

be construed to require the Federal Housing Finance Agency to collect or make publicly available additional information under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.), beyond information that was collected or made publicly available under that Act, as of the day before the date of enactment of this Act [Dec. 23, 2022].”

§ 4528. Open data publication

All public data assets published by the Agency shall be—

- (1) made available as an open Government data asset (as defined in section 3502 of title 44);
- (2) freely available for download;
- (3) rendered in a human-readable format; and
- (4) accessible via application programming interface where appropriate.

(Pub. L. 102-550, title XIII, §1319I, as added Pub. L. 117-263, div. E, title LVIII, §5882, Dec. 23, 2022, 136 Stat. 3437.)

Statutory Notes and Related Subsidiaries

RULE OF CONSTRUCTION REGARDING NO NEW DISCLOSURE REQUIREMENTS

Enactment of section not to be construed to require certain additional information to be collected or disclosed, see section 5884 of Pub. L. 117-263, set out as a note under section 4527 of this title.

PART B—ADDITIONAL AUTHORITIES OF THE DIRECTOR

SUBPART 1—GENERAL AUTHORITY

§ 4541. Prior approval authority for products

(a) In general

The Director shall require each enterprise to obtain the approval of the Director for any product of the enterprise before initially offering the product.

(b) Standard for approval

In considering any request for approval of a product pursuant to subsection (a), the Director shall make a determination that—

- (1) in the case of a product of the Federal National Mortgage Association, the product is authorized under paragraph (2), (3), (4), or (5) of section 1717(b) or section 1719 of this title;
- (2) in the case of a product of the Federal Home Loan Mortgage Corporation, the product is authorized under paragraph (1), (4), or (5) of section 1454(a) of this title;
- (3) the product is in the public interest; and
- (4) the product is consistent with the safety and soundness of the enterprise or the mortgage finance system.

(c) Procedure for approval

(1) Submission of request

An enterprise shall submit to the Director a written request for approval of a product that describes the product in such form as prescribed by order or regulation of the Director.

(2) Request for public comment

Immediately upon receipt of a request for approval of a product, as required under paragraph (1), the Director shall publish notice of

such request and of the period for public comment pursuant to paragraph (3) regarding the product, and a description of the product proposed by the request. The Director shall give interested parties the opportunity to respond in writing to the proposed product.

(3) Public comment period

During the 30-day period beginning on the date of publication pursuant to paragraph (2) of a request for approval of a product, the Director shall receive public comments regarding the proposed product.

(4) Offering of product

(A) In general

Not later than 30 days after the close of the public comment period described in paragraph (3), the Director shall approve or deny the product, specifying the grounds for such decision in writing.

(B) Failure to act

If the Director fails to act within the 30-day period described in subparagraph (A), then the enterprise may offer the product.

(C) Temporary approval

The Director may, subject to the rules of the Director, provide for temporary approval of the offering of a product without a public comment period, if the Director finds that the existence of exigent circumstances makes such delay contrary to the public interest.

(d) Conditional approval

If the Director approves the offering of any product by an enterprise, the Director may establish terms, conditions, or limitations with respect to such product with which the enterprise must comply in order to offer such product.

(e) Exclusions

(1) In general

The requirements of subsections (a) through (d) do not apply with respect to—

(A) the automated loan underwriting system of an enterprise in existence as of July 30, 2008, including any upgrade to the technology, operating system, or software to operate the underwriting system;

(B) any modification to the mortgage terms and conditions or mortgage underwriting criteria relating to the mortgages that are purchased or guaranteed by an enterprise, provided that such modifications do not alter the underlying transaction so as to include services or financing, other than residential mortgage financing; or

(C) any other activity that is substantially similar, as determined by rule of the Director to—

- (i) the activities described in subparagraphs (A) and (B); and
- (ii) other activities that have been approved by the Director in accordance with this section.

(2) Expedited review

(A) Enterprise notice

For any new activity that an enterprise considers not to be a product, the enterprise

shall provide written notice to the Director of such activity, and may not commence such activity until the date of receipt of a notice under subparagraph (B) or the expiration of the period described in subparagraph (C). The Director shall establish, by regulation, the form and content of such written notice.

(B) Director determination

Not later than 15 days after the date of receipt of a notice under subparagraph (A), the Director shall determine whether such activity is a product subject to approval under this section. The Director shall, immediately upon so determining, notify the enterprise.

(C) Failure to act

If the Director fails to determine whether such activity is a product within the 15-day period described in subparagraph (B), the enterprise may commence the new activity in accordance with subparagraph (A).

