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Court of Appeals
Division I
State of Washington

No. 96063-1

No. 76510-8-I

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I

NATIONAL HOMEBUYERS FUND, INC., et al.,

Appellants,

v.

WASHINGTON STATE HOUSING FINANCE COMMISSION,

Respondent.

**SUPPLEMENTAL BRIEF OF RESPONDENT
WASHINGTON STATE HOUSING FINANCE COMMISSION**

PAUL J. LAWRENCE
TAKI V. FLEVARIS
ALANNA E. PETERSON
PACIFICA LAW GROUP LLP
1191 Second Avenue, Suite 2000
Seattle, WA 98101-3404
(206) 245-1700

Special Assistant Attorneys General
for Respondent Washington State
Housing Finance Commission

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I. INTRODUCTION

In its reply brief, Petitioner National Homebuyers Fund, Inc. (“NHF”) raised and argued three new and distinct issues: injury in fact, federal preemption, and a U.S. Department of Housing and Urban Development (“HUD”) memorandum on down-payment assistance. As explained below, NHF not only has waived these arguments, but is also wrong about the law and facts on each issue. Contrary to NHF’s assertions, the Commission has shown numerous injuries from NHF’s operations; this lawsuit, concerning the allocation of state government authority in Washington, is not preempted and belongs in the courts of this state; and the cited memorandum specifically concerns government programs and does not approve of NHF’s false—and uncontroverted—invocation of governmental authority in this state. The trial court rightly declared that NHF’s activities in Washington are prohibited by law.

II. ARGUMENT

A. The Commission Has Established Injury in Fact.

NHF’s reply brief suggests the Commission lacks standing because it “has suffered no injury” as a result of NHF’s conduct. Apps.’ Reply Br. at 5. At the outset, NHF has waived this argument by not raising it in its opening brief. *See* RAP 10.3(c); *Cannabis Action Coalition v. City of Kent*, 180 Wn. App. 455, 468 n.10, 322 P.3d 1246 (2014). Under

Washington law, “if a defendant waives the defense that a plaintiff lacks standing, a Washington court can reach the merits.” *Trinity Univ. Ins. Co. v. Ohio Cas. Ins. Co.*, 176 Wn. App. 185, 198-99, 312 P.3d 976 (2013).

Moreover, this Court already found that the Commission has shown injury, when the Court denied NHF’s motion for emergency stay. *See Ruling Denying Em. Mot.* at 3 (Mar. 22, 2007). NHF did not challenge the ruling, which is now the law of the case. *See State v. Roy*, 147 Wn. App. 309, 315, 195 P.3d 967 (2008) (noting commissioner’s ruling was law of the case); *State v. Harrison*, 148 Wn.2d 550, 562, 61 P.3d 1104 (2003) (describing law of the case doctrine and policies).

Regardless, there can be no genuine dispute that the Commission has shown sufficient injury to establish standing. The modest purpose of the standing doctrine is to ensure each case is “brought and defended by the parties whose rights and interests are at stake.” *Riverview Comm’y Group v. Spencer & Livingston*, 181 Wn.2d 888, 893, 337 P.3d 1076 (2014). As such, the personal injury component is not a demanding evidentiary burden—even a mere “potential threat” qualifies as a cognizable injury for this purpose. *City of Burlington v. Wash. State Liquor Ctrl. Bd.*, 187 Wn. App. 853, 874, 351 P.3d 875 (2015).

Moreover, a public agency has vested interests in protecting its constituents, pursuing its mission, and preventing unlawful conduct within

its domain, as the Commission does here. *See* chapter 43.180 RCW.

When these interests are threatened, the agency suffers a special injury and has standing. *See City of Seattle v. State*, 103 Wn.2d 663, 669, 694 P.2d 641 (1985) (city could challenge annexation process based on its “duty to represent the interests of area residents”); *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 494, 585 P.2d 71 (1978) (school district had standing because funding dispute implicated “basic reason” it existed); *Vovos v. Grant*, 87 Wn.2d 697, 700, 555 P.2d 1343 (1976) (public defender could challenge booking practices based on duty to juvenile defendants).

