

## Section D: Lender Sanctions

### Overview

---

**In This Section** This section contains the topics listed in the table below.

<b>Topic</b>	<b>Topic Name</b>	<b>See Page</b>
1	General Information on Lender Sanctions	9-D-2
2	Lender Probation	9-D-3
3	Withdrawal of Direct Endorsement Authority	9-D-6
4	Use of Indemnification Agreements	9-D-9
5	Civil Money Penalties	9-D-10
6	Sanctions Against Individuals and Other Program Participants	9-D-15

---

## 1. General Information on Lender Sanctions

---

**Introduction** This topic contains general information on lender sanctions, including

- the application of sanctions against a lender, and
  - the types of lender sanctions.
- 

**Change Date** December 23, 2010

---

**4155.2 9.D.1.a  
Application of  
Sanctions  
Against a  
Lender** Various sanctions exist that allow the Homeownership Centers (HOCs) and FHA the flexibility to respond appropriately to any noncompliance action by a Direct Endorsement (DE) lender or other program participant. Noncompliance actions vary significantly in their scope and effect. The more serious the scope and effect of the action, the more serious the sanction applied.

When deciding what sanction to apply against a lender, FHA considers

- the seriousness and extent of the violation(s)
  - the degree of fault on the part of the individual or the mortgage lender, and
  - any mitigating factors.
- 

**4155.2 9.D.1.b  
Types of  
Lender  
Sanctions** The following sanctions may be imposed by [HOCs](#) and/or the Mortgagee Review Board (MRB):

- lender probation
  - withdrawal of [DE](#) status
  - withdrawal of FHA approval
  - indemnification agreements
  - civil money penalties, and
  - sanctions against individual program participants.
-

## 2. Lender Probation

---

**Introduction** This topic contains information on lender probation, including

- the applicability of the probation sanction
  - elements of lender probation
  - lender notification of probation
  - the effective date of the probation, and
  - the reasons for returning a lender to pre-closing review status.
- 

**Change Date** December 23, 2010

---

**4155.2 9.D.2.a Applicability of the Probation Sanction** The probation sanction is applied to the mortgage lender’s office (branch or main) that submitted the non-complying cases. The sanction generally applies to an

- individual branch or home office of a mortgage lender, and
- individual field office jurisdiction.

However, the Homeownership Center (HOC) has discretion to impose the sanction against all of a lender’s offices, or all offices within a field office jurisdiction.

---

**4155.2 9.D.2.b Elements of Lender Probation** When a mortgage lender’s main office or branch office fails to comply with Direct Endorsement (DE) Program requirements, the [HOC](#) may place the office on probation. The sanction imposed under the lender probation depends upon the seriousness of the problems and deficiencies exhibited by the lender. FHA views a return to pre-closing status as the most serious sanction.

The table below lists the various elements that may be involved in a lender’s probation.

Probation Element	Description
Training	The lender’s underwriter, or other technical staff, may be required to attend appropriate training sessions.
Technical Reviews	The <a href="#">HOC</a> may increase the percentage of lender cases subject to technical reviews.

---

*Continued on next page*

## 2. Lender Probation, Continued

### 4155.2 9.D.2.b Elements of Lender Probation (continued)

Probation Element	Description
Pre-closing Review Status	<p>The <a href="#">HOC</a> may</p> <ul style="list-style-type: none"> <li>• place a lender back in pre-closing review status, and</li> <li>• subject the lender's cases to technical underwriting reviews and firm commitment processing prior to endorsement.</li> </ul> <p>Pre-closing review status continues until the</p> <ul style="list-style-type: none"> <li>• lender corrects underwriting deficiencies, or</li> <li>• lender's <a href="#">DE</a> approval is withdrawn.</li> </ul> <p><b>Reference:</b> For information on reasons for placing a lender in pre-closing review status, see HUD <a href="#">4155.2 9.D.2.e</a>.</p>
Lender Audit	<p>The <a href="#">HOC</a> may require the lender to perform a review or audit of its underwriting processes and report results to the <a href="#">HOC</a>.</p> <p>The <a href="#">HOC</a> may also conduct an onsite lender monitoring review.</p>
Quality Control Plan	<p>The <a href="#">HOC</a> may require the lender to make changes to its Quality Control (QC) Plan.</p>

### 4155.2 9.D.2.c Lender Notification of Probation

The [HOC](#) must send a written notice of the probation action to the mortgage lender. The probation notice explains the

- probation elements being applied, and
- non-complying action that precipitated the probation.

