

Lenders Compliance Group

Tuesday, April 30, 2013

FHA: Mortgagee Review Board - Administrative Actions

Periodically, we review with you the types of administrative actions taken by HUD's Mortgagee Review Board (MRB).

The review of the MRB's published administrative actions should be considered a teaching moment for all FHA approved mortgagees, inasmuch as the MRB is empowered to enforce its administrative sanctions through, among other things, reprimand, probation, suspension or withdrawal of approval and/or underwriting authority, cease-and-desist orders, and civil money penalties.

On April 11, 2013 HUD published the administrative actions taken by the Mortgagee Review Board (MRB) against certain FHA mortgagees. The period covered in the issuance is January 1, 2012 to September 30, 2012.

In this article, I provide an outline of the kinds of violations and respective sanctions that the MRB recently sustained.

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A Word to the Wise Word

In representing clients before the MRB, I can vouch for the exhaustive due diligence that is virtually mandated, the considerable costs involved, the experienced legal counsel and requisite regulatory compliance expertise that is needed, and the significant adverse impact on an FHA lender's ability to conduct or even continue in business.

It's easy to get lulled into a sense of false confidence by thinking that some violations are minor. But if the MRB gets involved, those minor violations will become a part of the causes for administrative action, and even in some instances the proximate cause of the administrative action.

Nothing should be considered a "minor" violation, when originating HUD/FHA mortgage loans.

It is instructive to note the causes for the administrative action brought against an FHA-approved mortgagee.

Ignorance is a futile defense, when it comes to the causes that can affirmatively contribute to disciplinary action.

Rule of Thumb Rule

The MRB is not sympathetic to a mortgagee that violates HUD/FHA requirements which are, or are expected to be, within the mortgagee's control.

Violations that are not, or not expected to be, in the mortgagee's control provide the MRB with a more nuanced basis upon which to provide some leniency.

Administrative Actions

VIOLATION:

Failed to notify the Department that it was the subject of multiple state regulatory actions and sanctions, and submitted false certifications to HUD in connection with its annual renewal of eligibility documentation for its fiscal years ending in 2009, 2010 and 2011.

ACTION: Civil money penalty in the amount of \$75,000.

VIOLATION:

Failed to perform quality control functions in compliance with HUD/FHA requirements, failed to meet the requirements for participation in the FHA mortgage insurance program, failed to ensure the correct mortgagee identification number was used when originating FHA-insured mortgage loans, failed to adequately document the source of and/or adequacy of funds used for closing, failed to correctly calculate and document the mortgagee's income, failed to

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of closing, failed to correctly calculate and document the mortgagor's income, failed to verify the stability of the mortgagor's income, failed to ensure the mortgagor was eligible for an FHA-insured mortgage loan, failed to ensure the property met HUD's eligibility requirements, failed to comply with TOTAL Scorecard requirements, failed to comply with HUD's property flipping requirements, failed to provide construction documents required for property eligibility and/or high ratio financing resulting in over-insured mortgages, failed to ensure that the maximum mortgage amount was correctly calculated, resulting in over-insured mortgages, failed to ensure that data submitted to HUD systems was accurate, and charged mortgagors unallowable fees.

ACTION:

Notice of Administrative Action immediately and permanently withdrawing the FHA approval.

VIOLATION: Failed to obtain adequate documentation of the income used to qualify a borrower, failed to resolve discrepancies and/or conflicting information before submitting loans for FHA mortgage approval, and failed to ensure mortgagors were not charged fees that were excessive and/or unreasonable for the services performed.

ACTION:

Settlement Agreement that required civil money penalties in the amount of \$17,000, to indemnify HUD/FHA for its losses with respect to two FHA-insured loans, and to refund borrowers for excessive origination fees.

VIOLATION:

Submitted or caused to be submitted false information to HUD in relation to 63 mortgage record changes, failed to reconcile its portfolio data and allowed HUD records to incorrectly identify the mortgagee as the holder of 97 FHA-insured mortgage loans, and submitted false information to HUD on 133 claims for FHA insurance benefits and, in 90 instances, claimed benefits for ineligible holders of record.

ACTION: Settlement Agreement that, among other things, required a civil money penalty in the amount of \$1.2 million and to complete mortgage record changes to facilitate the payment of certain FHA insurance claims.

VIOLATION:

Employed or retained a debarred director and made three false certifications to HUD on the Yearly Verification Report and annual recertification submissions to HUD for 2009, 2010 and 2011.

ACTION:

Civil money penalty in the amount of \$59,000.

VIOLATION: Failed to engage in loss mitigation and/or retain required documentation in its loan servicing files with respect to its loss mitigation decisions.

ACTION:

Civil money penalty in the amount of \$32,500.

VIOLATION:

Failed to adopt and maintain a quality control plan and management reports, failed to implement a quality control plan, allowed non-employees and non W-2 employees to originate FHA loans, and failed to require the loan interviewer to sign page 4 of the initial Uniform Residential Loan Application, Fannie Mae Form 1003, and page 1 of the initial Form HUD 92900-A.

ACTION:

Civil money penalty in the amount of \$12,000.

VIOLATION:

Disseminated a misrepresentative or misleading advertisement or business solicitation to the public.

ACTION: Probation for a period of six months and required to pay a civil money penalty in the amount of \$7,500.