(f) No limitation

Nothing in this section may be construed to restrict—

- (1) the safety and soundness authority of the Director over all new and existing products or activities; or
- (2) the authority of the Director to review all new and existing products or activities to determine that such products or activities are consistent with the statutory mission of an enterprise.

(Pub. L. 102-550, title XIII, §1321, as added Pub. L. 110-289, div. A, title I, §1123, July 30, 2008, 122 Stat. 2689.)

Editorial Notes

PRIOR PROVISIONS

A prior section 4541, Pub. L. 102-550, title XIII, §1321, Oct. 28, 1992, 106 Stat. 3952, related to the Secretary of Housing and Urban Development's regulatory authority, prior to repeal by Pub. L. 110-289, div. A, title I, §1121(2), July 30, 2008, 122 Stat. 2689.

§ 4542. Housing Price Index

The Director shall establish and maintain a method of assessing the national average 1-family house price for use for adjusting the conforming loan limitations of the enterprises. In establishing such method, the Director shall take into consideration the monthly survey of all major lenders conducted by the Federal Housing Finance Agency to determine the national average 1-family house price, the House Price Index maintained by the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development before the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, any appropriate house price indexes of the Bureau of the Census of the Department of Commerce, and any other indexes or measures that the Director considers appropriate.

(Pub. L. 102-550, title XIII, §1322, as added Pub. L. 110-289, div. A, title I, §1124(d), July 30, 2008, 122 Stat. 2693.)

Editorial Notes

REFERENCES IN TEXT

The effective date of the Federal Housing Finance Regulatory Reform Act of 2008, referred to in text, probably means the date of enactment of div. A of Pub. L. 110-289, which was approved July 30, 2008.

PRIOR PROVISIONS

A prior section 4542, Pub. L. 102-550, title XIII, §1322, Oct. 28, 1992, 106 Stat. 3953, related to the Secretary of Housing and Urban Development's prior approval authority for new programs, prior to repeal by Pub. L. 110-289, div. A, title I, §1121(2), July 30, 2008, 122 Stat. 2689.

§ 4543. Public access to mortgage information

(a) Availability

(1) In general

The Director shall make available to the public, in forms useful to the public (including forms accessible by computers), the data submitted by the enterprises in the reports required under section 1723a(m) of this title or section 1456(e) of this title.

(2) Census tract level reporting

Such data shall include the data elements required to be reported under the Home Mortgage Disclosure Act of 1975 [12 U.S.C. 2801 et seq.], at the census tract level.

(b) Access

(1) Proprietary data

Except as provided in paragraph (2), the Director may not make available to the public data that the Director determines pursuant to section 4546 of this title are proprietary information.

(2) Exception

The Director shall not restrict access to the data provided in accordance with section 1723a(m)(1)(A) of this title or section 1456(e)(1)(A) of this title or with subsection (a)(2).

(c) Fees

The Director may charge reasonable fees to cover the cost of making data available under this section to the public.

(d) Timing

Data submitted under this section by an enterprise in connection with a provision referred to in subsection (a) shall be made publicly available in accordance with this section not later than September 30 of the year following the year to which the data relates.

(Pub. L. 102-550, title XIII, §1323, Oct. 28, 1992, 106 Stat. 3954; Pub. L. 110-289, div. A, title I, §§1122(a)(1), 1126, July 30, 2008, 122 Stat. 2689, 2695.)

Editorial Notes

REFERENCES IN TEXT

The Home Mortgage Disclosure Act of 1975, referred to in subsec. (a)(2), is title III of Pub. L. 94-200, Dec. 31, 1975, 89 Stat. 1125, which is classified principally to chapter 29 (§2801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2801 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110-289, §1122(a)(1), substituted “Director” for “Secretary” wherever appearing in subsecs. (a) to (c).

Subsec. (a). Pub. L. 110-289, §1126(1), substituted “Availability” for “In general” in subsec. heading, inserted par. (1) designation and heading, and added par. (2). The amendment was executed to reflect the probable intent of Congress, notwithstanding an error in the directory language which did not take into consideration the prior amendment by Pub. L. 110-289, §1122(a)(1). See above.

Subsec. (b)(2). Pub. L. 110-289, §1126(2), inserted “or with subsection (a)(2)” before period at end.

Subsec. (d). Pub. L. 110-289, §1126(3), added subsec. (d).