**Reference:** For more information on the format for the probation letter, see [HUD 4155.2 12.C.4](#).

*Continued on next page*

## 2. Lender Probation, Continued

---

**4155.2 9.D.2.d  
Effective Date  
of Probation**

Lender probation is effective immediately upon the receipt of the [HOC](#) notification letter by the mortgage lender.

---

**4155.2 9.D.2.e  
Reasons for  
Returning a  
Lender to Pre-  
Closing Review  
Status**

The [HOC](#) must return a lender to pre-closing review status under the circumstances listed below.

- A lender's branch or only office has had 20% or more of its post endorsement technical review (PETR) cases rated Unacceptable for two consecutive quarters. (*Note:* The lender must have had at least 50 cases subjected to [PETRs](#) during each quarter, or such lower number as established by the [HOC](#)).
  - After review of a lender's cases, the
    - [HOC](#) identifies a pattern of fraud of which the lender was aware, or should have been aware, and
    - Quality Assurance Division (QAD) has recommended that the lender be returned to pre-closing status based on the results of onsite or other reviews conducted of that lender.
-

### 3. Withdrawal of Direct Endorsement (DE) Authority

---

**Introduction** This topic contains information on the withdrawal of Direct Endorsement (DE) authority, including

- withdrawing DE lender approval status
  - notification of the withdrawal of DE lender status
  - the effective date of the DE lender status withdrawal
  - the lender/Homeownership Center (HOC) informal conference and follow-up
  - Mortgage Review Board (MRB) withdrawal of FHA basic approval
  - the effect of the withdrawal of DE and/or FHA approval on cases in process, and
  - withdrawal of DE authority for excessive default and claim rates.
- 

**Change Date** March 1, 2011

---

**4155.2 9.D.3.a  
Withdrawing  
DE Lender  
Approval  
Status** The Homeownership Center (HOC) may withdraw the Direct Endorsement (DE) lender approval of any lender's branch office that demonstrates a pattern or practice of failing to comply with FHA underwriting guidelines or other program requirements.

---

*Continued on next page*

### 3. Withdrawal of Direct Endorsement (DE) Authority, Continued

---

#### 4155.2 9.D.3.b Notification of Withdrawal of DE Lender Status

The [HOC](#) must send written notice of the withdrawal of [DE](#) lender status to the lender. The notice

- is sent and applies specifically to the lender's office that submitted the non-complying cases
- states the grounds for action, and
- informs the lender of the right to an informal conference before the decision-making [HOC](#).

*Note:* Copies of the notice are sent to the

- Office of Lender Activities and Program Compliance (OLAPC), and
- Single Family Development Division.

*References:* For more information on the

- informal conference with the [HOC](#), see [HUD 4155.2 9.D.3.d](#), and
  - format for the withdrawal letter, see [HUD 4155.2 12.C.6](#).
- 

#### 4155.2 9.D.3.c Effective Date of the DE Lender Status Withdrawal

[DE](#) lender status withdrawal is effective immediately upon receipt of the notice by the lender.

---

#### 4155.2 9.D.3.d Lender/HOC Informal Conference and Follow Up

The purpose of the informal conference between the lender and the [HOC](#) is to provide the lender with the opportunity to

- address the grounds for the action as stated in the notice
- make documentary and oral presentations, and
- advise the [HOC](#) decision-maker as to what actions, if any, the lender has taken to address the problems identified.

