

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),¹ 1715n(a)(7)(B),¹ and 1735f-13 of this title. Where the Secretary determines that a mortgagee is not in compliance with these requirements, the Secretary

¹ See References in Text note below.

shall refer the matter to the Mortgagee Review Board for investigation and appropriate action.

(2) Not later than 180 days after November 28, 1990, the Secretary shall by notice establish a procedure under which (A) any person may file a request that the Secretary determine whether a mortgagee is in compliance with sections 1709(t),¹ 1715n(a)(7)(B),¹ and 1735f-13 of this title, (B) the Secretary shall inform the person of the disposition of the request, and (C) the Secretary shall publish in the Federal Register the disposition of any case referred by the Secretary to the Mortgagee Review Board. Such procedures shall be established by regulation under section 553 of title 5. The Secretary shall issue regulations based on the initial notice before the expiration of the 8-month period beginning on the date of the notice.

(3) Omitted.

(b) Monitoring and review

The Secretary shall continually monitor and undertake a thorough review of the implementation of this section to assess the impact of the section on the lending practices of mortgagees and the availability of mortgages insured under this chapter. The Secretary shall monitor the availability of credit, the number and type of lenders participating in the program, whether there is any change in the composition or practices of such lenders and any other factors the Secretary considers appropriate. The Secretary shall submit to the Congress findings detailing the results of such monitoring and review not later than 18 months after November 28, 1990.

(June 27, 1934, ch. 847, title V, § 539, as added Pub. L. 101-625, title III, § 330(b), Nov. 28, 1990, 104 Stat. 4139.)

REFERENCES IN TEXT

Section 1709(t) of this title, referred to in subsec. (a)(1), (2), was redesignated section 1709(u) of this title by Pub. L. 106-377, § 1(a)(1) [title II, § 209(a)(1)], Oct. 27, 2000, 114 Stat. 1441, 1441A-25.

Section 1715n(a)(7)(B) of this title, referred to in subsec. (a)(1), (2), was redesignated section 1715n(a)(7)(A)(ii) of this title by Pub. L. 107-116, title VI, § 615(3), Jan. 10, 2002, 115 Stat. 2225.

CODIFICATION

Paragraph (3) of subsection (a), which required the Secretary to submit to Congress, not less than annually, a report on actions taken to carry out this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 103 of House Document No. 103-7.

§ 1735f-18. Information regarding early defaults and foreclosures on insured mortgages

(a) In general

The Secretary of Housing and Urban Development shall collect and maintain information regarding early defaults on mortgages as provided under this section. The Secretary shall make such information available for public inspection upon request. Information shall be collected quarterly with respect to each applicable collection period (as such term is defined in subsection (c) of this section) and shall be available for inspection not more than 30 days after the conclusion of the calendar quarter relating to

each such period. Information shall first be made available under this section for the applicable collection period relating to the first calendar quarter ending more than 180 days after November 28, 1990.

(b) Contents

(1) Mortgage lender analysis

Information collected under this section shall include, for each lender originating mortgages during the applicable collection period that are insured pursuant to section 1709 of this title and secured by property in a designated census tract, the following information with respect to such mortgages:

(A) The name of the lender and the number of each designated census tract in which the lender originated 1 or more such mortgages during the applicable collection period.

(B) The total number of such mortgages originated by such lender during the applicable collection period in each designated census tract and the number of mortgages originated each year in each designated census tract.

(C) The total number of defaults and foreclosures on such mortgages during the applicable collection period in each designated census tract and the number of defaults and foreclosures in each designated census tract in each year of the period.

(D) For each designated census tract, the percentage of such lender's total insured mortgages originated during each year of the applicable collection period (with respect to properties within such census tract) on which defaults or foreclosures have occurred during the applicable collection period.

(E) The total of all such originations, defaults, and foreclosures on insured mortgages originated by such lender during the applicable collection period for all designated census tracts and the percentage of the total number of such lender's insured mortgage originations on which defaults or foreclosures have occurred during the applicable collection period.

(2) Other information

Information collected under this section shall also include the following:

(A) For each lender referred to under paragraph (1), the total number of insured mortgages originated by the lender secured by properties not located in a designated census tract, the total number of defaults and foreclosures on such mortgages, and the percentage of such mortgages originated on which defaults or foreclosures occurred during the applicable collection period.

(B) For each designated census tract, the total number of mortgages originated during the applicable collection period that are insured pursuant to section 1709 of this title, the number of defaults and foreclosures occurring on such mortgages during such period, and the percentage of the total insured mortgage originations during the period on which defaults or foreclosures occurred.

(c) Annual reports

The Secretary shall submit to the Congress annually a report containing the information