§ 4544. Annual housing report

(a) In general

After reviewing and analyzing the reports submitted under section 1723a(n) of this title and section 1456(f) of this title, the Director shall submit a report, not later than October 30 of each year, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, on the activities of each enterprise.

(b) Contents

The report required under subsection (a) shall—

(1) discuss—

(A) the extent to and manner in which—

(i) each enterprise is achieving the annual housing goals established under subpart 2;

(ii) each enterprise is complying with its duty to serve underserved markets, as established under section 4565 of this title;

(iii) each enterprise is complying with section 4567 of this title;

(iv) each enterprise received credit towards achieving each of its goals resulting from a transaction or activity pursuant to section 4561(b)(2) of this title; and

(v) each enterprise is achieving the purposes of the enterprise established by law; and

(B) the actions that each enterprise could undertake to promote and expand the purposes of the enterprise;

(2) aggregate and analyze relevant data on income to assess the compliance of each enterprise with the housing goals established under subpart 2;

(3) aggregate and analyze data on income, race, and gender by census tract and other relevant classifications, and compare such data with larger demographic, housing, and economic trends;

(4) identify the extent to which each enterprise is involved in mortgage purchases and secondary market activities involving subprime and nontraditional loans;

(5) compare the characteristics of subprime and nontraditional loans both purchased and securitized by each enterprise to other loans purchased and securitized by each enterprise; and

(6) compare the characteristics of high-cost loans purchased and securitized, where such

securities are not held on portfolio to loans purchased and securitized, where such securities are either retained on portfolio or repurchased by the enterprise, including such characteristics as—

(A) the purchase price of the property that secures the mortgage;

(B) the loan-to-value ratio of the mortgage, which shall reflect any secondary liens on the relevant property;

(C) the terms of the mortgage;

(D) the creditworthiness of the borrower; and

(E) any other relevant data, as determined by the Director.

(c) Data collection and reporting

(1) In general

To assist the Director in analyzing the matters described in subsection (b), the Director shall conduct, on a monthly basis, a survey of mortgage markets in accordance with this subsection.

(2) Data points

Each monthly survey conducted by the Director under paragraph (1) shall collect data on—

(A) the characteristics of individual mortgages that are eligible for purchase by the enterprises and the characteristics of individual mortgages that are not eligible for purchase by the enterprises including, in both cases, information concerning—

(i) the price of the house that secures the mortgage;

(ii) the loan-to-value ratio of the mortgage, which shall reflect any secondary liens on the relevant property;

(iii) the terms of the mortgage;

(iv) the creditworthiness of the borrower or borrowers; and

(v) whether the mortgage, in the case of a conforming mortgage, was purchased by an enterprise;

(B) the characteristics of individual subprime and nontraditional mortgages that are eligible for purchase by the enterprises and the characteristics of borrowers under such mortgages, including the creditworthiness of such borrowers and determination whether such borrowers would qualify for prime lending; and

(C) such other matters as the Director determines to be appropriate.

(3) Public availability

The Director shall make any data collected by the Director in connection with the conduct of a monthly survey available to the public in a timely manner, provided that the Director may modify the data released to the public to ensure that the data—

(A) is not released in an identifiable form; and

(B) is not otherwise obtainable from other publicly available data sets.

(4) Definition

For purposes of this subsection, the term “identifiable form” means any representation of information that permits the identity of a

borrower to which the information relates to be reasonably inferred by either direct or indirect means.

(Pub. L. 102-550, title XIII, §1324, as added Pub. L. 110-289, div. A, title I, §1125(b), July 30, 2008, 122 Stat. 2693.)

Editorial Notes

PRIOR PROVISIONS

A prior section 4544, Pub. L. 102-550, title XIII, §1324, Oct. 28, 1992, 106 Stat. 3954, related to annual housing report, prior to repeal by Pub. L. 110-289, div. A, title I, §1125(a), July 30, 2008, 122 Stat. 2693.