Here, the Commission has shown numerous cognizable injuries, to both its financial position and to its mission and constituents, from NHF’s unauthorized operations in Washington. First, the mere fact that NHF is an unauthorized participant in the federal mortgage insurance program, falsely invoking governmental authority that the Commission has been delegated, is sufficient to show injury. Authorized participants have a presumptive interest in preventing unauthorized actors from operating within the same restricted market. *See, e.g., Puget Sound Traction, Light & Pwr. Co. v. Grassmeyer*, 102 Wash. 482, 490-91, 173 P. 504 (1918).

Second, NHF diverts revenues from the Commission’s programs to special-interest lobbying efforts and hefty officer salaries in California. *See* CP 62-63, 206-07, 423-30, 457-61, 526-27, 544, 671-72, 703-04; *see*

also CP 409-11, 1343-44, 1347-50 (explaining that Commission recycles revenues sustainably and long-term to promote state housing policies). When NHF previously suspended its program, for example, many of its lenders switched over to the Commission's programs in direct response. CP 680-86. Mere "probable economic injury resulting from . . . alter[ed] competitive conditions" is sufficient to show injury for standing. *Wash. Ind. Tel. Ass'n v. Wash. Utils. and Transp. Comm'n*, 110 Wn. App. 498, 512, 41 P.3d 1212 (2002) (internal quotes omitted). Here, the Commission has shown actual economic injury.

Third, NHF has prompted confusion among lenders, borrowers, and others regarding its relationship with the Commission and authority to operate. When entering Washington and elsewhere, NHF represented itself as an instrumentality of government working in partnership with "housing finance agencies" such as the Commission. CP 649-51. In truth, NHF had no such partnerships. CP 512-13, 521-22, 875 (at 66:1-21). As a result of this and other misstatements, many lenders and borrowers were confused about NHF's legal status and relationship to the Commission. The Commission even received inquiries from lenders thinking NHF was a Commission program or partner. CP 388-89, 415. These were just the lenders who reached out to the Commission; others likely proceeded under the false belief that NHF is part of, or a partner of, the Commission.

Fourth, NHF offers down-payment assistance to low-income borrowers without supportive services, saddles them with higher interest rates and fees, and increases the overall risk of market disruptions. *See Br. of Resp.* at 15-17 & n.4; *Ans. to Mot. for Stay* at 14, 16-19; CP 389, 497-98, 510-11, 622-23, 717, 1317-26, 1328-29, 1375, 1381-82. In stark contrast, the Commission sets low rates, caps lender fees, prescreens borrowers, and provides a homebuyer education program modeled after research-based recommendations from the Federal National Mortgage Association. CP 374-75, 378-81, 1361-64. As a result, the Commission's delinquency rates historically have been lower than the comparable general market in Washington. CP 1361-64.

Fifth, NHF undercuts state policy by offering down-payment "grants," rather than the secondary loans that the Commission offers at the direction of the Washington Legislature. In authorizing the Commission's governmental activities, the Legislature has specifically directed the Commission to "[m]ake *loans* for down payment assistance to home buyers in conjunction with other commission programs." RCW 43.180.050(1)(d) (emphasis added). The use of loans, rather than grants, furthers numerous important policy interests: it establishes a vested financial interest in the borrower's success and facilitates continuing support; promotes transparency and borrower accountability at the outset;

keeps interest rates and monthly payments lower; and enables funds to be recycled for long-term and continuing use. At one point, NHF itself acknowledged that loans are superior to grants for such reasons, at least from a policy perspective. *See* CP 575.

Finally, the Commission has standing regardless of injury because this issue is one of public importance. Washington courts will resolve a dispute if the public interest inheres in “the subject matter” and “would be enhanced by reviewing the case.” *Kitsap Cnty. v. Smith*, 143 Wn. App. 893, 908, 180 P.3d 834 (2008) (internal quotes omitted). Whether an entity can falsely invoke government authority in Washington’s restricted market for federally insured mortgages has great import. *See* RCW 43.180.010, .040(1); *Wash. State Housing Fin. Comm’n v. O’Brien*, 100 Wn.2d 491, 494, 671 P.2d 247 (1983) (noting Commission’s programs help prevent “downward spiral effect” on state economy). The 2008 crisis shows why misconduct in this area must be addressed promptly.