Following the informal conference, the [HOC](#) decision-maker advises the lender, in writing, as to whether the withdrawal has been rescinded, modified, or affirmed.

---

*Continued on next page*

### 3. Withdrawal of Direct Endorsement (DE) Authority, Continued

---

**4155.2 9.D.3.e  
MRB  
Withdrawal of  
Basic FHA  
Approval**

The Mortgagee Review Board (MRB) reviews cases of serious non-compliance with [DE](#) program requirements and may issue a letter of reprimand, probation, suspension or withdrawal for any lender in violation of FHA requirements, the non-discrimination requirements of the Equal Credit Opportunity Act (ECOA), the Fair Housing Act, or Executive Order 11063.

Only the [MRB](#), and *not* a [HOC](#), may withdraw a lender's basic FHA approval. Withdrawal of basic FHA approval applies to *all* offices of the mortgage lender.

Withdrawn FHA approval means that the lender may not originate, service, or purchase any FHA-insured mortgages.

**References:** For information on

- applying for FHA approval, see [HUD 4155.2 2.A.1.d](#), and
  - the Mortgagee Review Board, see [HUD 4060.2](#).
- 

**4155.2 9.D.3.f  
Effect of  
Withdrawal of  
DE and/or FHA  
Approval on  
Cases in  
Process**

A mortgage involving a borrower whose application was approved on or before the date that the lender received notification of the withdrawal of its [DE](#) or FHA approval, may be closed under the [DE](#) Program and submitted to FHA for endorsement.

The lender must transfer all other applications in process to another [DE](#)-approved lender for completion of processing, submission and endorsement.

---

**4155.2 9.D.3.g  
Withdrawal of  
DE Authority  
for Excessive  
Default and  
Claim Rates**

HUD can use its regulatory authority to terminate a lender's authorization to underwrite single family loans in specific geographic areas where the lender has a high rate of early defaults and claims.

See [ML 10-03](#) for more information on the review, appeal and reinstatement processes, criteria for termination, and mitigating factors.

**Reference:** For more information on lender approval, see [HUD 4060.1](#) REV-2, *Mortgagee Approval Handbook*.

---

## 4. Use of Indemnification Agreements

---

**Introduction** This topic contains information on the use of indemnification agreements, including

- use of indemnification agreements
  - who requests indemnification
  - the terms of the indemnification agreement, and
  - the duration of an indemnification agreement.
- 

**Change Date** December 23, 2010

---

**4155.2 9.D.4.a Use of Indemnification Agreements** Lender violations that significantly increase FHA's risk, and were caused by fraud or negligence on the part of the lender, should result in an indemnification agreement with the lender.

---

**4155.2 9.D.4.b Who Requests Indemnification** Indemnification is requested by either the

- Homeownership Center (HOC), through the Quality Assurance Division (QAD), when appropriate, or
- Office of Lender Activities and Program Compliance (OLAPC), located at FHA Headquarters, in lieu of referring the matter to the Mortgagee Review Board (MRB).

---

**4155.2 9.D.4.c Terms of an Indemnification Agreement** Under an indemnification agreement, the originating lender agrees to either

- abstain from filing an insurance claim, or
- reimburse FHA if a subsequent holder of the mortgage files an insurance claim and FHA suffers a financial loss disposing of the property.

---

**4155.2 9.D.4.d Duration of an Indemnification Agreement** The term or duration of an indemnification agreement varies according to the severity of the violation. Typically, the agreement is effective for five years from the date of the agreement, but may extend for a longer period at FHA's discretion.