§ 4545. Fair housing

The Secretary of Housing and Urban Development shall—

(1) by regulation, prohibit each enterprise from discriminating in any manner in the purchase of any mortgage because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect;

(2) by regulation, require each enterprise to submit data to the Secretary to assist the Secretary in investigating whether a mortgage lender with which the enterprise does business has failed to comply with the Fair Housing Act [42 U.S.C. 3601 et seq.];

(3) by regulation, require each enterprise to submit data to the Secretary to assist in investigating whether a mortgage lender with which the enterprise does business has failed to comply with the Equal Credit Opportunity Act [15 U.S.C. 1691 et seq.], and shall submit any such information received to the appropriate Federal agencies, as provided in section 704 of the Equal Credit Opportunity Act [15 U.S.C. 1691c], for appropriate action;

(4) obtain information from other regulatory and enforcement agencies of the Federal Government and State and local governments regarding violations by lenders of the Fair Housing Act and the Equal Credit Opportunity Act and make such information available to the enterprises;

(5) direct the enterprises to undertake various remedial actions, including suspension, probation, reprimand, or settlement, against lenders that have been found to have engaged in discriminatory lending practices in violation of the Fair Housing Act or the Equal Credit Opportunity Act, pursuant to a final adjudication on the record, and after opportunity for an administrative hearing, in accordance with subchapter II of chapter 5 of title 5; and

(6) periodically review and comment on the underwriting and appraisal guidelines of each enterprise to ensure that such guidelines are consistent with the Fair Housing Act and this section.

(Pub. L. 102-550, title XIII, §1325, Oct. 28, 1992, 106 Stat. 3955; Pub. L. 110-289, div. A, title I, §1122(b), July 30, 2008, 122 Stat. 2689.)

Editorial Notes

REFERENCES IN TEXT

The Fair Housing Act, referred to in pars. (2) and (4) to (6), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42 and Tables.

The Equal Credit Opportunity Act, referred to in pars. (3) to (5), is title VII of Pub. L. 90-321, as added by Pub. L. 93-495, title V, §503, Oct. 28, 1974, 88 Stat. 1521, which is classified generally to subchapter IV (§1691 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

AMENDMENTS

2008—Pub. L. 110-289 inserted “of Housing and Urban Development” after “The Secretary” in introductory provisions.

§ 4546. Prohibition of public disclosure of proprietary information

(a) In general

Subject to subsection (d), the Director may, by regulation or order, provide that certain information shall be treated as proprietary information and not subject to disclosure under section 4543 of this title, section 1723a(n)(3) of this title, or section 1456(f)(3) of this title.

(b) Protection of information on housing activities

The Director shall not provide public access to, or disclose to the public, any information required to be submitted by an enterprise under section 1723a(n) of this title or section 1456(f) of this title that the Director determines is proprietary.

(c) Nondisclosure pending consideration

This section may not be construed to authorize the disclosure of information to, or examination of data by, the public or a representative of any person or agency pending the issuance of a final decision under this section.

(d) Mortgage information

Subject to privacy considerations, as described in section 304(j) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(j)), the Director shall, by regulation or order, provide that certain information relating to single family mortgage data of the enterprises shall be disclosed to the public, in order to make available to the public—

(1) the same data from the enterprises that is required of insured depository institutions under the Home Mortgage Disclosure Act of 1975 [12 U.S.C. 2801 et seq.]; and

(2) information collected by the Director under section 4544(b)(6) of this title.

(Pub. L. 102-550, title XIII, §1326, Oct. 28, 1992, 106 Stat. 3955; Pub. L. 110-289, div. A, title I, §§1122(a)(1), 1127, July 30, 2008, 122 Stat. 2689, 2695.)

Editorial Notes

REFERENCES IN TEXT

The Home Mortgage Disclosure Act of 1975, referred to in subsec. (d)(1), is title III of Pub. L. 94-200, Dec. 31,

1975, 89 Stat. 1125, which is classified principally to chapter 29 (§2801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2801 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110-289, §1122(a)(1), substituted “Director” for “Secretary” wherever appearing in subsecs. (a) and (b).

Subsec. (a). Pub. L. 110-289, §1127(1), substituted “Subject to subsection (d), the Director” for “The Director”.

Subsec. (d). Pub. L. 110-289, §1127(2), added subsec. (d).

§ 4547. Enterprise guarantee fees

(a) Definitions

For purposes of this section, the following definitions shall apply:

(1) Guarantee fee

The term “guarantee fee”—

(A) means a fee described in subsection (b); and

(B) includes—

(i) the guaranty fee charged by the Federal National Mortgage Association with respect to mortgage-backed securities; and

(ii) the management and guarantee fee charged by the Federal Home Loan Mortgage Corporation with respect to participation certificates.

(2) Average fees

The term “average fees” means the average contractual fee rate of single-family guaranty arrangements by an enterprise entered into during 2011, plus the recognition of any up-front cash payments over an estimated average life, expressed in terms of basis points. Such definition shall be interpreted in a manner consistent with the annual report on guarantee fees by the Federal Housing Finance Agency.