B. This Lawsuit Concerns State Governmental Authority and Is Not Federally Preempted.

NHF also suggests this lawsuit is “preempted” under federal law because of the enforcement authority of HUD’s Mortgagee Review Board (“MRB”), which allegedly “occupies the field” and “conflicts” with this suit. Apps.’ Reply Br. at 10-11. Again, NHF has waived this issue, both

because it waited until its reply brief to make the argument on appeal, *see* RAP 10.3(c), and because it similarly waited until its reply brief on summary judgment to make the same argument about the MRB before the trial court, CP 1117-18; RAP 2.5(a). If the “preemptive effect of federal law” is not raised timely, the issue is waived. *Winger v. Yellow Freight Sys., Inc.*, 146 Wn.2d 841, 853-54, 50 P.3d 256 (2002).

Regardless, NHF is wrong to suggest the Commission’s claim is preempted. Federal preemption “occurs only if (1) federal law expressly preempts state law, (2) Congress has occupied an entire field of regulation to the exclusion of any state laws, or (3) state law conflicts with federal law due to either impossibility of joint compliance or state law acting as an obstacle to accomplishment of a federal purpose.” *Resident Action Counsel v. Seattle Housing Auth.*, 177 Wn.2d 417, 444, 327 P.3d 600 (2013) (“RAC”). There is “a strong presumption” against finding state law preempted. *Id.* Here, none of the grounds for preemption applies.

First, there is no express preemption. Where Congress has intended to preempt state law within the mortgage insurance program, it has said so explicitly, and done so narrowly and precisely. *See* 12 U.S.C. § 1709-1a (preempting preexisting state usury laws but authorizing subsequently enacted state restrictions); 12 U.S.C. § 1708(c)(9) (precluding state law from narrowing the MRB’s enforcement authority).

No such provision applies to the allocation or exercise of governmental authority for purposes of the program. Quite the contrary, Congress has granted special rights to each “[s]tate or local governmental agency or instrumentality” acting in the program, thus incorporating each state’s laws allocating authority for this purpose. *See* 12 U.S.C. § 1735f-6.

Second, there is no field preemption. As the Washington Supreme Court held in *RAC*, cooperative federalism necessarily precludes a finding of field preemption, given the importance of state law to defining the powers and duties of participating state and local entities such as the Commission. 177 Wn.2d at 430, 444. More broadly, state law governs a number of matters pertinent to the program—as reflected in HUD’s Handbook, which indicates that “state licensing agencies,” for example, may be called upon to resolve non-compliance issues as relevant. HUD Handbook 4000.1 at 947 (2016) (“Handbook”) (Supp. App. at 2).¹

¹ NHF calls into question whether the federal mortgage insurance program falls within the scope of cooperative federalism. *See* Apps.’ Reply Br. at 8 n.7. It surely does. Much like the local authorities at issue in *RAC*, the Washington Legislature created the Commission and “authorized” it “to secure the financial aid or cooperation of the federal government,” and the Commission has thus “coordinated with HUD to receive federal assistance and is now subject to certain federal regulations,” ultimately “combining state and federal participation to solve” housing problems. 177 Wn.2d at 429. (internal quotes omitted). At the same time, the Commission “remains subject to state law,” which “establishes [it] in the first place, defines [its] powers and obligations, and addresses various ancillary matters related to [its] operation.” *Id.* at 430. The fact that authorized state and local entities such as the Commission are afforded special status and privileges within the mortgage insurance program further establishes that cooperative federalism is at play. *See, e.g.*, 12 U.S.C. § 1735f-6; Handbook at 225-26, 230 (App. at 16-18).

Finally, there is no conflict preemption here. Instead, federal law defers to each state’s allocation of governmental authority for purposes of the program—promoting political accountability and responsibility where they are most important. *See* 12 U.S.C. § 1735f-6; *FHA: Proh’d Sources of Min. Cash Inv. Under NHA—Interp. Rule*, 77 Fed. Reg. 72219 (Dec. 5, 2012). In such circumstances, given the absence of any conflict, state law may be applied and enforced according to its own terms. *See, e.g., RAC*, 177 Wn.2d at 430; *City of Tacoma v. Taxpayers of Tacoma*, 49 Wn.2d 781, 791, 307 P.2d 567 (1956); *cf. Miller v. Long*, 152 F.2d 196, 196-98 (4th Cir. 1945) (plaintiff alleging seller obtained federally insured mortgage through fraud could obtain “the complete relief sought” in “state court” notwithstanding intersection with federal law).

