

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 25, 28, 30, 81, 180, 3282, and 3500

[Docket No. FR-4787-F-01]

RIN 2501-AC91

Inflation Adjustment of Civil Money Penalty Amounts

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD's civil money penalty regulations to make inflation adjustments to the civil money penalties imposed by HUD as required by statute. The applicable statute mandates the adjustments and the formula used to calculate them.

DATES: Effective Date: April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Dane Narode, Deputy Chief Counsel for Administrative Proceedings, Departmental Enforcement Center, Department of Housing and Urban Development, 1250 Maryland Avenue, SW., Suite 200, Washington, DC 20024. Telephone (202) 708-2350 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. This Final Rule

The changes made by this rule will increase the amount of civil money penalties, consistent with statutory authority.

A. Inflation Adjustment to the Civil Money Penalties

The Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461) (FCPIA Act), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701), requires each federal agency to make inflation adjustments to their maximum civil money penalties. This rule raises the maximum penalties that HUD may impose upon violators with respect to several HUD regulations found in 24 CFR parts 25, 28, 30, 81, 3282, and 3500. For several HUD regulations that address civil money penalties (e.g., 24 CFR 4.28, 30.20, 30.25, 30.36, 30.65, 30.68, and 81.83(b)(2)), no amendment is necessary because application of the statute's formula results in no increase to the penalty. The FCPIA Act provides for a "rounding-off," achieved by using multiples from \$10 to \$25,000, of the increase determined by use of the factor derived from calculating the periodic

increase in the Consumer Price Index (CPI). (See 28 U.S.C. 2461(5)(a).) Consequently, in those instances in which the increased dollar amount is determined to be less than the applicable multiple, the existing penalty is unchanged. The following regulations are revised by this rule.

In § 28.10, the maximum penalty for making a false claim or written statement, as described in the regulation, is increased from \$5,500 to \$6,500.

In § 30.35(c), the maximum penalties that the Mortgagee Review Board may impose for a series of violations identified in the regulations are increased from \$5,500 to \$6,500 per violation, and from \$1,100,000 to \$1,250,000 for all violations committed during any one-year period.

In § 30.40, the maximum penalty that HUD may impose upon a mortgagee or a holder of a guarantee certificate who violates the statutory provisions concerning loan guarantees for Indian housing is increased from \$5,000 to \$6,000 per violation, and from \$1,100,000 to a maximum of \$1,250,000 for all violations committed during any one-year period.

In § 30.45(g), the maximum penalty that may be imposed upon a mortgagor of a multifamily property or on any person in a relationship with the mortgagor as described in the regulations at paragraph (c) of § 30.45 is increased to \$32,500 per violation.

In § 30.50(c), the maximum penalty that may be imposed against a Government National Mortgage Association (GNMA) issuer or custodian for a violation of any provision of 12 U.S.C. 1723i(b) or other authorities cited in the regulations is increased from \$5,500 to \$6,500 per violation, and from \$1,100,000 to \$1,250,000 for all violations committed during any one-year period.

In § 30.55(c), the maximum penalty for each violation of any provision of the Interstate Land Sales Full Disclosure Act remains unchanged at \$1,100, but the one-year maximum per person increases from \$1,100,000 to \$1,250,000.

In § 30.60(c), the maximum penalty that may be imposed upon any dealer or loan correspondent for, among other things, falsifying statements or making false representations in violation of section 2(b)(7) of the National Housing Act (12 U.S.C. 1703(b)(7)) is increased from \$5,500 to \$6,500 for each violation, and from \$1,100,000 to a maximum of \$1,250,000 during any one-year period.

In § 81.83(b)(1), the maximum penalty that the Secretary may impose upon a Government Sponsored Enterprise (GSE) is increased from \$25,000 to

\$30,000 for each day an identified failure occurs.

In §§ 180.670(b)(3)(A)(2) and (3), the maximum penalty that the Administrative Law Judge (ALJ) may impose upon a respondent who is found to have engaged in a discriminatory housing practice is increased from \$27,500 to \$32,500, and from \$55,000 to \$60,000.

In §§ 180.671(a)(2) and (3), the maximum penalty that the ALJ may impose upon a respondent who is found to have engaged in a discriminatory housing practice is increased from \$27,500 to \$32,500, and from \$55,000 to \$60,000.

In § 3282.10, the maximum penalty for each violation of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 *et seq.*) remains unchanged at \$1,100. The one-year maximum for any related series of violations occurring within one year from the date of the first violation is increased from \$1,100,000 to \$1,250,000.

In § 3500.17(m)(1), the penalty for a servicer's failure to submit to a borrower an initial or annual escrow account statement is increased from \$55 to \$65 for each such violation. The total of assessed penalties may not exceed \$120,000 (from the existing total of \$110,000) for violations that occur during any consecutive 12-month period.