(b) Increase

(1) In general

(A) Phased increase required

Subject to subsection (c), the Director shall require each enterprise to charge a guarantee fee in connection with any guarantee of the timely payment of principal and interest on securities, notes, and other obligations based on or backed by mortgages on residential real properties designed principally for occupancy of from 1 to 4 families, consummated after December 23, 2011.

(B) Amount

The amount of the increase required under this section shall be determined by the Director to appropriately reflect the risk of loss, as well¹ the cost of capital allocated to similar assets held by other fully private regulated financial institutions, but such amount shall be not less than an average increase of 10 basis points for each origination year or book year above the average fees imposed in 2011 for such guarantees. The Director shall prohibit an enterprise from offsetting the cost of the fee to mortgage origina-

tors, borrowers, and investors by decreasing other charges, fees, or premiums, or in any other manner.

(2) Authority to limit offer of guarantee

The Director shall prohibit an enterprise from consummating any offer for a guarantee to a lender for mortgage-backed securities, if—

(A) the guarantee is inconsistent with the requirements of this section; or

(B) the risk of loss is allowed to increase, through lowering of the underwriting standards or other means, for the primary purpose of meeting the requirements of this section.

(3) Deposit in Treasury

Amounts received from fee increases imposed under this section shall be deposited directly into the United States Treasury, and shall be available only to the extent provided in subsequent appropriations Acts. The fees charged pursuant to this section shall not be considered a reimbursement to the Federal Government for the costs or subsidy provided to an enterprise.

(c) Phase-in

(1) In general

The Director may provide for compliance with subsection (b) by allowing each enterprise to increase the guarantee fee charged by the enterprise gradually over the 2-year period beginning on December 23, 2011, in a manner sufficient to comply with this section. In determining a schedule for such increases, the Director shall—

(A) provide for uniform pricing among lenders;

(B) provide for adjustments in pricing based on risk levels; and

(C) take into consideration conditions in financial markets.

(2) Rule of construction

Nothing in this subsection shall be interpreted to undermine the minimum increase required by subsection (b).

(d) Information collection and annual analysis

The Director shall require each enterprise to provide to the Director, as part of its annual report submitted to Congress—

(1) a description of—

(A) changes made to up-front fees and annual fees as part of the guarantee fees negotiated with lenders;

(B) changes to the riskiness of the new borrowers compared to previous origination years or book years; and

(C) any adjustments required to improve for future origination years or book years, in order to be in complete compliance with subsection (b); and

(2) an assessment of how the changes in the guarantee fees described in paragraph (1) met the requirements of subsection (b).

(e) Enforcement

(1) Required adjustments

Based on the information from subsection (d) and any other information the Director

¹ So in original. Probably should be followed by “as”.

deems necessary, the Director shall require an enterprise to make adjustments in its guarantee fee in order to be in compliance with subsection (b).

(2) Noncompliance penalty

An enterprise that has been found to be out of compliance with subsection (b) for any 2 consecutive years shall be precluded from providing any guarantee for a period, determined by rule of the Director, but in no case less than 1 year.

(3) Rule of construction

Nothing in this subsection shall be interpreted as preventing the Director from initiating and implementing an enforcement action against an enterprise, at a time the Director deems necessary, under other existing enforcement authority.

(f) Expiration

The provisions of this section shall expire on October 1, 2032.

(Pub. L. 102-550, title XIII, §1327, as added Pub. L. 112-78, title IV, §401, Dec. 23, 2011, 125 Stat. 1287; Pub. L. 117-58, div. I, §90005, Nov. 15, 2021, 135 Stat. 1346.)

Editorial Notes

PRIOR PROVISIONS

A prior section 4547, Pub. L. 102-550, title XIII, §1327, Oct. 28, 1992, 106 Stat. 3956; Pub. L. 110-289, div. A, title I, §1122(a)(1), July 30, 2008, 122 Stat. 2689, related to authority to require reports by enterprises, prior to repeal by Pub. L. 110-289, div. A, title I, §1104(b), July 30, 2008, 122 Stat. 2667.

AMENDMENTS

2021—Subsec. (f). Pub. L. 117-58 substituted “2032” for “2021”.

§ 4548. Regulations for use of credit scores

The Director shall—

(1) by regulation, establish standards and criteria for any process used by an enterprise to validate and approve credit scoring models pursuant to section 1717(b)(7) of this title and section 1454(d) of this title; and

(2) ensure that any credit scoring model that is validated and approved by an enterprise under section 1717(b)(7) of this title or section 1454(d) of this title meets the requirements of clauses (i), (ii), and (iii) of section 1717(b)(7)(C) of this title and subparagraphs (A), (B), and (C) of section 1454(d) of this title, respectively.

