

§ 30.40

§ 30.40 Loan guarantees for Indian housing.

(a) *General.* The Assistant Secretary for Public and Indian Housing (or his/her designee) may initiate a civil money penalty action against any mortgagee or holder of a guarantee certificate who knowingly and materially violates the provisions of 12 U.S.C. 1715z-13a(g)(2) concerning loan guarantees for Indian housing.

(b) *Continuing violation.* Each day that a violation continues shall constitute a separate violation.

(c) *Amount of penalty.* The maximum penalty is \$5,000 for each violation, up to a limit of \$1,100,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

[61 FR 50215, Sept. 24, 1996, as amended at 65 FR 9087, Feb. 23, 2000]

EFFECTIVE DATE NOTE: At 68 FR 12788, Mar. 17, 2003, § 30.40 was amended by revising paragraph (c), effective Apr. 16, 2003. For the convenience of the user, the revised text follows:

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(c) *Amount of penalty.* The maximum penalty is \$6,000 for each violation, up to a limit of \$1,250,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

§ 30.45 Multifamily and section 202 or 811 mortgagors.

(a) *Definitions.* The following definitions apply to this section only:

(1) *Agent employed to manage the property that has an identity of interest and identity of interest agent.* An entity:

- (i) That has management responsibility for a project;
- (ii) In which the ownership entity, including its general partner or partners (if applicable) and its officers or directors (if applicable), has an ownership interest; and
- (iii) Over which the ownership entity exerts effective control.

(2) *Effective control.* The ability to direct, alter, supervise, or otherwise influence the actions, policies, decisions, duties, employment, or personnel of the management agent.

(3) *Entity.* An individual corporation; company; association; partnership; authority; firm; society; trust; state, local government or agency thereof; or any other organization or group of people.

(4) *Multifamily property.* Property that includes 5 or more living units and that has a mortgage insured, co-insured, or held pursuant to the National Housing Act (12 U.S.C. 1702 *et seq.*).

(5) *Ownership interest.* Any direct or indirect interest in the stock, partnership interests, beneficial interests (for a trust) or other medium of equity participation. An indirect interest includes equity participation in any entity that holds a management interest (e.g. general partner, managing member of an LLC, majority stockholder, trustee) or minimum equity interest (e.g., a 25% or more limited partner, 10% or more stockholder) in the ownership entity of the management agent.

(6) *Section 202 or 811 property.* Property that includes 5 or more living units and that has a mortgage held pursuant to a direct loan or capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) or capital advances under section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013).

(b) *Violation of agreement—(1) General.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against a mortgagor of a section 202 or 811 property or a mortgagor, general partner of a partnership mortgagor, or any officer or director of a corporate mortgagor of a multifamily property who:

- (i) Has agreed in writing, as a condition of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a workout agreement, to use nonproject income to make cash contributions for payments due under the note and mortgage, for payments to the reserve for replacements, to restore the project to good physical condition, or to pay other project liabilities; and
- (ii) Knowingly and materially fails to comply with any of the commitments listed in paragraph (b)(1)(i) of this section.

(2) *Maximum penalty.* The maximum penalty for each violation under paragraph (b) of this section is the amount of loss that the Secretary would experience at a foreclosure sale, or a sale after foreclosure, of the property involved.

(c) *Other violations.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against any of the following who knowingly and materially take any of the actions listed in 12 U.S.C. 1735f-15(c)(1)(B):

(1) Any mortgagor of a multifamily property;

(2) Any general partner of a partnership mortgagor of such property;

(3) Any officer or director of a corporate mortgagor;

(4) Any agent employed to manage the property that has an identity of interest with the mortgagor, with the general partner of a partnership mortgagor, or with any officer or director of a corporate mortgagor of such property; or

(5) Any member of a limited liability company that is the mortgagor of such property or is the general partner of a limited partnership mortgagor or is a partner of a general partnership mortgagor.

(d) *Acceptable management.* For purposes of this rule, "management acceptable to the Secretary" under 12 U.S.C. 1735f-15(c)(1)(B)(xiv) shall include:

(1) Proper fiscal management;

(2) Proper handling of vacancies and tenanting in accordance with HUD regulations;

(3) Appropriate handling of rent collection;

(4) Proper maintenance;

(5) Compliance with HUD regulations on tenant organization; and

(6) Any other matters that pertain to proper management.

(e) *Civil money penalty.* A consistent pattern of violations of HUD program requirements, or a single violation that causes serious injury to the public or tenants, can be a basis for an action to assess a civil money penalty.

(f) *Section 202 or 811 projects.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her

designee, may initiate a civil money penalty action against any mortgagor of a section 202 or 811 property who knowingly and materially takes any of the actions listed in 12 U.S.C. 1701q-1(c)(1).

(g) *Maximum penalty.* The maximum penalty for each violation under paragraph (c) of this section is \$30,000.

(h) *Payment of penalty.* No payment of a civil money penalty levied under this section shall be payable out of project income.

(i) *Exceptions.* The Secretary may not impose penalties under this section for a violation, if a material cause of the violation is the failure of the Secretary, an agent of the Secretary, or a public housing agency to comply with an existing agreement.

[66 FR 63441, Dec. 6, 2001]

EFFECTIVE DATE NOTE: At 68 FR 12788, Mar. 17, 2003, § 30.45 was amended by revising paragraph (g), effective Apr. 16, 2003. For the convenience of the user, the revised text follows:

§ 30.45 Multifamily and Section 202 or 811 mortgagors.

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(g) *Maximum penalty.* The maximum penalty for each violation under paragraph (c) of this section is \$32,500.

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§ 30.50 GNMA issuers and custodians.

(a) *General.* The President of GNMA, or his or her designee, may initiate a civil money penalty action against a GNMA issuer or custodian that knowingly and materially violates any provision of 12 U.S.C. 1723i(b), title III of the National Housing Act, or any implementing regulation, handbook, guaranty agreement, or contractual agreement, or participant letter issued by GNMA, or fails to comply with the terms of a settlement agreement with GNMA.

(b) *Continuing violation.* Each day that a violation continues shall constitute a separate violation.

(c) *Amount of penalty.* The maximum penalty is \$5,500 for each violation, up to a limit of \$1,100,000 during any one-year period. Each violation shall constitute a separate violation with respect to each pool of mortgages.