VIOLATION: Failed to maintain a quality control plan, failed to perform quality control functions, failed to service FHA-insured loans in accordance with HUD's loss mitigation requirements, and failed to timely provide the HUD-PA-426 pamphlet to delinquent borrowers.

ACTION:

Civil money penalty in the amount of \$23,300, to require all of its mortgage servicing staff and supervisors to complete, within six months, HUD's twelve-module electronic training program on loss mitigation and servicing systems, and to submit to HUD and implement a written quality control plan that complies with HUD requirements.

VIOLATION:

Failed to notify HUD/FHA that the mortgagee was involuntarily dissolved by the state of Illinois and, the fiscal years ending March 31, 2009, March 31, 2010 and March 31, 2011, failed to timely submit its Yearly Verification Report/Electronic Annual Certification forms, failed to pay the annual recertification fees and failed to submit acceptable audited financial statements.

ACTION: Notice of Administrative Action withdrawing the FHA approval for a period of one year.

VIOLATION: Failed either to timely remit monthly mortgage insurance premiums to HUD/FHA or to notify HUD/FHA within fifteen calendar days of the termination of the contract of mortgage insurance, the sale of the mortgage, or both on 1,373 loans.

ACTION: Civil money penalty in the amount of \$85,150.

VIOLATION:

Failed to engage in loss mitigation, failed to service FHA loans in accordance with HUD

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requirements, and failed to offer property disposition options to the mortgagors.

ACTION:

Civil money penalty in the amount of \$37,000, and pay \$92,677 to indemnify HUD for its losses with respect to one FHA loan, to indemnify HUD for any loss (past, present or future) on five FHA loans for a period of five years from the date of the agreement, and to retain and fully pay for a third-party servicing monitor for a period of one year.

VIOLATION:

Failed either to timely remit mortgage insurance premiums to HUD/FHA or to notify HUD/FHA within 15 calendar days of the termination of the contract of mortgage insurance, the sale of the mortgage, or both on twenty loans.

ACTION:

Civil money penalty in the amount of \$8,100 and remit all Mortgage Insurance Premiums and late fees due HUD for 20 FHA insured mortgages serviced by the mortgagee.

VIOLATION: Approved loans without properly analyzing the borrower's credit, approved loans without properly documenting or verifying effective income, approved loans with inadequate verification of the borrowers cash investment in the property, approved loans with inadequate analysis of the borrower's ability to repay the mortgage obligation, approved a loan with an incomplete Mortgage Credit Analysis Worksheet (MCAW), and failed to implement an acceptable quality control plan.

ACTION:

Civil money penalty in the amount of \$91,500, to pay \$917,528 to indemnify HUD for its losses with respect to five defaulted FHA loans, and to indemnify HUD for any loss (past, present or future) on three FHA loans for a period of five years from the date of the agreement, without admitting fault or liability.

VIOLATION: On thirteen FHA-insured mortgages serviced or held by the mortgagee, the mortgagee failed to remit Mortgage Insurance Premiums, failed to notify HUD/FHA within fifteen calendar days of the termination of the contract for mortgage insurance or the sale of the mortgage, or both.

ACTION: Notice of Administrative Action withdrawing the FHA approval for a period of one year.

VIOLATION:

Failed to timely remit 200 Upfront Mortgage Insurance Premiums to HUD/FHA within ten calendar days of closing or disbursement, whichever was later, and failed to honor two indemnification agreements with HUD when it failed to remit payments owed to HUD pursuant to the terms of the Indemnification Agreements.

ACTION:

Civil money penalty in the amount of \$13,500 and to pay \$243,872 to indemnify HUD for its losses with respect to two defaulted FHA loans.

VIOLATION: Failed to complete its annual online certification, failed to submit the recertification fee, failed to submit its audited financial statements, employed individuals to originate loans who NHL knew or should have known were engaged in prohibited outside employment in the mortgage lending field, permitted non-FHA-approved mortgage brokers to perform loan origination services, failed to adhere to HUD/FHA requirements when underwriting loans for FHA insurance, and failed to adopt, maintain, and implement a quality control plan in compliance with HUD/FHA requirements.

ACTION:

Notice of Administrative Action permanently withdrawing the FHA approval.

VIOLATION:

Failed to remit payments owed to HUD per the terms of an indemnification agreement with HUD, failed to timely notify HUD/FHA of a business change that affected the standing as an approved institution or changed the information on which it was originally approved, failed to timely submit its audited financial statements for fiscal years 2009, 2010, and 2011, failed to timely submit its annual recertification fee(s) for fiscal years 2009, 2010 and 2011, and failed to timely submit its annual online certifications for fiscal years 2009, 2010 and 2011.

ACTION: Notice of Administrative Action permanently withdrawing the FHA approval.

VIOLATION: Failed to maintain its state mortgage lender's license and failed to notify HUD/FHA that it had closed its main office and was no longer licensed in the state.

ACTION: Notice of Administrative Action withdrawing the FHA approval for a period of one year.

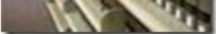
VIOLATION:

Failed either to timely remit mortgage insurance premiums to HUD/FHA or to notify HUD/FHA within fifteen calendar days of the termination of the contract of mortgage insurance, the sale of the mortgage, or both on 97 FHA-insured loans.

ACTION: Civil money penalty in the amount of \$15,000.

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Department of Housing and Urban Development

Office of the Assistant Secretary for Housing
Federal Housing Commissioner

Mortgagee Review Board: Administrative Actions

April 11, 2013



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