

## § 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

## 24 CFR Subtitle A (4-1-03 Edition)

§ 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