
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.