Conduct," to Title 24 of the Code of Federal Regulations. A copy of this Rule is contained in Appendix 6 of this handbook.
- 6-2. Background. Before the enactment of the Reform Act and the addition of 24 CFR Part 30, the Department of Housing and Urban Development had established a Mortgagee Review Board. Except for the coinsurance program, that Board had been the sole organization that was authorized within HUD to take administrative action against HUD-approved mortgagees (and Title I lenders) who violate the Department's requirements. Regulations governing the Board's activities are contained in 24 CFR Part 25. HUD Handbook 4060.2 REV-1, Mortgagee Review Board, was issued on September 10, 1985. This handbook restates that the Office of Lender Activities and Land Sales Registration serves as staff to the Board and describes the operations of the Mortgagee Review Board.
- 6-3. Previously Available Sanctions. Depending on the nature and extent of a lender's violations, the Mortgagee Review Board could impose one or more of the following four sanctions against lenders:
- a. Reprimand. The Board issues a letter of reprimand informing the lender of a violation of HUD requirements and directing the lender to conform to all HUD requirements. A lender's lack of compliance with the terms of the letter could result in more serious sanctions.

- b. Probation. When a lender is placed on

probation, it is for a specified time during which HUD evaluates its compliance with HUD's requirements. Additional requirements may be imposed by HUD during the probationary period to aid HUD's continuing evaluation of a lender's performance. These additional requirements include but are not limited to:

1. HUD supervision of the lender's activities.
  2. Periodic reporting to HUD.
  3. Sending HUD internal audits, audits by an Independent Public Accountant, or other audits.
- c. Suspension. Suspension is temporary; it is used when there is adequate evidence that the public interest or HUD's best interest would not be served by providing insurance coverage on new mortgages (or Title I loans) pending completion of any: (1) audit; (2) investigation; (3) other review; or (4) administrative or legal proceedings. A suspension is for a specified period of one year or less. The Board may extend a suspension for an additional six months if it determines an extension is in the public interest.
- d. Withdrawal of Approval. The Board may withdraw HUD-FHA approval from a lender for a specified time commensurate with the seriousness of the lender's infractions; the time is generally less than six years, but approval may be withdrawn for an indefinite period for egregious or willful violations.
1. A lender may file a new application for approval after the period of withdrawal of approval has expired.
  2. Where withdrawal of approval is for an indefinite period, a lender may, after six years, ask the Board to set a specific date for expiration of the withdrawal.

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- 6-4. Current Sanctions. The 1989 Reform Act and the new Part 30 of Title 24 of the Code of Federal Regulations provide for a new sanction while retaining the four previous sanctions described

above. The new sanction is "Civil Money Penalties."  
When violations exist:

- a. Civil money penalties may be imposed against servicing or holding mortgagees by the Mortgagee Review Board. However, the Mortgagee Review Board will propose civil money penalties only when civil money penalties are being proposed in conjunction with other administrative sanctions the Board is authorized to impose.
- b. Civil money penalties may be imposed against servicing or holding mortgagees by the Housing Civil Penalties Panel (HCCP). This Panel is authorized to act when the Mortgagee Review Board does not propose other authorized administrative sanctions.

6-5. The amounts of civil money penalties that may be assessed against mortgagees shall not exceed \$5,000 for each violation, except that the maximum penalty for all violations by any particular lender during any one-year period shall not exceed \$1 million.

6-6. HUD's Field and Regional Offices may recommend that sanctions should be imposed against mortgagees servicing or holding insured multifamily mortgages. HUD Headquarters organizations also may recommend the imposition of sanctions against lenders; for instance, the Headquarters Office of Mortgage Insurance Accounting and Servicing (MIAS) may recommend the imposition of civil money penalties against mortgagees who fail to pay the Mortgage Insurance Premiums by the dates due.

6-7. All Field Office originated recommendations for sanctions against insured multifamily mortgagees are to be sent to their Regional Directors of Housing.