NHF’s argument for preemption is that HUD’s MRB has enforcement authority within the mortgage insurance program. *See* Apps.’ Reply Br. at 10-11. This conflates preemption of state law with exclusive jurisdiction—a distinct issue. *See, e.g., Pioneer First Fed. Savings and Loan Ass’n v. Pioneer Nat’l Bank*, 98 Wn.2d 853, 854-55, 659 P.2d 481 (1983) (holding that state unfair competition law was preempted but state courts still had jurisdiction over related federal claims). As to preemption, the mere fact that MRB has authority to oversee and sanction lenders within the mortgage insurance program does not mean that state law,

regarding the exercise of governmental authority within the program, has been preempted. As explained above, the opposite is true.

As for exclusive jurisdiction, the MRB's enforcement power does not deprive Washington courts of jurisdiction to adjudicate the allocation and exercise of governmental authority in this state for purposes of the program. To the contrary, the MRB's enforcement power is limited and non-exclusive, and does not extend to the allocation of state governmental authority in Washington, a matter particularly within the province of the courts of this state.

First, the MRB's authority is limited to entities not at issue here. The MRB is tasked with overseeing lenders, or "mortgagees"—not entities invoking governmental authority to provide down-payment assistance, like NHF or the Commission. *See* 12 U.S.C. §§ 1708(c)(1), 1707(b). Lenders are not, and could not be, expected to resolve disputes between ostensibly public entities over the allocation of government authority in each state. Nor, for that matter, is the MRB equipped to resolve such a dispute. Rather than objecting to the conduct of a lender, the Commission is challenging NHF and its invocation of government authority in this state. This is not a dispute for the MRB to resolve.

Second, the MRB's authority is non-exclusive in any event. As the Washington Supreme Court has held, "[e]xclusive jurisdiction should not

be presumed; it must be shown by express intent.” *Pioneer*, 98 Wn.2d at 863 (citing *Clafin v. Houseman*, 93 U.S. 130, 23 L. Ed. 833 (1876)). The statute establishing the MRB within HUD gives no indication the MRB’s authority is exclusive. *See* 12 U.S.C. § 1708(c). To the contrary, the statute expressly contemplates enforcement by other authorities, *see* 12 U.S.C. § 1708(e); *see also* 12 U.S.C. § 1735f-14, and it preempts only a narrow category of state laws that have no relevance here, *see* 12 U.S.C. § 1708(c)(9). Consistent with this understanding, HUD’s Handbook notes that it may refer a matter for potential enforcement to “any appropriate body,” including not only the MRB, but also “state licensing agencies.” Handbook at 947 (Supp. App. at 2). In other words, state laws still apply, and state enforcement mechanisms remain available.

Third, the adjudication of government authority within the State of Washington is particularly within the province of the courts of this state. *See City of Tacoma*, 49 Wn.2d at 791; *see also, e.g., Skagit Cnty. Pub. Hosp. Dist. No. 304 v. Skagit Cnty. Pub. Hosp. Dist. No. 1*, 177 Wn.2d 718, 723-27, 730-31, 305 P.3d 1079 (2013). As NHF has recognized, HUD does not have procedures in place to adjudicate the allocation of state and local government authority. CP 1425-27, 1431-34. Indeed, that was the very reason NHF was emboldened to expand into Washington and elsewhere. Disputes regarding governmental authorization rarely arise, as

it is not often an ostensibly public agency flouts the limits on its authority and encroaches upon the agencies of other states in this way. When such a dispute does arise, however, the courts of this state have jurisdiction to resolve it, including by declaration. Const. art. IV, § 6; RCW 7.24.010.

NHF cites to numerous cases holding that private participants generally may not enforce HUD's regulations against one another, against an authorized state entity, or against HUD itself. *See* Apps.' Reply Br. at 9-10. These cases do not address the intersection between federal and state law at issue here, nor do they involve a state entity invoking its authorizing statutes to exclude an unauthorized pseudo-governmental competitor, as here. The cases are thus inapplicable. *See, e.g., Talton v. BAC Home Loans Serv'g LP*, 839 F. Supp. 2d 896, 910 (E.D. Mich. 2012) (“[F]ederal regulations *by themselves* do not create *private* causes of action, *at least not in the present case.*” (emphases added)).