B. Technical Correction to 24 CFR 25.12

In addition to revising HUD's civil money penalties to make inflation adjustments as required by statute, this rule makes a technical correction to 24 CFR 25.12. Section 25.12 provides that the Mortgagee Review Board is authorized to impose civil money penalties and refers the reader to 24 CFR 30.320 for a list of violations for which a civil money penalty may be imposed. HUD published a final rule on September 24, 1996 (61 FR 50208), that removed § 30.320 from 24 CFR part 30. In part 30, subpart B now contains a separate section identifying each category of user that is subject to civil money penalties (e.g., Federal Housing Administration approved lenders and mortgagees, multifamily and part 202 mortgagors, GNMA issuers and custodians). This rule, therefore, removes the reference to § 30.320 in § 25.12 and replaces it with the appropriate reference to subpart B (Violations) of part 30.

II. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's

regulations on rulemaking at 24 CFR part 10. Part 10, however, provides in § 10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is “impracticable, unnecessary or contrary to the public interest.”

HUD finds that good cause exists to publish this rule for effect without soliciting public comment in that prior public procedure is “unnecessary.” This final rule merely follows the statutory directive in the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461) to make periodic increases in HUD’s civil money penalties by applying the adjustment formula established in the statute. Accordingly, because calculation of the increases is formula-driven, HUD has no discretion in updating the regulations to reflect the maximum allowable penalties derived from application of the formula. HUD emphasizes that this rule only addresses the matter of the calculation of the maximum civil money penalties for the respective violations described in the regulations. This rule does not address the issue of the Secretary’s discretion to impose or not to impose a penalty, nor the procedures that HUD must follow in initiating a civil money penalty action.

III. Findings and Certifications

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The reason for HUD’s determination is that all entities, small or large, will be subject to the same penalties as established by statute and implemented by this rule. There are not any unusual procedures that would need to be complied with by small entities.

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c), this rule is categorically excluded from the requirements of the National

Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

List of Subjects

24 CFR Part 25

Administrative practice and procedure, Loan programs “housing and community development, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

24 CFR Part 28

Administrative practice and procedure, Claims, Fraud, Penalties.

24 CFR Part 30

Administrative practice and procedure, Grant programs—housing and community development, Loan programs—housing and community development, Mortgages, Penalties.

24 CFR Part 81

Accounting, mortgages, Reporting and recordkeeping requirements, Securities.

24 CFR Part 180

Administrative practice and procedure, Aged, Civil Rights, Fair housing, Individuals with disabilities, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Mortgages, Reporting and recordkeeping requirements.

24 CFR Part 3500

Consumer protection, Housing, Mortgages, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 25, 28, 30, 81, 180, 3282, and 3500 to read as follows:

PART 25—MORTGAGEE REVIEW BOARD

1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 1708(c), 1708(d), 1709(s), 1715b and 1735(f)–14; 42 U.S.C. 3535(d).

2. Revise § 25.12 to read as follows:

§ 25.12 Civil money penalties.

The Board is authorized pursuant to section 536 of the National Housing Act (12 U.S.C. 1735(f)–14) to impose civil money penalties upon lenders and mortgagees, as set forth in 24 CFR part 30. The violations for which a civil money penalty may be imposed are listed in subpart B (Violations) of part 30. Hearings to challenge the imposition of civil money penalties shall be conducted according to the applicable rules of 24 CFR part 30.

PART 28—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

3. The authority citation for part 28 continues to read as follows:

Authority: 28 U.S.C. 2461 note; 31 U.S.C. 3801; 42 U.S.C. 3535(d).

4. Amend § 28.10 by revising the introductory text of paragraphs (a) and (b)(1) to read as follows:

§ 28.10 Basis for civil penalties and assessments.

(a) *Claims.* A civil penalty of not more than \$6,500 may be imposed upon a person who makes a claim that the person knows or has reason to know:

* * * * *

(b) *Statements.* (1) A civil penalty of up to \$6,500 may be imposed upon a person who makes a written statement that:

* * * * *

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

5. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 1701q-1, 1703, 1723i, 1735f-14, 1735f-15; 15 U.S.C. 1717a; 28 U.S.C. 2461 note; 42 U.S.C. 1437z-1 and 3535(d).

6. Amend § 30.35 by revising paragraph (c) to read as follows:

§ 30.35 Mortgagees and lenders.

* * * * *

(c) *Amount of penalty.* The maximum penalty is \$6,500 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.

7. Amend § 30.40 by revising paragraph (c) to read as follows:

§ 30.40 Loan guarantees for Indian housing.

* * * * *

(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.

