
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.