(Pub. L. 102-550, title XIII, §1328, as added Pub. L. 115-174, title III, §310(c), May 24, 2018, 132 Stat. 1355.)

Editorial Notes

PRIOR PROVISIONS

A prior section 4548, Pub. L. 102-550, title XIII, §1328, Oct. 28, 1992, 106 Stat. 3956; Pub. L. 110-289, div. A, title I, §1122(a)(1), July 30, 2008, 122 Stat. 2689, related to required annual reports, prior to repeal by Pub. L. 110-289, div. A, title I, §1104(b), July 30, 2008, 122 Stat. 2667.

SUBPART 2—HOUSING GOALS

§ 4561. Establishment of housing goals

(a) In general

The Director shall, by regulation, establish effective for 2010 and each year thereafter, annual housing goals, with respect to the mortgage purchases by the enterprises, as follows:

(1) Single-family housing goals

Four single-family housing goals under section 4562 of this title.

(2) Multifamily special affordable housing goal

One multifamily special affordable housing goal under section 4563 of this title.

(b) Timing

The Director shall, by regulation, establish an annual deadline by which the Director shall establish the annual housing goals under this subpart for each year, taking into consideration the need for the enterprises to reasonably and sufficiently plan their operations and activities in advance, including operations and activities necessary to meet such annual goals.

(c) Transition

The annual housing goals effective for 2008 pursuant to this subpart, as in effect before July 30, 2008, shall remain in effect for 2009, except that not later than the expiration of the 270-day period beginning on July 30, 2008, the Director shall review such goals applicable for 2009 to determine the feasibility of such goals given the market conditions current at such time and, after seeking public comment for a period not to exceed 30 days, may make appropriate adjustments consistent with such market conditions.

(d) Eliminating interest rate disparities

(1) In general

Upon request by the Director, an enterprise shall provide to the Director, in a form determined by the Director, data the Director may review to determine whether there exist disparities in interest rates charged on mortgages to borrowers who are minorities as compared with comparable mortgages to borrowers of similar creditworthiness who are not minorities.

(2) Remedial actions upon preliminary finding

Upon a preliminary finding by the Director that a pattern of disparities in interest rates with respect to any lender or lenders exists pursuant to the data provided by an enterprise in paragraph (1), the Director shall¹

(A) refer the preliminary finding to the appropriate regulatory or enforcement agency for further review; and

(B) require the enterprise to submit additional data with respect to any lender or lenders, as appropriate and to the extent practicable, to the Director who shall submit any such additional data to the regulatory or enforcement agency for appropriate action.

(3) Annual report to Congress

The Director shall submit to the Committee on Financial Services of the House of Rep-

¹ So in original.

representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the actions taken, and being taken, by the Director to carry out this subsection. No such report shall identify any lender or lenders who have not been found to have engaged in discriminatory lending practices pursuant to a final adjudication on the record, and after opportunity for an administrative hearing, in accordance with subchapter II of chapter 5 of title 5.

(4) Protection of identity of individuals

In carrying out this subsection, the Director shall ensure that no property-related or financial information that would enable a borrower to be identified shall be made public.

(Pub. L. 102-550, title XIII, §1331, as added Pub. L. 110-289, div. A, title I, §1128(b), July 30, 2008, 122 Stat. 2696.)

Editorial Notes

PRIOR PROVISIONS

A prior section 4561, Pub. L. 102-550, title XIII, §1331, Oct. 28, 1992, 106 Stat. 3956, related to establishment of housing goals, prior to repeal by Pub. L. 110-289, div. A, title I, §1128(a), July 30, 2008, 122 Stat. 2696.

§ 4562. Single-family housing goals

(a) In general

The Director shall, by regulation, establish annual goals for the purchase by each enterprise of the following types of mortgages for the following categories of families:

(1) Purchase-money mortgages

A goal for purchase of conventional, conforming, single-family, purchase money mortgages financing owner-occupied housing for each of the following categories of families:

- (A) Low-income families.
- (B) Families that reside in low-income areas.
- (C) Very low-income families.

(2) Refinancing mortgages

A goal for purchase of conventional, conforming mortgages on owner-occupied, single-family housing for low-income families that are given to pay off or prepay an existing loan secured by the same property.

