

\$10,000 for each day that the failure occurs.

(c) *Factors in determining amount of penalty.* In determining the amount of a penalty under this section, the Secretary shall give consideration to such factors as:

- (1) The gravity of the offense;
- (2) Any history of prior offenses;
- (3) The GSE's ability to pay the penalty;
- (4) The nature of the injury to the public caused by the failure;
- (5) The benefits received by the GSE because of the GSE's failure;
- (6) Deterrence of future violations that would result from the penalty; and
- (7) Other factors that the Secretary determines in the public interest warrant consideration.

(d) *Procedures.*—(1) *Notice of determination to impose civil money penalties.* The Secretary shall notify the GSE in writing of the Secretary's determination to impose a civil money penalty by issuing a Notice of Intent to Impose Civil Money Penalties ("Notice of Intent"). The Notice of Intent shall provide:

- (i) A concise statement of the facts constituting the conduct upon which the Secretary has relied in determining that a civil penalty should be imposed;
- (ii) The amount of the civil money penalty that the Secretary intends to impose;
- (iii) Notice of the GSE's right to a hearing on the record on the civil money penalty;
- (iv) The procedures to follow to obtain such a hearing;
- (v) The consequences of failing to request a hearing; and
- (vi) The date the penalty shall be due unless stayed or rescinded.

(2) To appeal the Secretary's decision to impose a civil money penalty, a GSE shall, within 20 days after receiving service of the Notice of Intent, file a written Answer with the Chief Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, at the address provided in the Notice of Intent.

(3) The hearing and other proceedings conducted under this section shall be presided over by a HUD Administrative Law Judge, in accordance with § 81.84 and 24 CFR 30.10, 30.15, and part 30, subpart E, to the extent such provisions are not inconsistent with any of the procedures in these regulations or the Act.

(4) *Issuance of order.* If the Administrative Law Judge finds, on the record made at a hearing, that any conduct specified in the notice of charges has been established by a preponderance of the evidence (or a

GSE consents to the order pursuant to § 81.84), the Administrative Law Judge may issue an order imposing a civil money penalty.

(5) *Consultation with the Director.* In the Secretary's discretion, the Director of the Office of Federal Housing Enterprise Oversight may be requested to review any Notice of Intent, determination, order, or interlocutory ruling arising from a hearing.

(e) *Action to collect penalty.* If a GSE fails to comply with an order by the Secretary imposing a civil money penalty under this section, after the order is no longer subject to review as provided by sections 1342 and 1343 of the Act, the Secretary may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia to obtain a monetary judgment against the GSE and such other relief as may be available. The monetary judgment may, in the court's discretion, include attorney fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the order imposing the penalty is not subject to review.

(f) *Settlement by Secretary.* The Secretary may compromise, modify, or remit any civil money penalty that may be, or has been, imposed under this section.

(g) *Deposit of penalties.* The Secretary shall deposit any civil money penalties collected under this section into the general fund of the Treasury.

§ 81.84 Hearings.

(a) *Applicability.* The hearing procedures in this section apply to hearings on the record to review cease-and-desist orders, civil money penalties, and new programs disapproved based upon a determination by the Secretary that such programs are not in the public interest.

(b) *Hearing requirements*—(1) Hearings shall be held on the record and in the District of Columbia.

(2) Hearings shall be conducted by a HUD Administrative Law Judge authorized to conduct proceedings under 24 CFR part 30.

(c) *Timing.* Unless an earlier or later date is requested by a GSE and such request is granted by the Administrative Law Judge, hearings shall be fixed for a date not earlier than 30 days, nor later than 60 days, after: service of the notice of charges under § 81.82; service of the Notice of Intent to Impose Civil Money Penalties under § 81.83; or a request for a hearing under § 81.54(b).

(d) *Procedure.* Hearings shall be conducted in accordance with the procedures set forth in 24 CFR 30.10, 30.15, and part 30, subpart E, to the extent that such provisions are not inconsistent with any of the procedures in these regulations or the Act.

(e) *Method of service.* Any service required or authorized to be made by the Secretary under this subpart may be made to the Chief Executive Officer of a GSE or such other representative as the GSE may designate in writing to the Secretary.

(f) *Subpoena authority*—(1) *General.* In the course of or in connection with any hearing, the Secretary and/or the Administrative Law Judge shall have the authority to:

- (i) Administer oaths and affirmations;
- (ii) Take and preserve testimony under oath;
- (iii) Issue subpoenas and subpoenas duces tecum; and
- (iv) Revoke, quash, or modify subpoenas and subpoenas duces tecum issued by the Secretary.

(2) *Witnesses and documents.* The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State at any designated place where such proceeding is being conducted.

(3) *Enforcement.* The Secretary may request the Attorney General of the United States to bring an action in the United States District Court for the judicial district in which such proceeding is being conducted or where the witness resides or conducts business, or in the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section.

(4) *Fees and expenses.* Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses and fees shall be paid by the GSE or from its assets.

(g) *Failure to appear.* If a GSE fails to appear at a hearing through a duly authorized representative, the GSE shall be deemed to have consented to the issuance of the cease-and-desist order, the imposition of the penalty, or the disapproval of the new program, whichever is applicable.

(h) *Public hearings.* All hearings shall be open to the public, unless the Secretary, in the Secretary's discretion,