NHF's suggestion that this is a matter for HUD's MRB is disingenuous, given HUD's own indications. In communications with NHF, HUD officials have disclaimed having the authority to decide that NHF may operate outside California. CP 580, 1430-32. HUD is also well aware of this lawsuit—at one point, HUD officials even asked the Commission for a status report. CP 1345-46. HUD has not objected, nor has it ever suggested that the Commission's claim belongs before the

MRB rather than a Washington court. Instead, HUD officials have supported the Commission's position, both at public conferences and to NHF directly, indicating that in their view, NHF appears to be acting without requisite authority. CP 1388-90, 1394-95, 1450-51. This Court should affirm the trial court's proper declaration to that effect.

C. HUD's Memorandum Does Not Authorize NHF's Operations in Washington.

Finally, based on a certain HUD memorandum cited only in its reply brief, NHF has argued that it is not "financially interested" in the mortgages its program originates to make money. Apps.' Reply Br. at 21-22. The upshot, according to NHF, is that NHF does not need government authority to provide down-payment gifts. Again, NHF has waived the issue, failing to mention HUD's memorandum until its reply brief, *see* RAP 10.3(c), after making only a bare reference to it before the trial court, also on reply, *see* CP 1118; RAP 2.5(a).

Regardless, the cited memorandum does not apply to NHF or authorize its program. Instead, the memo concerns "the manner in which *a governmental entity* may raise funds for its downpayment assistance program," approving "the sale of mortgages on the secondary market" as one such method. Reply App. at 14, 15 (emphasis added); *id.* at 16 n.1, 19. The premise for this decision was that HUD's interpretive rule "places

no restrictions or prohibitions on how governmental entities raise funds for their downpayment assistance programs.” *Id.* at 15. The same cannot be said of non-government programs, such as NHF’s. *See* Br. of Resp. at 4-5.

NHF points to one statement from the memorandum, taken out of context, which notes that the prohibition against funding minimum down-payments is “directed towards parties that financially benefit” from “the property sales transaction” rather than “the secondary mortgage market.” Reply App. at 15. This only means that government agencies—which are generally not subject to the prohibition in the first place—are on especially safe ground when utilizing the secondary market to fund their programs. It does *not* mean that any private party can coordinate with lenders to fund minimum down-payments and sell the resulting mortgages on the secondary market for profit, as NHF is now suggesting.

NHF’s suggestion not only misconstrues HUD’s memorandum, it is also contrary to settled law and the undisputed facts. For one thing, HUD’s Handbook clarifies that the down-payment funding prohibition applies to anyone “who financially benefits from the transaction (directly or indirectly).” Handbook at 226, 300 (emphasis added) (App. at 17, 19). It is also undisputed that NHF’s gift funds were rejected for federal mortgage insurance until NHF began indicating to lenders that its funds are governmental. *See* Br. of Resp. at 13; CP 613-18. It is this

uncontroverted and false invocation of authority the Commission is challenging. Previously, NHF admitted that it has relied “on its status as a governmental or public entity” to provide “assistance on FHA-insured loans” in Washington, and even asserted that its allegedly governmental status is what “renders it a permissible source of gift assistance.” CP 776, 781. The Commission remains entitled to a declaration that NHF lacks such authority and that its operations in Washington are unlawful.

III. CONCLUSION

The Commission has shown numerous injuries from NHF’s unauthorized housing finance activities in Washington. The state laws establishing the Commission’s authority within the mortgage insurance program are consistent with federal law and policy, and have not been preempted. Washington courts are the most appropriate venue to apply those laws and adjudicate NHF’s governmental status within Washington. And NHF’s program requires government authority, in both law and fact. For these reasons, in addition to NHF’s lack of authority under California law to operate even in a proprietary capacity, *see* Br. of Resp. at 34-39, the Commission remains entitled to a declaration that NHF’s operations in Washington are prohibited by law. The Commission respectfully requests this Court affirm the trial court’s judgment to that effect.

RESPECTFULLY SUBMITTED this 27th day of October, 2017.

