

**§ 1735f-11. Review of mortgagee performance and authority to terminate**

**(a) Periodic review of mortgagee performance**

To reduce losses in connection with single family mortgage insurance programs under this chapter, at least once a year the Secretary shall review the rate of early defaults and claims for insured single family mortgages originated or underwritten by each mortgagee.

**(b) Comparison with other mortgagees**

For each mortgagee, the Secretary shall compare the rate of early defaults and claims for insured single family mortgage loans originated or underwritten by the mortgagee in an area with the rate of early defaults and claims for other mortgagees originating or underwriting insured single family mortgage loans in the area. For purposes of this section, the term "area" means each geographic area in which the mortgagee is authorized by the Secretary to originate insured single family mortgages.

**(c) Termination of mortgagee origination approval**

(1) Notwithstanding section 1708(c) of this title, the Secretary may terminate the approval of a mortgagee to originate or underwrite single family mortgages if the Secretary determines that the mortgage loans originated or underwritten by the mortgagee present an unacceptable risk to the insurance funds. The determination shall be based on the comparison required under subsection (b) and shall be made in accordance with regulations of the Secretary. The Secretary may rely on existing regulations published before this section takes effect.

(2) The Secretary shall give a mortgagee at least 60 days prior written notice of any termination under this subsection. The termination shall take effect at the end of the notice period, unless the Secretary withdraws the termination notice or extends the notice period. If requested in writing by the mortgagee within 30 days of the date of the notice, the mortgagee shall be entitled to an informal conference with the official authorized to issue termination notices on behalf of the Secretary (or a designee of that official). At the informal conference, the mortgagee may present for consideration specific factors that it believes were beyond its control and that caused the excessive default and claim rate.

(June 27, 1934, ch. 847, title V, § 533, as added Pub. L. 100-242, title IV, § 407(b), Feb. 5, 1988, 101 Stat. 1902; amended Pub. L. 107-73, title II, § 209, Nov. 26, 2001, 115 Stat. 675.)

AMENDMENTS

2001—Pub. L. 107-73 amended section catchline and text generally. Prior to amendment, text read as follows:

"(a) To reduce losses in connection with mortgage insurance programs under this chapter, the Secretary shall review, at least once a year, the rate of early serious defaults and claims involving mortgagees approved under this chapter. On the basis of this review, the Secretary shall notify each mortgagee which, as determined by the Secretary, had a rate of early serious defaults and claims during the preceding year which was higher than the normal rate for the geographic area or areas in which that mortgagee does business. In the notification, the Secretary shall require each mortgagee

to submit a report, within a time determined by the Secretary, containing the mortgagee's (1) explanation for the above normal rate of early serious defaults and claims; (2) plan for corrective action, if applicable, both with regard to (A) mortgages in default; and (B) its mortgage-processing system in general; and (3) a time-frame within which this corrective action will be begun and completed. If the Secretary does not agree with this timeframe or plan, a mutually agreeable timeframe and plan will be determined.

"(b) Failure of the mortgagee to submit a report required under subsection (a) of this section within the time determined by the Secretary or to commence or complete the plan for corrective action within the timeframe agreed upon by the Secretary may be cause for suspension of the mortgagee from participation in programs under this chapter."

**§ 1735f-12. Assurance of adequate processing of applications for loan and mortgage insurance**

**(a) State offices**

In order to ensure the adequate processing of applications for insurance of loans and mortgages under this chapter, the Secretary shall maintain not less than one office in each State to carry out the provisions of this chapter.

**(b) Expedited procedure for RTC properties**

To assist the Resolution Trust Corporation in disposing of the property to which it acquires title and to ensure the timely processing of applications for insurance of loans and mortgages under this chapter that will be used to purchase multifamily residential property from the Resolution Trust Corporation, the Secretary shall establish an expedited procedure for considering such applications.

(June 27, 1934, ch. 847, title V, § 534, as added Pub. L. 100-242, title IV, § 418, Feb. 5, 1988, 101 Stat. 1912; amended Pub. L. 102-550, title V, § 512(a), Oct. 28, 1992, 106 Stat. 3786.)

AMENDMENTS

1992—Pub. L. 102-550 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

REGULATIONS

Pub. L. 102-550, title V, § 512(b), Oct. 28, 1992, 106 Stat. 3786, provided that: "The procedure referred to in the amendment made by subsection (a) [amending this section] shall be established through interim and final regulations issued by the Secretary. The Secretary shall issue interim regulations implementing the procedure not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], which shall be effective upon issuance. The Secretary shall issue final regulations after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section)."

