

terest” and “identity of interest agent” mean an entity—

(1) that has management responsibility for a project;

(2) 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

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

(June 27, 1934, ch. 847, title V, § 537, as added Pub. L. 101-235, title I, § 108(a), Dec. 15, 1989, 103 Stat. 2003; amended Pub. L. 105-65, title V, § 561(a), Oct. 27, 1997, 111 Stat. 1414; Pub. L. 108-447, div. I, title II, § 219(b), (c), Dec. 8, 2004, 118 Stat. 3319.)

#### AMENDMENTS

2004—Subsec. (c)(1)(B)(ii). Pub. L. 108-447, § 219(b), inserted “other revenues, or contract rights,” after “rents.”

Subsec. (c)(1)(B)(x). Pub. L. 108-447, § 219(c), amended cl. (x) generally. Prior to amendment, cl. (x) read as follows: “Failure to furnish the Secretary, by the expiration of the 60-day period beginning on the 1st day after the completion of each fiscal year, with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared and certified to by an independent public accountant or a certified public accountant and certified to by an officer of the mortgagor, unless the Secretary has approved an extension of the 60-day period in writing. The Secretary shall approve an extension where the mortgagor demonstrates that failure to comply with this subparagraph is due to events beyond the control of the mortgagor.”

1997—Subsec. (b)(1). Pub. L. 105-65, § 561(a)(1), substituted “on that mortgagor, on a general partner of a partnership mortgagor, or on any officer or director of a corporate mortgagor” for “on that mortgagor”.

Subsec. (c). Pub. L. 105-65, § 561(a)(2)(A), substituted “Other violations” for “Violations of regulatory agreement for which penalty may be imposed” in heading.

Subsec. (c)(1). Pub. L. 105-65, § 561(a)(2)(B)(i), (iv), substituted “violation of this subsection” for “violation of such agreement” before period at end of closing provisions and struck out heading and introductory provisions. Introductory provisions read as follows: “The Secretary may also impose a civil money penalty under this section on any mortgagor of property that includes 5 or more living units and that has a mortgage insured, co-insured, or held pursuant to this chapter for any knowing and material violation of the regulatory agreement executed by the mortgagor, as follows:”

Subsec. (c)(1)(A). Pub. L. 105-65, § 561(a)(2)(B)(i), (ii), added subpar. (A) and redesignated former subpar. (A) as cl. (i) of subpar. (B).

Subsec. (c)(1)(B) to (L). Pub. L. 105-65, § 561(a)(2)(B)(i)–(iii), inserted heading and introductory provisions of subpar. (B), redesignated former subpars. (A) to (L) as cls. (i) to (xii) of subpar. (B), respectively, and added cls. (xiii) to (xv).

Subsec. (d)(1)(B). Pub. L. 105-65, § 561(a)(3)(A), inserted “, general partner of a partnership mortgagor, officer or director of a corporate mortgagor, or identity of interest agent employed to manage the property” after “mortgagor”.

Subsec. (d)(5). Pub. L. 105-65, § 561(a)(3)(B), added par. (5).

Subsec. (e)(1). Pub. L. 105-65, § 561(a)(4), substituted “an entity or person” for “a mortgagor”.

Subsec. (f). Pub. L. 105-65, § 561(a)(5), (6), substituted “Civil money penalties against multifamily mortgagors, general partners of partnership mortgagors, officers and directors of corporate mortgagors, and certain managing agents” for “Action to collect penalty” in heading and inserted “, general partner of a partnership mortgagor, officer or director of a corporate mort-

gagor, or identity of interest agent employed to manage the property” after “mortgagor” in two places in text.

Subsec. (k). Pub. L. 105-65, § 561(a)(7), added subsec. (k).

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-65, title V, § 561(c), Oct. 27, 1997, 111 Stat. 1416, provided that: “The amendments made by subsection (a) [amending this section] shall apply only with respect to—

“(1) violations that occur on or after the effective date of the final regulations implementing the amendments made by this section; and

“(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation that occurs on or after that date.”

#### EFFECTIVE DATE

Pub. L. 101-235, title I, § 108(b), Dec. 15, 1989, 103 Stat. 2007, provided that: “The amendment made by subsection (a) [enacting this section] shall apply only with respect to violations referred to in the amendment that occur on or after the effective date of this section [Dec. 15, 1989].”

#### IMPLEMENTATION

Pub. L. 105-65, title V, § 561(b), Oct. 27, 1997, 111 Stat. 1416, provided that:

“(1) **PUBLIC COMMENT.**—The Secretary shall implement the amendments made by this section [amending this section and enacting provisions set out as a note under this section] by regulation issued after notice and opportunity for public comment. The notice shall seek comments primarily as to the definitions of the terms ‘ownership interest in’ and ‘effective control’, as those terms are used in the definition of the terms ‘agent employed to manage the property that has an identity of interest’ and ‘identity of interest agent’.

“(2) **TIMING.**—A proposed rule implementing the amendments made by this section shall be published not later than 1 year after the date of enactment of this Act [Oct. 27, 1997].”

### § 1735f-16. Annual audited financial statements

With respect to fiscal year 1989 and for every fiscal year thereafter, the Secretary shall make available to the public a financial statement of the insurance funds established under this chapter that will present their financial condition on a cash and accrual basis, consistent with generally accepted accounting principles. Each financial statement shall be audited by an independent accounting firm selected by the Secretary and the results of such audit shall be made available to the public.

(June 27, 1934, ch. 847, title V, § 538, as added Pub. L. 101-235, title I, § 131, Dec. 15, 1989, 103 Stat. 2026.)

### § 1735f-17. Examinations and sanctions for certain violations

#### (a) Examinations and sanctions

(1) In connection with any examination of a mortgagee approved by the Secretary pursuant to this chapter, the Secretary shall assess the performance of the mortgagee in meeting the requirements of sections 1709(t),<sup>1</sup> 1715n(a)(7)(B),<sup>1</sup> and 1735f-13 of this title. Where the Secretary determines that a mortgagee is not in compliance with these requirements, the Secretary

<sup>1</sup> See References in Text note below.