

(b) *Amount of penalty.* The maximum penalty is \$11,000 for each violation.

[65 FR 50593, Aug. 18, 2000]

§ 30.68 Section 8 owners.

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

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

(1) That has management responsibility for a project;

(2) In which the ownership entity, including its general partner or partners (if applicable), has an ownership interest; and

(3) Over which the ownership entity exerts effective control.

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

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.

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.

(b) *General.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, and the Assistant Secretary for Public and Indian Housing, or his or her designee, may initiate a civil money penalty action against any owner, any general partner of a partnership owner, or any agent employed to manage the property that has an identity of interest with the owner or the general partner of a partnership owner of a property receiving project-based assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) for a knowing and material breach of a housing

assistance payments contract, including the following:

(1) Failure to provide decent, safe, and sanitary housing pursuant to section 8 of the United States Housing Act of 1937 and 24 CFR 5.703; or

(2) Knowing or willful submission of false, fictitious, or fraudulent statements or requests for housing assistance payments to the Secretary or to any department or agency of the United States.

(c) *Maximum penalty.* The maximum penalty for each violation under this section is \$25,000.

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

(e) *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 63442, Dec. 6, 2001]

Subpart C—Procedures

§ 30.70 Prepenalty notice.

Whenever HUD intends to seek a civil money penalty, the official designated in subpart B of this part, or his or her designee (or the chairperson of the Mortgage Review Board, or his or her designee, in actions under § 30.35), shall issue a written notice to the respondent. This prepenalty notice shall include the following:

(a) That HUD is considering seeking a civil money penalty;

(b) The specific violations alleged;

(c) The maximum civil money penalty that may be imposed;

(d) The opportunity to reply in writing to the designated program official within 30 days after receipt of the notice; and

(e) That failure to respond within the 30-day period may result in issuance of a complaint under § 30.85 without consideration of any information that the respondent may wish to provide.

§ 30.75 Response to prepenalty notice.

The response shall be in a format prescribed in the prepenalty notice. The

§ 30.80

response shall include any arguments opposing the imposition of a civil money penalty that the respondent may wish to present.

§ 30.80 Factors in determining appropriateness and amount of civil money penalty.

In determining whether to seek a penalty, and the amount of such penalty, the officials designated in subpart B of this part shall consider the following factors:

- (a) The gravity of the offense;
- (b) Any history of prior offenses. For violations under §§ 30.25, 30.35, 30.45, 30.50, 30.55, and 30.60, offenses that occurred prior to December 15, 1989 may be considered;
- (c) The ability to pay the penalty;
- (d) The injury to the public;
- (e) Any benefits received by the violator;
- (f) The extent of potential benefit to other persons;
- (g) Deterrence of future violations;
- (h) The degree of the violator's culpability;
- (i) With respect to Urban Homestead violations under § 30.30, the expenditures made by the violator in connection with any gross profit derived; and
- (j) Such other matters as justice may require.
- (k) In addition to the above factors, with respect to violations under §§ 30.45, 30.55, 30.60, and 30.68, the Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, or the Assistant Secretary for Public and Indian Housing, or his or her designee, shall also consider:
 - (1) Any injury to tenants; and/or
 - (2) Any injury to lot owners.

[61 FR 50215, Sept. 24, 1996, as amended at 66 FR 63442, Dec. 6, 2001]

§ 30.85 Complaint.

(a) *General.* Upon the expiration of the period for the respondent to submit a response to the prepenalty notice, the official designated in subpart B of this part, or his or her designee (or the Mortgagee Review Board in actions under § 30.35) shall determine whether to seek a civil money penalty. Such determination shall be based upon a review of the prepenalty notice, the response, if any, and the factors listed at

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§ 30.80. A determination by the Mortgagee Review Board to seek a civil money penalty shall be by a majority vote of the Board.

(b) If a determination is made to seek a civil money penalty, the official or his or her designee, or the Mortgagee Review Board, shall issue a complaint to the respondent. The complaint shall state the following:

- (1) The factual basis for the decision to seek a penalty;
 - (2) The applicable civil money penalty statute;
 - (3) The amount of penalty sought;
 - (4) The right to submit a response in writing, within 15 days of receipt of the complaint, requesting a hearing on any material fact in the complaint, or on the appropriateness of the penalty sought;
 - (5) The address to which a response must be sent;
 - (6) That the failure to submit a response may result in the imposition of the penalty in the amount sought.
- (c) A copy of this part and of 24 CFR part 26, subpart B shall be included with the complaint.
- (d) *Service of the complaint.* The complaint shall be served on the respondent by first class mail, personal delivery, or other means. In cases of violations by mortgagees and lenders of 12 U.S.C. 1735f-14(b) (1)(D) or (1)(F), or by GNMA issuers or custodians of 12 U.S.C. 1723i(b) (1)(G) or (1)(I), a copy of the complaint shall be provided to the Attorney General.

§ 30.90 Response to the complaint.

(a) *General.* The respondent may submit to HUD a written response to the complaint within 15 days of its receipt. The response shall be considered a request for a hearing. The response should include the admission or denial of each allegation of liability made in the complaint; any defense on which the respondent intends to rely; any reasons why the civil money penalty is not warranted or should be less than the amount sought in the complaint; and the name, address, and telephone number of the person who will act as the respondent's representative, if any.

(b) *Filing with the administrative law judges.* HUD shall file the complaint and response with the Chief Docket