

§ 81.45

24 CFR Subtitle A (4-1-06 Edition)

§ 81.45 Obtaining and disseminating information.

(a) The Secretary shall obtain information from other regulatory and enforcement agencies of the Federal Government and State and local governments regarding violations by lenders of the Fair Housing Act, ECOA, and/or State or local fair housing/lending laws, and shall make such information available to the GSEs as the Secretary deems appropriate in accordance with applicable law regarding the confidentiality of supervisory information and the right to financial privacy, and subject to the terms of memoranda of understanding and other arrangements between the Secretary and Federal financial regulators and other agencies. In addition, the Secretary shall make information that the Secretary possesses regarding violations of the Fair Housing Act available to the GSEs.

(b) As contemplated in paragraph (a) of this section, the Secretary shall obtain information regarding violations by lenders of the Fair Housing Act or ECOA involving discrimination with respect to the availability of credit in a residential real-estate-related transaction from other Federal regulatory or enforcement agencies. The Secretary will obtain information from regulators regarding violations of ECOA by lenders only in circumstances in which there is either more than a single ECOA violation, or the ECOA violation could also be a violation of the Fair Housing Act.

§ 81.46 Remedial actions.

(a) *General.* The Secretary shall direct the GSEs to take one or more remedial actions, including suspension, probation, reprimand or settlement, against lenders found to have engaged in discriminatory lending practices in violation of the Fair Housing Act or ECOA, pursuant to a final adjudication on the record and an opportunity for a hearing under subchapter II of chapter 5 of title 5, United States Code.

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

Indefinite suspension means that, until directed to do otherwise by the Secretary, the GSEs will refrain from purchasing mortgages from a lender.

Probation means that, for a fixed period of time specified by the Secretary, a lender that has been found to have violated the Fair Housing Act or ECOA will be subject automatically to more severe sanctions than probation, *e.g.*, suspension, if further violations are found.

Remedial action includes a reprimand, probation, temporary suspension, indefinite suspension, or settlement.

Reprimand means a written letter to a lender from a GSE, which has been directed to be sent by the Secretary, stating that the lender has violated the Fair Housing Act or ECOA and warning of the possibility that the Secretary may impose more severe remedial actions than reprimand if any further violation occurs.

Temporary Suspension means that, for a fixed period of time specified by the Secretary, the GSEs will not purchase mortgages from a lender.

(c) *Institution of remedial actions.* (1) The Secretary shall direct the GSE to take remedial action(s) against a lender charged with violating ECOA only after a final determination on the charge has been made by an appropriate United States District Court or any other court of competent jurisdiction. The Secretary shall direct the GSE to take remedial action(s) against a lender charged with violating the Fair Housing Act only after a final determination on the matter has been made by a United States Court, a HUD Administrative Law Judge, or the Secretary.

(2) Following a final determination sustaining a charge against a lender for violating the Fair Housing Act or ECOA, in accordance with paragraph (c)(1) of this section, the Secretary shall determine the remedial action(s) that the GSE is to be directed to take for such violation.

(3) In determining the appropriate remedial action(s), the Secretary shall solicit and fully consider the views of the Federal financial regulator responsible for the subject lender concerning the action(s) that are contemplated to be directed against such lender, prior to directing any such action(s). If such responsible Federal financial regulator makes a written determination that a particular remedial action would

threaten the financial safety and soundness of a Federally-insured lender, the Secretary shall consider other remedial actions. Where warranted, the Secretary also shall solicit and fully consider the views of the Director regarding the effect of the action(s) that are contemplated on the safety and soundness of the GSE. In determining what action(s) to direct, the Secretary will also, without limitation, consider the following:

- (i) The gravity of the violation;
- (ii) The extent to which other action has been taken against the lender for discriminatory activities;
- (iii) Whether the lender's actions demonstrate a discriminatory pattern or practice or an individual instance of discrimination;
- (iv) The impact or seriousness of the harm;
- (v) The number of people affected by the discriminatory act(s);
- (vi) Whether the lender operates an effective program of self assessment and correction;
- (vii) The extent of any actions or programs by the lender designed to compensate victims and prevent future fair lending violations;
- (viii) The extent that a finding of liability against a lender is based on a lender's use of a facially-neutral underwriting guideline of a secondary mortgage market entity applied appropriately by the lender in order to sell loans to that secondary mortgage market entity; and
- (ix) Any other information deemed relevant by the Secretary.

(d) *Notice of remedial action(s)*. (1) Following the Secretary's decision concerning the appropriate remedial action(s) that the GSE is to be directed to take, the Secretary shall prepare and issue to the GSE and the lender a written notice setting forth the remedial action(s) to be taken and the date such remedial action(s) are to commence. The Notice shall inform the lender of its right to request a hearing on the appropriateness of the proposed remedial action(s), within 20 days of service of the Notice, by filing a request with the Docket Clerk, HUD Office of Administrative Law Judges.

(2) Where a lender does not timely request a hearing on a remedial action,

the GSE shall take the action in accordance with the Notice.

(e) *Review and decision on remedial action(s)*. (1) Where a lender timely requests a hearing on a remedial action, a hearing shall be conducted before a HUD administrative law judge (ALJ) and a final decision rendered in accordance with the procedures set forth in 24 CFR part 26, subpart B, to the extent such provisions are not inconsistent with subpart C of this part or FHEFSSA. The lender and the Secretary, but not the GSE, shall be parties to the action. At such hearing, the appropriateness of the remedial action for the violation(s) will be the sole matter for review. The validity or appropriateness of the underlying determination on the violation(s) shall not be subject to review at such hearing.

(2) The Secretary shall transmit to the GSEs each final decision by HUD on a remedial action and any dispositive settlement of a proceeding on such action.

(3) The GSE shall take the action(s) set forth in a final decision by HUD on remedial action(s) or any dispositive settlement of such a proceeding setting forth remedial action(s) in accordance with such decision or settlement.

[60 FR 61888, Dec. 1, 1995, as amended by 61 FR 50218, Sept. 24, 1996]

§ 81.47 Violations of provisions by the GSEs.

(a) FHEFSSA empowers the Director of OFHEO to initiate enforcement actions for GSE violations of the provisions of section 1325 of FHEFSSA and these regulations. The Secretary shall refer violations and potential violations of 12 U.S.C. 4545 and this subpart C to the Director.

(b) Where a private complainant or the Secretary is also proceeding against a GSE under the Fair Housing Act, the Assistant Secretary for Fair Housing and Equal Opportunity shall conduct the investigation of the complaint and make the reasonable cause/no reasonable cause determination required by section 810(g) of the Fair Housing Act. Where reasonable cause is found, a charge shall be issued and the matter will proceed to enforcement pursuant to sections 812(b) and (c) of the Fair Housing Act.