PACIFICA LAW GROUP LLP

By s/ Paul J. Lawrence

Paul J. Lawrence, WSBA # 13557

Taki V. Flevaris, WSBA #42555

Alanna E. Peterson, WSBA #46502

Special Assistant Attorneys
General for Respondent
Washington State Housing
Finance Commission

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**APPENDIX TO SUPPLEMENTAL BRIEF OF RESPONDENT
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PAUL J. LAWRENCE
TAKI V. FLEVARIS
ALANNA E. PETERSON
PACIFICA LAW GROUP LLP
1191 Second Avenue, Suite 2000
Seattle, WA 98101-3404
(206) 245-1700

Special Assistant Attorneys
General for Respondent
Washington State Housing Finance
Commission

INDEX TO APPENDIX

Appendix Pages	Title
01-08	HUD Handbook 4000.1 (2016) (excerpts)



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of:

All FHA Approved Mortgagees
All Direct Endorsement Underwriters
All FHA Roster Appraisers
All FHA Roster Inspectors
All FHA Approved 203(k) Consultants
All HUD Approved Housing Counselors
All HUD Approved Nonprofit Organizations
All Governmental Entity Participants
All Real Estate Brokers
All Closing Agents

Transmittal: Handbook 4000.1

Issued: December 30, 2016

Effective Date: Multiple; See Below

1. This Transmits:

The incorporation of previously published updates to Handbook 4000.1, FHA Single Family Housing Policy Handbook.

2. Explanation of Materials Transmitted:

This revision to the FHA Single Family Housing Policy Handbook, or Handbook 4000.1 (Handbook), is being published to update existing sections.

V. QUALITY CONTROL, OVERSIGHT AND COMPLIANCE

E. Enforcement

5. Closing Agents

5. Closing Agents

Closing Agents will be monitored by the AM, who will report any deficiency or noncompliance issues to HUD for further investigation and/or action that may result in deactivation of the Closing Agent's Title ID number.

6. Additional Other Participants

RESERVED FOR FUTURE USE

This section is reserved for future use, and until such time, FHA-approved Mortgagees and Other Participants must continue to comply with all applicable law and existing Handbooks, Mortgagee Letters, Notices and outstanding guidance applicable to their participation in FHA programs.

E. ENFORCEMENT

The following provides general information about the processes and procedures normally employed by FHA in its enforcement activities. The following is provided for informational purposes only and does not represent a waiver of any authority of FHA, HUD, or the federal government to carry out enforcement activities to the full extent of its authorities in connection with FHA's Single Family programs.

1. Referrals for Non-Compliance

FHA may refer any Finding for administrative or other enforcement action in its discretion. Referrals may be made to any appropriate body, including:

- HUD's Mortgagee Review Board (MRB);
- HUD's Office of Fair Housing and Equal Opportunity (FHEO) (fair lending issues);
- HUD's Departmental Enforcement Center (DEC) (suspension or debarment actions);
- HUD's OIG (suspected fraud or illegal activities);
- the Consumer Financial Protection Bureau (CFPB);
- the Department of Justice; and/or
- state licensing agencies (e.g., Secretary of State, Real Estate Commissioner, Appraisal Review Board, Department of Banking, Bar Association, etc.).

2. Employee Improprieties Attributed to the Mortgagee

Criminal, fraudulent, or other seriously improper conduct by an officer, director, shareholder, partner, employee, or other individual associated with a Mortgagee may be attributed to the Mortgagee with which the individual is connected when the improper conduct occurred in connection to the individual's performance of duties for or on behalf of the Mortgagee, or with the Mortgagee's knowledge, approval, or acquiescence. Such impropriety may result in appropriate administrative sanctions against the Mortgagee.

V. QUALITY CONTROL, OVERSIGHT AND COMPLIANCE

E. Enforcement

4. Mortgagee Review Board Actions and Sanctions

b. Loan Level Actions and Sanctions

FHA has the authority to pursue loan level actions and sanctions reasonably related to a Mortgagee's underlying violations.

4. Mortgagee Review Board Actions and Sanctions

The MRB is authorized to impose civil money penalties and take administrative action against any FHA-approved Mortgagee that does not comply with HUD and FHA statutory, regulatory, and any Handbook requirements, the Real Estate Settlement Procedures Act (RESPA), or the non-discrimination requirements of the ECOA, the Fair Housing Act, or Executive Order 11063 on Equal Opportunity in Housing.

a. Actions and Sanctions

The following actions and sanctions may be imposed by the MRB:

- a letter of reprimand;
- probation;
- suspension;
- withdrawal of FHA approval; and
- civil money penalties.

The MRB may also enter into settlement agreements with non-complying Mortgagees.