---

## 5. Civil Money Penalties

---

**Introduction** This topic contains information on civil money penalties, including

- grounds for civil money penalties
  - who may receive a civil money penalty
  - who imposes a civil money penalty
  - referring a case for consideration of a civil money penalty, and
  - examples of program violations warranting civil money penalties.
- 

**Change Date** March 1, 2011

---

**4155.2 9.D.5.a  
Grounds for  
Civil Money  
Penalties** FHA may impose civil money penalties upon those entities (both individual and corporate) connected with an insured mortgage who *knowingly and materially*

- do *not* implement a Quality Assurance (QA) Plan
- demonstrate a pattern of egregious violations of FHA policy
- submit false information or falsely certify to the FHA, or
- submit a false certification by another person or entity to the FHA.

***References:***

- For more information on civil money penalties, see [24 CFR 30](#).
  - For examples of program violations warranting civil money penalties, see [HUD 4155.2 9.D.5.e](#), and
  - For a definition of “*knowingly and materially*,” see [HUD 4155.2 9.D.5.d](#).
- 

*Continued on next page*

## 5. Civil Money Penalties, Continued

---

**4155.2 9.D.5.b  
Who May  
Receive a Civil  
Money Penalty**

FHA is authorized to pursue civil money penalties against any owners, officers or directors of an FHA-approved lender for violations of program requirements. FHA may also pursue civil money penalties against any

- non-FHA approved or unauthorized individual or entity that originates an FHA-insured loan
  - participant in FHA programs that causes or participates in any violation set forth in Section 536(b)(1) of the National Housing Act (NHA)
  - other program participants, including but not limited to
    - real estate agents and brokers
    - appraisers and inspectors
    - borrowers
    - mortgage brokers and third-party originators, and
    - closing agents and title companies.
- 

**4155.2 9.D.5.c  
Who Imposes a  
Civil Money  
Penalty**

The imposition of civil money penalties is the responsibility of the

- Mortgagee Review Board ([MRB](#)), for penalties against mortgage lender program participants, and
  - Assistant Secretary for Housing/Federal Housing Commissioner, for penalties against any other participants.
- 

*Continued on next page*

## 5. Civil Money Penalties, Continued

### 4155.2 9.D.5.d Referring a Case for Consideration of a Civil Money Penalty

The table below describes the process for referring a case to either the [MRB](#) or the Assistant Secretary for Housing/Federal Housing Commissioner for consideration of a civil money penalty.

Stage	Description
1	<p>The Homeownership Center (<a href="#">HOC</a>) refers a lender or other program participant for consideration of a civil money penalty, making sure that the referral is based upon adequate documentation that the program participant <i>knowingly and materially</i> engaged in violations of the FHA's rules or requirements.</p> <p><b>Note:</b> The term</p> <ul style="list-style-type: none"> <li>• “<i>knowingly</i>” means that the program participant <ul style="list-style-type: none"> <li>– had actual knowledge of the violations</li> <li>– should have known of the acts, or</li> <li>– was acting with deliberate ignorance or reckless disregard of the FHA's requirements, and</li> </ul> </li> <li>• “<i>materially</i>” means that the violations have a financial impact on FHA or may have influenced an FHA decision (such as whether to endorse a mortgage for insurance).</li> </ul>

*Continued on next page*

## 5. Civil Money Penalties, Continued

---

### 4155.2 9.D.5.d Referring a Case for Consideration of a Civil Money Penalty (continued)

Stage	Description
2	<p>The Director of the Office of Lender Activities and Program Compliance (OLAPC) located at FHA Headquarters reviews the <a href="#">HOC</a> referral for</p> <ul style="list-style-type: none"> <li>• full factual background of the violations</li> <li>• citation(s) of violated FHA regulations or requirements</li> <li>• all supporting documentation of the violations, and</li> <li>• all information that the program participant previously submitted to the <a href="#">HOC</a>.</li> </ul>
3	<p>The Director of the <a href="#">OLAPC</a> coordinates the referral and, if appropriate, submits the case to the <a href="#">MRB</a> or to the Assistant Secretary for Housing/Federal Housing Commissioner for action.</p>

---

*Continued on next page*

## 5. Civil Money Penalties, Continued

---

**4155.2 9.D.5.e**  
**Examples:**  
**Program**  
**Violations**  
**Warranting**  
**Civil Money**  
**Penalties**

Examples of “*knowingly and materially*” engaging in program violations include the