(b) Goals as a percentage of total mortgage purchases

The goals established under paragraphs (1) and (2) of subsection (a) shall be established as a percentage of the total number of conventional, conforming, single-family, owner-occupied, purchase money mortgages purchased by the enterprise, or as percentage of the total number of conventional, single-family, owner-occupied refinance mortgages purchased by the enterprise, as applicable, that are mortgages for the types of families specified in paragraphs (1) and (2) of subsection (a).

(c) Single-family, owner-occupied rental housing units

The Director shall require each enterprise to report the number of rental housing units affordable to low-income families each year which

are contained in mortgages purchased by the enterprise financing 2- to 4-unit single-family, owner-occupied properties and may, by regulation, establish additional requirements relating to such units.

(d) Determination of compliance

(1) In general

The Director shall determine, for each year that the housing goals under this section are in effect pursuant to section 4561(a) of this title, whether each enterprise has complied with each such goal established under subsection (a) of this section and any additional requirements which may be established under subsection (c) of this section.

(2) Purchase-money mortgage goals

An enterprise shall be considered to be in compliance with a housing goal under subparagraph (A), (B), or (C) of subsection (a)(1) for a year only if, for the type of family described in such subparagraph, the percentage of the number of conventional, conforming, single-family, owner-occupied, purchase money mortgages purchased by the enterprise in such year that serve such families, meets or exceeds the target for the year for such type of family that is established under subsection (e).

(3) Refinance goal

An enterprise shall be considered to be in compliance with the refinance goal under subsection (a)(2) for a year only if the percentage of the number of conventional, conforming, single-family, owner-occupied refinance mortgages purchased by the enterprise in such year that serve low-income families meets or exceeds the target for the year that is established under subsection (e).

(e) Annual targets

(1) In general

The Director shall, by regulation, establish annual targets for each goal and subgoal under this section, provided that the Director shall not set prospective targets longer than three years. In establishing such targets, the Director shall not consider segments of the market determined to be unacceptable or contrary to good lending practices, inconsistent with safety and soundness, or unauthorized for purchase by the enterprises.

(2) Goals targets

(A) Calculation

The Director shall calculate, for each of the types of families described in subsection (a), the percentage, for each of the three years that most recently precede such year and for which information under the Home Mortgage Disclosure Act of 1975 [12 U.S.C. 2801 et seq.] is publicly available—

- (i) of the number of conventional, conforming, single-family, owner-occupied purchase money mortgages originated in such year that serve such type of family, or
- (ii) the number of conventional, conforming, single-family, owner-occupied refinance mortgages originated in such year that serve low-income families,

as applicable, as determined by the Director using the information obtained and determined pursuant to paragraphs (4) and (5).

(B) Establishment of goal targets

The Director shall, by regulation, establish targets for each of the goal categories, taking into consideration the calculations under subparagraph (A) and the following factors:

- (i) National housing needs.
- (ii) Economic, housing, and demographic conditions, including expected market developments.
- (iii) The performance and effort of the enterprises toward achieving the housing goals under this section in previous years.
- (iv) The ability of the enterprise to lead the industry in making mortgage credit available.
- (v) Such other reliable mortgage data as may be available.
- (vi) The size of the purchase money conventional mortgage market, or refinance conventional mortgage market, as applicable, serving each of the types of families described in subsection (a), relative to the size of the overall purchase money mortgage market or the overall refinance mortgage market, respectively.
- (vii) The need to maintain the sound financial condition of the enterprises.

(3) Authority to adjust targets

The Director may, by regulation, adjust the percentage targets previously established by regulation pursuant to paragraph (2)(B) for any year, to reflect subsequent available data and market developments.

(4) HMDA information

The Director shall annually obtain information submitted in compliance with the Home Mortgage Disclosure Act of 1975 [12 U.S.C. 2801 et seq.] regarding conventional, conforming, single-family, owner-occupied, purchase money and refinance mortgages originated and purchased for the previous year.

(5) Conforming mortgages

In determining whether a mortgage is a conforming mortgage for purposes of this paragraph, the Director shall consider the original principal balance of the mortgage loan to be the principal balance as reported in the information referred to in paragraph (4), as rounded to the nearest thousand dollars.

(f) Notice of determination and enterprise comment

(1) Notice

Within 30 days of making a determination under subsection (d) regarding compliance of an enterprise for a year with a housing goal established under this section and before any public disclosure thereof, the Director shall provide notice of the determination to the enterprise, which shall include an analysis and comparison, by the Director, of the performance of the enterprise for the year and the targets for the year under subsection (e).