The following are general descriptions of the types of actions and sanctions that may be taken by the MRB and are for informational purposes only. The specific requirements for and procedures applicable to these actions are set forth in sections 202(c) and 536 of the National Housing Act ([12 U.S.C. §§ 1708\(c\) and 1735f-14](#)), and Parts 25 and 30 of Title 24 of the Code of Federal Regulations ([24 CFR Parts 25 and 30](#)).

i. Letter of Reprimand

The MRB may issue a letter of reprimand to inform a Mortgagee of its violation of FHA requirements. A letter of reprimand is effective upon receipt of the letter by the Mortgagee.

(A) Case Status

A letter of reprimand has no impact on the Mortgagee's authority to originate, underwrite, or service FHA-insured Mortgages.

(B) Duration

There is no time duration associated with a letter of reprimand.

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(C) Appeal

The Mortgagee has no right to appeal a letter of reprimand within HUD.

ii. Probation

The MRB may place a Mortgagee on probation for violation of FHA requirements. The MRB will specify the scope, terms, and conditions of the probation, which are designed to allow FHA to monitor the Mortgagee and assist FHA with bringing the Mortgagee into compliance with FHA regulations.

(A) Case Status

Unless specified in the terms of the probation, a Mortgagee on probation retains its origination, underwriting, and servicing authorities, as applicable.

(B) Duration

The MRB may place a Mortgagee on probation for a period of up to six months.

(C) Appeal

The Mortgagee has the right to appeal a probation action in accordance with the provisions of [24 CFR Parts 25 and 26](#).

iii. Suspension

Suspension is a temporary measure that is applied to a Mortgagee when there is adequate evidence that the interests of HUD or the public would not be served by continuing to allow the Mortgagee to participate in FHA programs, pending the completion of any investigation, other review, or legal or administrative proceedings the Mortgagee is involved in.

(A) Effective Date

If the MRB determines there is adequate evidence that immediate action is required to protect the financial interests of HUD or the public, the MRB is authorized to suspend a Mortgagee's FHA approval immediately upon issuance of the notice of suspension and without prior issuance of a [Notice of Violation](#) (NOV) as set forth in [24 CFR § 25.7\(d\)](#).

Any other suspension is effective upon the Mortgagee's receipt of the notice of suspension as set forth in [24 CFR § 25.5\(d\)](#).

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(B) Case Status

During the period of suspension, HUD will not endorse any Mortgage originated by the suspended Mortgagee unless it was an Approved Mortgage prior to the date of suspension.

The Mortgagee must transfer all other applications in process to another FHA-approved Mortgagee for completion of processing, submission, and endorsement.

(C) Duration

Suspension is generally imposed for a period of six months to one year, but may be extended for an additional six months in accordance with the provisions of [24 CFR Part 25](#).

(D) Appeal

The Mortgagee has the right to appeal a suspension in accordance with the provisions of [24 CFR Parts 25 and 26](#).

iv. Withdrawal of FHA Approval

Only the MRB may withdraw a Mortgagee's FHA approval. Withdrawal of FHA approval applies to all offices of the Mortgagee.

(A) Effective Date

If the MRB determines there is adequate evidence that immediate action is required to protect the financial interests of HUD or the public, the MRB is authorized to withdraw a Mortgagee's FHA approval immediately; in this case, the withdrawal is effective upon the Mortgagee's receipt of the notice of withdrawal.

Any other withdrawal is effective upon either:

- the expiration of the 30-Day appeal period, if the Mortgagee does not request a hearing; or
- the receipt of the Administrative Law Judge's final decision, if the Mortgagee does request a hearing within the 30-Day appeal period.

(B) Case Status

HUD will not endorse any Mortgage originated by the withdrawn Mortgagee unless it was an Approved Mortgage prior to the date of withdrawal.

The withdrawn Mortgagee must transfer its servicing portfolio to another FHA-approved Mortgagee (see [Transfers of Servicing](#) and [Sales of Mortgages](#)).

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Withdrawn FHA approval means that the Mortgagee may not originate, underwrite, service, or purchase any FHA-insured Mortgages.

(C)Duration

The MRB's withdrawal of a Mortgagee's FHA approval will be for a reasonable, specified period of time, but not less than one year. The MRB may permanently withdraw a Mortgagee's FHA approval if it finds the Mortgagee's violations to be egregious or willful.

A withdrawn Mortgagee's approval is not reinstated at the end of the period of withdrawal. The Mortgagee may reapply for FHA approval after the period of withdrawal has expired.