- transfer of an insured mortgage to a mortgage lender not approved by FHA
  - use of escrow funds for any purpose other than that for which they were received
  - falsely certifying or submitting a false certification by another person
  - failure to comply with mortgage servicing requirements
  - submission of false information in connection with any insured mortgage transaction
  - hiring or employing an individual such as an officer, director, principal or employee, whose duties involve programs administered by the FHA, while that individual is under suspension or debarment by the FHA
  - failure to comply with any agreement, certification or condition set forth or applicable to the application of a mortgage lender for approval by the FHA
  - failure by a mortgage lender to segregate escrow funds received from borrowers and to deposit such funds in a special account with a federally-insured depository institution
  - hiring or retaining an agent whose duties involve programs administered by the FHA while such agent is under suspension or debarment by the FHA
  - failure to remit, or timely remit, Mortgage Insurance Premiums (MIPs), loan insurance charges, late charges or interest penalties
  - failure to timely submit documents that are complete and accurate in connection with a conveyance of property or a claim for insurance benefits, and
  - failure to comply with the provisions of the Real Estate Settlement Procedures Act (RESPA) and the Home Mortgage Disclosure Act (HMDA).
-

## 6. Sanctions Against Individuals and Other Program Participants

---

**Introduction** This topic contains information on sanctions against individuals and other program participants, including

- the policy on imposing sanctions
  - employee improprieties may be attributed to the organization
  - the types of sanctions
  - the Limited Denial of Participation ([LDP](#)) sanction, and
  - debarment.
- 

**Change Date** December 23, 2010

---

**4155.2 9.D.6.a Policy on Imposing Sanctions** FHA may impose sanctions upon individuals and companies involved in FHA programs who demonstrate a lack of business responsibility.

***Examples:***

- Direct Endorsement ([DE](#)) underwriters
- FHA Roster appraisers or inspectors
- real estate agents or brokers, pest control operators, and so on, or
- companies who participate in FHA programs, such as
  - real estate companies, and
  - appraisal and inspection companies.

***Reference:*** For more information on imposing sanctions on individuals and companies, see 24 CFR 24.

---

**4155.2 9.D.6.b Employee Improprieties May Be Attributed to the Organization** Criminal, fraudulent or other seriously improper conduct by DE underwriters or other mortgage lender employees may be attributed to the organization with which the employee is connected when the impropriety is performed within the course of the employee's official duty.

Such impropriety may result in appropriate administrative sanctions against the DE mortgage lender.

---

*Continued on next page*

## 6. Sanctions Against Individuals and Other Program Participants, Continued

---

### 4155.2 9.D.6.c Types of Sanctions

The two types of sanctions to be imposed on individuals and other program participants (companies) include

- Limited Denial of Participation ([LDP](#)), and
- debarment.

**References:** For more information on

- the [LDP](#) sanction, see [HUD 4155.2 9.D.6.d](#), and
- Debarment, see [HUD 4155.2 9.D.6.e](#).

---

*Continued on next page*

## 6. Sanctions Against Individuals and Other Program Participants, Continued

**4155.2 9.D.6.d LDP Sanction** An [LDP](#) excludes a specific person from participating in a specific program, or programs, within a Homeownership Center’s ([HOC](#)) geographic jurisdiction, for a specific period of time. An [LDP](#) is normally issued by a [HOC](#), but may be issued by a HUD Headquarters office.

The table below provides details on the LDP sanction.