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The Regional Offices will review the recommendations and, when appropriate, forward them to the Operations Division of the Office of Multifamily Housing Management in Headquarters. Sanction recommendations will then be reviewed and forwarded to the Office of Lender Activities. OLA may then refer the matter to the relevant sanctioning panel (the Mortgagee Review Board or the Housing Civil Penalties Panel) or take such other actions as it deems appropriate.

## Section 2. HUD Field Office Actions

- 6-8. The Loan Management (LM) Branch Chiefs of the HUD Field Office have the authority to recommend the imposition of sanctions against mortgagees to the Regional Director of Housing. The LM Branch Chiefs should normally discuss such proposed recommendations with the Legal Divisions of the Field offices before forwarding their recommendations. Field Office Counsels can assist the LM Branch Chiefs in preparing their recommendations and can provide advice about what evidence and documentation should accompany the Branch Chiefs' recommendations.
- 6-9. Distribution of recommendations for sanctions. Recommendations for imposition of sanctions against mortgagees are to be distributed as specified in paragraph 5-23 of this handbook.
- 6-10. The Loan Management Branch Chiefs may include specific recommendations for the imposition of civil money penalties when they recommend a mortgagee for other administrative sanctions. If they choose to do so, their memorandums recommending sanctions should state that imposition of civil money penalties also is recommended. There may be other occasions when the sanction of civil money penalties only is the most appropriate remedy for HUD to use.
- a. For example, suppose the remote monitoring activities conducted by a HUD Field Office disclose that a mortgagee is submitting flawed

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physical inspection reports to the Field Office and is unwilling or unable to correct the deficiencies. Also suppose that this is the only area of weakness in the mortgagee observed by that HUD Office. The Loan Management Branch Chief of the HUD Office has a choice of several actions. He may: (1) refer the matter to the Regional Director of Housing and ask for assistance; or (2) refer the matter to the Regional Director of Housing and recommend that civil money penalties or other administrative sanctions be imposed against the offending lender; or (3) decide that no further action is warranted under the circumstances.

1. Requesting the assistance of the Regional

Director of Housing might be the preferred choice in this example. The Regional Directors are in a position to know if the problem is isolated or widespread; they can coordinate actions with other Field Offices if necessary.

2. In this example if the deficiencies in the physical inspection reports were extensive or serious, the appropriate choice might be to refer the case to the Regional Director of Housing with a recommendation for the imposition of civil money penalties. The Field Office should provide copies of its documentation when making a recommendations for imposing civil money penalties.
3. If the deficiencies in the mortgagee's inspection reports were relatively minor or trivial, the Loan Management Branch Chief may not need to take any action at all. The Branch Chief needs to remember that the time that elapsed between HUD's and the mortgagee's physical inspections of a property could account for some of the differences between the inspection reports.

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- b. For another example suppose that moderate to serious deficiencies exist with the physical inspection reports submitted by a mortgagee and that problems in other servicing areas (escrows, hazard insurance, debt collection, default reporting) regarding that mortgagee also are detected by the Field Office. The preferred course of action here might be for the Loan Management Branch Chief to recommend the imposition of administrative sanctions together with the imposition of civil money penalties against the mortgagee.

### Section 3. HUD Headquarters Actions

- 6-11. The Office of Lender Activities receives recommendations for the imposition of sanctions against multifamily mortgagees. This handbook, which provides instructions and guidance to multifamily mortgagees and to HUD Field offices, does not prescribe any policies, practices, or procedures for the Office of Mortgage Insurance Accounting and

Servicing, the Office of Lender Activities, the Mortgagee Review Board, or the Housing Civil Penalties Panel. The Director, Office of Lender Activities, examines recommendations for the imposition of sanctions against mortgagees holding or servicing insured multifamily mortgages in accordance with the procedures established by that Office.

- 6-12. The Director, Office of Lender Activities, is expected to inform the Director, Office of Multifamily Housing Management, of the results of Field Office recommendations for sanctions against multifamily mortgagees.
- 6-13. The Director, Office of Multifamily Housing Management, will provide appropriate information to the Department's Regional and Field Offices from time to time.