(D)Appeal

The Mortgagee has the right to appeal a withdrawal of its FHA approval by the MRB in accordance with the provisions of [24 CFR Parts 25 and 26](#).

v. Civil Money Penalties

The MRB may impose civil money penalties against any FHA-approved Mortgagee who knowingly and materially violates FHA requirements as set forth in [24 CFR § 30.35](#).

(A)Complaint

If the MRB elects to seek civil money penalties against a Mortgagee, HUD will file a complaint to initiate legal action. A civil money penalty may be imposed against a Mortgagee in addition to any other administrative action taken by the MRB.

(B)Maximum Civil Money Penalties

The MRB is authorized to impose a civil money penalty, in accordance with the provisions of [24 CFR Part 30](#), against a party that knowingly and materially violates FHA program regulations or requirements. A civil money penalty may be imposed with respect to each insured Mortgage or other separate occurrence of a violation up to the maximum permitted under Part 30.

(C)Mitigating and Aggravating Factors

In determining the amount of a civil money penalty, the MRB will consider the following factors:

- the gravity of the offense;
- the Mortgagee's history of prior offenses;
- the Mortgagee's ability to pay the penalty;
- the injury to the public;
- the benefits received by the violator;

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- the extent of potential benefit to other persons;
- deterrence of future violations; and
- the degree of the violator's culpability.

vi. Settlement Agreements

The MRB is authorized to enter into settlement agreements with non-complying Mortgagees at any time in order to resolve grounds for an administrative sanction or civil money penalty, as set forth in [12 U.S.C. § 1708\(c\)\(3\)\(E\)](#) and [24 CFR § 25.5\(a\)](#). Failure by the Mortgagee to comply with the terms of a settlement agreement may result in a suspension or withdrawal of the Mortgagee's FHA approval.

b. Procedures

The following is a brief summary of the procedures of the MRB under [24 CFR Parts 25, 26, and 30](#).

i. Notice of Violation

The MRB will send the Mortgagee an NOV detailing the Mortgagee's alleged violations.

(A) Mortgage Response

The Mortgagee may provide the MRB with a written response within 30 Days of receiving the NOV. The MRB will consider the Mortgagee's response, as well as other relevant material, when deciding which administrative action to take, if any, and whether to seek civil money penalties against the Mortgagee.

If the Mortgagee fails to respond to the NOV within 30 Days, the MRB will make a final determination based upon the information available to it.

(B) Preservation of Documents

Upon receipt of the NOV, the Mortgagee is required to preserve and maintain all documents and data, including electronically stored data, within the Mortgagee's possession or control that may relate to the violations alleged in the NOV.

ii. Notice of Administrative Action

If the MRB decides to take administrative action against the Mortgagee, the MRB will issue a Notice of Administrative Action to the Mortgagee describing the nature and duration of the action and setting forth the basis for the action being taken.

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iii. Appeal

(A) Request for Hearing

Mortgagees may appeal a probation, suspension or withdrawal action by the MRB by submitting a written request for a hearing within 30 Days of receipt of the Notice of Administrative Action. The Mortgagee's request for a hearing must specifically respond to the violations set forth in the Notice of Administrative Action.

(B) Hearing Process and Procedures

Hearings are conducted before an impartial Administrative Law Judge in accordance with the procedures set forth in [24 CFR Part 26, Subpart B](#).

(C) Waiver of Appeal

If a Mortgagee fails to request a hearing within the 30-Day period, the MRB action becomes final.

iv. Public Notice

(A) Federal Register

Pursuant to the National Housing Act ([12 U.S.C. § 1708\(c\)\(5\)](#)), HUD publishes a description of and the cause for each administrative action against an FHA-approved Mortgagee in the [Federal Register](#). The Federal Register notices include details on all MRB actions, including letters of reprimand, probations, suspensions, withdrawals of FHA approval, settlement agreements, and civil money penalties.

(B) Agency Notifications

If the MRB suspends or withdraws the approval of a Mortgagee, FHA is required to notify certain state, federal, and other interested agencies that interact with the Mortgagee, including:

- Conference of State Bank Supervisors/NMLS
- CFPB
- Fannie Mae
- Federal Deposit Insurance Corporation (FDIC)
- Federal Reserve
- Freddie Mac
- Ginnie Mae
- National Credit Union Administration (NCUA)
- Office of the Comptroller of the Currency
- U.S. Department of Agriculture Rural Development Housing Authority
- U.S. Department of Veterans Affairs

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