LDP Information	Description
<p>Causes for Issuing an <a href="#">LDP</a></p>	<p>An <a href="#">LDP</a> may be issued against an individual, a contractor, or other program participant based upon adequate evidence of any of the following:</p> <ul style="list-style-type: none"> <li>• approval of an applicant who is an unsatisfactory risk</li> <li>• irregularities in a person’s past performance in an FHA program</li> <li>• failure of a person to maintain the prerequisites of eligibility to participate in an FHA program</li> <li>• failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations</li> <li>• failure to satisfy, upon completion, the requirements of an assistance agreement or contract</li> <li>• deficiencies in ongoing construction projects</li> <li>• falsely certifying in connection with any FHA program, whether or not the certification was made directly to FHA</li> <li>• commission of an offense as listed in <a href="#">24 CFR 24.800</a></li> <li>• imposition of an <a href="#">LDP</a> by any other HUD office</li> <li>• violation of any law, regulation, or procedure relating to the application for financial assistance, insurance, or guarantee, or to the performance of obligations incurred pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee</li> <li>• failure to proceed in accordance with <a href="#">DE</a> underwriting guidelines in all aspects of loan origination, such as architectural review, property analysis, mortgage credit analysis, underwriting guidelines, and closing requirements</li> <li>• making or procuring to be made any false statement for the purpose of influencing in any way an action of the Department, and</li> <li>• debarment or suspension by another Federal agency for any cause substantially the same as provided in <a href="#">24 CFR 24.800</a></li> </ul>

*Continued on next page*

## 6. Sanctions Against Individuals and Other Program Participants, Continued

### 4155.2 9.D.6.d LDP Sanction (continued)

LDP Information	Description
Causes for Issuing an <a href="#">LDP</a> (cont.)	<p><b>Exceptions:</b> FHA-approved mortgage lenders are not eligible for <a href="#">LDP</a>.</p> <p><b>Note:</b> A decision to order an <a href="#">LDP</a> is discretionary and should be imposed only in the best interest of Government.</p> <p><b>Reference:</b> For more information on <a href="#">LDPs</a>, see <a href="#">24 CFR 24.1100</a> through <a href="#">24.1165</a>.</p>
Scope of <a href="#">LDP</a>	<p>An <a href="#">LDP</a> generally extends only to participation in the program under which the cause arose. However, an <a href="#">LDP</a> may, at the discretion of the authorized official, extend to other programs, initiatives, or functions within the jurisdiction of an Assistant Secretary.</p> <p>The authorized official may determine that a sanction will apply to all programs throughout HUD when the sanction is based on an indictment or conviction.</p>
Duration of <a href="#">LDP</a>	The <a href="#">LDP</a> sanction may be imposed for a period not to exceed 12 months, and is limited to the geographic jurisdiction of the <a href="#">HOC</a> imposing the sanction.
<a href="#">LDP</a> Processing and Appeal Procedures	<a href="#">LDP</a> processing and appeal procedures are set forth in <a href="#">24 CFR 24.1100</a> through <a href="#">24 CFR 24.1165</a>

Continued on next page

## 6. Sanctions Against Individuals and Other Program Participants, Continued

4155.2 9.D.6.e The table below provides details regarding debarment.  
**Debarment**

Debarment Information	Description
Who May Impose Debarment	A <a href="#">HOC</a> , or the Deputy Assistant Secretary for Single Family Housing may refer persons or companies to FHA Headquarters for proposed debarment proceedings. Only the Assistant Secretary for Housing/Federal Housing Commissioner may actually impose debarment.
Causes for Proposing a Debarment	Reasons for imposing debarment are listed in <a href="#">24 CFR 24.800</a> and include <ul style="list-style-type: none"> <li>• criminal conviction or civil judgment for commission of fraud</li> <li>• violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program</li> <li>• any other serious or compelling cause that affects the present responsibility of a person, or</li> <li>• material violation of a statutory or regulatory provision or program requirement.</li> </ul>
Scope of Debarment	Debarment excludes the party being debarred from all Federal Government programs.
Duration of Debarment	Debarment should be commensurate with the cause of the debarment, but generally does not exceed 3 years.
Debarment Processing and Appeal Procedures	Debarment processing and appeal procedures are set forth in <a href="#">24 CFR 24.805</a> through 24 CFR 24.885