8. Amend § 30.45 by revising paragraph (g) to read as follows:

§ 30.45 Multifamily and Section 202 or 811 mortgagors.

* * * * *

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

* * * * *

9. Amend § 30.50 by revising paragraph (c) to read as follows:

§ 30.50 GNMA issuers and custodians.

* * * * *

(c) *Amount of penalty.* The maximum penalty is \$6,500 for each violation, up to a limit of \$1,250,000 during any one-year period. Each violation shall constitute a separate violation with respect to each pool of mortgages.

10. Amend § 30.55 by revising paragraph (c) to read as follows:

§ 30.55 Interstate Land Sales violations.

* * * * *

(c) *Amount of penalty.* The maximum penalty is \$1,100 for each violation, up to a limit for any particular person of \$1,250,000 during any one-year period. Each violation shall constitute a separate violation as to each sale or lease or offer to sell or lease.

11. Amend § 30.60 by revising paragraph (c) to read as follows:

§ 30.60 Dealers or loan correspondents.

* * * * *

(c) *Amount of penalty.* The maximum penalty is \$6,500 for each violation, up to a limit for any particular person of \$1,250,000 during any one-year period.

PART 81—THE SECRETARY OF HUD'S REGULATION OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE) AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC)

12. The authority citation for part 81 continues to read as follows:

Authority: 12 U.S.C. 1451 *et seq.*, 1716-1723h, and 4501-4641; 28 U.S.C. 2461 note; 42 U.S.C. 3535(d) and 3601-3619.

13. Amend § 81.83 by revising paragraph (b)(1) to read as follows:

§ 81.83 Civil money penalties.

* * * * *

(b) * * *
(1) For any failure described in paragraph (a)(1) of this section, \$30,000 for each day that the failure occurs; and

* * * * *

PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

14. The authority citation for part 180 continues to read as follows:

Authority: 29 U.S.C. 794; 42 U.S.C. 2000d-1, 3535(d), 3601-3619, 5301-5320, and 6103.

15. Amend § 180.670 by revising paragraphs (b)(3)(iii)(A)(2) and (3) to read as follows:

§ 180.670 Initial decision of ALJ.

* * * * *

(b) * * *
(3) * * *
(iii) * * *
(A) * * *
(2) \$32,500, if the respondent has been adjudged to have committed one other discriminatory housing practice in any administrative hearing or civil action permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, state, or local government agency, and the adjudication was made during the five-year period preceding the date of filing of the charge.

(3) \$60,000, if the respondent has been adjudged to have committed two or more discriminatory housing practices in any administrative hearings or civil actions permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government

agency, and the adjudications were made during the seven-year period preceding the date of filing of the charge.

* * * * *

16. Amend § 180.671 by revising paragraphs (a)(2) and (3) to read as follows:

§ 180.671 Assessing civil penalties for Fair Housing Act cases.

(a) * * *

(1) * * *

(2) \$32,500, if the respondent has been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, to have committed one other discriminatory housing practice and the adjudication was made during the five-year period preceding the date of filing of the charge.

(3) \$60,000, if the respondent has been adjudged in any administrative hearings or civil actions permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, to have committed two or more discriminatory housing practices and the adjudications were made during the seven-year period preceding the date of filing of the charge.

* * * * *

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

17. The authority citation for part 3282 continues to read as follows:

Authority: 28 U.S.C. 2461 note; 42 U.S.C. 5424; and 42 U.S.C. 3535(d).

18. Revise § 3282.10 to read as follows:

§ 3282.10 Civil and criminal penalties.

Failure to comply with these regulations may subject the party in question to the civil and criminal penalties provided for in section 611 of the Act, 42 U.S.C. 5410. The maximum amount of penalties imposed under section 611 of the Act shall be \$1,100 for each violation, up to a maximum of \$1,250,000 for any related series of violations occurring within one year from the date of the first violation.

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

19. The authority citation for part 3500 continues to read as follows:

Authority: 12 U.S.C. 2601 *et seq*; 42 U.S.C. 3535(d).

20. Amend § 3500.17 by revising paragraph (m)(1) to read as follows:

§ 3500.17 Escrow accounts.

* * * * *

(m) *Penalties.* (1) A servicer's failure to submit to a borrower an initial or

annual escrow account statement meeting the requirements of this part shall constitute a violation of section 10(d) of RESPA (12 U.S.C. 2609(d)) and this section. For each such violation, the Secretary shall assess a civil penalty of 65 dollars (\$65), except that the total of the assessed penalties shall not exceed \$120,000 for any one servicer for

violations that occur during any consecutive 12-month period.

* * * * *

Dated: February 24, 2003.

Mel Martinez,

Secretary.

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