**§ 1735f-13. Prohibition of requirement of minimum principal loan amount**

A mortgagee or lender may not require, as a condition of providing a loan insured under this chapter or secured by a mortgage insured under this chapter, that the principal amount of the loan exceed a minimum amount established by the mortgagee or lender.

(June 27, 1934, ch. 847, title V, § 535, as added Pub. L. 100-242, title IV, § 419(a), Feb. 5, 1988, 101 Stat. 1913.)

**§ 1735f-14. Civil money penalties against mortgagees, lenders, and other participants in FHA programs**

**(a) In general**

**(1) Authority**

If a mortgagee approved under the<sup>1</sup> chapter, a lender holding a contract of insurance under subchapter I, or a principal, officer, or employee of such mortgagee or lender, or other person or entity participating in either an insured mortgage or subchapter I loan transaction under this chapter or providing assistance to the borrower in connection with any such loan, including sellers of the real estate involved, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents and dealers, knowingly and materially violates any applicable provision of subsection (b), the Secretary may impose a civil money penalty on the mortgagee or lender, or such other person or entity, in accordance with this section. The penalty under this paragraph shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions. The penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.

**(2) Amount of penalty**

The amount of the penalty, as determined by the Secretary, may not exceed \$5,000 for each violation, except that the maximum penalty for all violations by any particular mortgagee or lender or such other person or entity during any 1-year period shall not exceed \$1,000,000. Each violation of a<sup>2</sup> the provisions of subsection (b)(1) shall constitute a separate violation with respect to each mortgage or loan application. In the case of a continuing violation, as determined by the Secretary, each day shall constitute a separate violation.

In the case of the mortgagee's failure to engage in loss mitigation activities, as provided in subsection (b)(1)(I), the penalty shall be in the amount of three times the amount of any insurance benefits claimed by the mortgagee with respect to any mortgage for which the mortgagee failed to engage in such loss mitigation actions.

**(b) Violations for which a penalty may be imposed**

**(1) Violations**

The Secretary may impose a civil money penalty under subsection (a) for any knowing and material violation by a mortgagee or lender or any of its owners, officers, or directors, as follows:

(A) Except where expressly permitted by statute, regulation, or contract approved by the Secretary, transfer of a mortgage insured under this chapter to a mortgagee not

approved by the Secretary, or transfer of a loan to a transferee that is not holding a contract of insurance under subchapter I of this chapter.

(B) Failure of a nonsupervised mortgagee, as defined by the Secretary—

(i) to segregate all escrow funds received from a mortgagor for ground rents, taxes, assessments, and insurance premiums; or

(ii) to deposit these funds in a special account with a depository institution whose accounts are insured by the Federal Deposit Insurance Corporation through the Deposit Insurance Fund, or by the National Credit Union Administration.

(C) Use of escrow funds for any purpose other than that for which they were received.

(D) Submission to the Secretary of information that was false, in connection with any mortgage insured under this chapter, or any loan that is covered by a contract of insurance under subchapter I of this chapter.

(E) With respect to an officer, director, principal, or employee—

(i) hiring such an individual whose duties will involve, directly or indirectly, programs administered by the Secretary, while that person was under suspension or withdrawal by the Secretary; or

(ii) retaining in employment such an individual who continues to be involved, directly or indirectly, in programs administered by the Secretary, while that person was under suspension or withdrawal by the Secretary.

(F) Falsely certifying to the Secretary or submitting to the Secretary a false certification by another person or entity.

(G) Failure to comply with an agreement, certification, or condition of approval set forth on, or applicable to—

(i) the application of a mortgagee or lender for approval by the Secretary; or

(ii) the notification by a mortgagee or lender to the Secretary concerning establishment of a branch office.

(H) Violation of any provisions of subchapter I or II of this chapter, or any implementing regulation, handbook, or mortgagee letter that is issued under this chapter.

(I) Failure to engage in loss mitigation actions as provided in section 1715u(a) of this title.

(J) Failure to perform a required physical inspection of the mortgaged property.

(K) Violation of section 1708(d) of this title.

(L) Use of “Federal Housing Administration”, “Department of Housing and Urban Development”, “Government National Mortgage Association”, “Ginnie Mae”, the acronyms “HUD”, “FHA”, or “GNMA”, or any official seal or logo of the Department of Housing and Urban Development, except as authorized by the Secretary.

**(2) Additional violations**

The Secretary may impose a civil money penalty under subsection (a) for any knowing

<sup>1</sup> So in original. Probably should be “this”.

<sup>2</sup> So in original. The word “a” probably should not appear.