

the matter has been made by a United States Court, a HUD Administrative Law Judge, or the Secretary.

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

(4) 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). In determining what action(s) to direct, the Secretary in addition will also, without limitation, consider the following:

- (i) The gravity of the violation;
- (ii) If a judgment by an Administrative Law Judge or a court has previously been rendered against the lender for discriminatory actions, the lender's response to that judgment, including the actions taken and the timeliness of such actions;
- (iii) The nature and extent of cases under substantially equivalent State or local laws, or ECOA against the lender including cases which were settled, conciliated, or otherwise resolved;
- (iv) The nature and extent of fair housing enforcement actions or judgments by HUD, the Department of Justice, or other regulatory agencies, including cases that were settled or otherwise resolved;
- (v) The nature and extent of private fair housing lawsuits and judgments against the lender including cases that were settled, conciliated, or otherwise resolved;
- (vi) Whether the lender's actions demonstrate a discriminatory pattern or practice or an individual instance of discrimination;
- (vii) The impact or seriousness of the harm;
- (viii) The number of people affected by the discriminatory act(s);
- (ix) Whether the lender operates an effective program of self assessment and correction;
- (x) The extent of any actions or programs by the lender designed to compensate victims and prevent future fair lending violations;
- (xi) The effect of the contemplated action(s) on the safety and soundness of the lender (in considering this factor the Secretary shall solicit and fully consider the views of the regulator responsible for regulating the lender and, where warranted, the Director); and

(xii) 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 receipt of the Notice, by filing a request with the Docket Clerk, HUD Administrative Law Judge (ALJ).

(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 ALJ and a final decision rendered in accordance with the procedures set forth in 24 CFR 30.10, 30.15, and part 30, subpart E, to the extent such provisions are not inconsistent with this subpart or the Act. 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 the Department 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 the Department on remedial action(s) or any dispositive settlement of such a proceeding setting forth remedial action(s) in accordance with such decision or settlement.

§ 81.47 Violations of provisions by the GSEs.

(a) The Act empowers the Director of the Office of Federal Housing Enterprise Oversight to initiate enforcement actions for GSE violations of the provisions of section 1325 of the Act and these regulations. The Secretary shall refer violations and potential violations of section 1325 and these regulations 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 (o) of the Fair Housing Act.

Subpart D—New Program Approval

§ 81.51 General.

Sections 305(c) of the Freddie Mac Act and 302(b)(6) of the Fannie Mae Act provide that neither GSE may implement any new program before obtaining the approval of the Secretary under section 1322 of the Act. Section 1322(a) provides that the Secretary shall require each GSE to obtain the Secretary's approval before implementing any new program. This subpart details the requirements and procedures for review of requests for new program approval by the Secretary.

§ 81.52 Requirement for program requests.

(a) Before implementing a new program, a GSE shall submit a request for new program approval ("program request") to the Secretary for the Secretary's review.

(b) Submission of a program request and Secretarial review is not required where the program that the GSE proposes to implement is not significantly different from:

(1) A program that has already been approved in writing by the Secretary (hereinafter an "approved program"); or

(2) A program that was engaged in by the GSE prior to October 28, 1992, the date of enactment of FHEFSSA (hereinafter an "authorized program").

(c) Section 1303(13) of FHEFSSA approves all authorized programs.

(d) Approved programs remain subject to all limitations and requirements under which such programs were being operated by the GSEs on or before October 28, 1992.

(e) *Significantly different programs.*

(1) A significantly different program of a GSE is a program that materially differs from approved or authorized programs of the GSE by:

(i) Entailing substantially greater risk than the average financial risks under approved or authorized programs; or

(ii) Substantially expanding the GSE's role in the housing markets by involving new categories of borrowers, properties or other securities, borrowing purposes, or credit enhancements.

(2) Where a planned program reasonably raises questions as to whether it is significantly different from existing programs, the GSE shall submit a program request and may indicate in