(2) Comment period

The Director shall provide each enterprise an opportunity to comment on the determina-

tion during the 30-day period beginning upon receipt by the enterprise of the notice.

(g) Use of borrower income

In monitoring the performance of each enterprise pursuant to the housing goals under this section and evaluating such performance (for purposes of section 4566 of this title), the Director shall consider a mortgagor's income to be such income at the time of origination of the mortgage.

(h) Consideration of properties with rental units

Mortgages financing two- to four-unit owner-occupied properties shall count toward the achievement of the single-family housing goals under this section, if such properties otherwise meet the requirements under this section, notwithstanding the use of one or more units for rental purposes.

(i) Goals credit

The Director shall determine whether an enterprise shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals established pursuant to section 4562 and 4563 of this title. In making any such determination, the Director shall consider whether a transaction or activity of an enterprise is substantially equivalent to a mortgage purchase and either (1) creates a new market, or (2) adds liquidity to an existing market. No credit toward the achievement of the housing goals and subgoals established under this section may be given to the purchase of mortgages, including any transaction or activity of an enterprise determined to be substantially equivalent to a mortgage purchase, that is determined to be unacceptable or contrary to good lending practices, inconsistent with safety and soundness, or unauthorized for purchase by the enterprises, pursuant to regulations issued by the Director.

(Pub. L. 102-550, title XIII, §1332, as added Pub. L. 110-289, div. A, title I, §1128(b), July 30, 2008, 122 Stat. 2697.)

Editorial Notes

REFERENCES IN TEXT

The Home Mortgage Disclosure Act of 1975, referred to in subsec. (e)(2)(A), (4), is title III of Pub. L. 94-200, Dec. 31, 1975, 89 Stat. 1125, which is classified principally to chapter 29 (§2801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2801 of this title and Tables.

PRIOR PROVISIONS

A prior section 4562, Pub. L. 102-550, title XIII, §1332, Oct. 28, 1992, 106 Stat. 3956, related to low- and moderate-income housing goal, prior to repeal by Pub. L. 110-289, div. A, title I, §1128(a), July 30, 2008, 122 Stat. 2696.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 102-550, title XIII, §1338, Oct. 28, 1992, 106 Stat. 3964, which provided the effective date for housing goals established under former sections 4562(d), 4563(d), and 4564(d) of this title, was repealed by Pub. L. 110-289, div. A, title I, §1122(a)(2), July 30, 2008, 122 Stat. 2689.

§ 4563. Multifamily special affordable housing goal

(a) Establishment of goal

(1) In general

The Director shall, by regulation, establish a single annual goal, by either unit or dollar volume, of purchases by each enterprise of mortgages on multifamily housing that finance dwelling units affordable to low-income families.

(2) Additional requirements for units affordable to very low-income families

When establishing the goal under this section, the Director shall establish additional requirements for the purchase by each enterprise of mortgages on multifamily housing that finance dwelling units affordable to very low-income families.

(3) Reporting on smaller properties

The Director shall require each enterprise to report on the purchase by each enterprise of multifamily housing of a smaller or limited size that is affordable to low-income families, which may be based on multifamily projects of 5 to 50 units (as such numbers may be adjusted by the Director) or on mortgages of up to \$5,000,000 (as such amount may be adjusted by the Director), and may, by regulation, establish such additional¹ requirements related to such units.

(4) Factors

In establishing the goal and additional requirements under this section, the Director shall not consider segments of the market determined to be inconsistent with safety and soundness or unauthorized for purchase by the enterprises, and shall take into consideration—

(A) national multifamily mortgage credit needs and the ability of the enterprise to provide additional liquidity and stability for the multifamily mortgage market;

(B) the performance and effort of the enterprise in making mortgage credit available for multifamily housing in previous years;

(C) the size of the multifamily mortgage market for housing affordable to low-income and very low-income families, including the size of the multifamily markets for housing of a smaller or limited size;

(D) the ability of the enterprise to lead the market in making multifamily mortgage credit available, especially for multifamily housing described in paragraphs (1) and (2);

(E) the availability of public subsidies; and

(F) the need to maintain the sound financial condition of the enterprise.

(b) Units financed by housing finance agency bonds

The Director shall give full credit toward the achievement of the multifamily special affordable housing goal under this section (for purposes of section 4566 of this title) to dwelling units in multifamily housing that otherwise qualifies under such goal and that is financed by

tax-exempt or taxable bonds issued by a State or local housing finance agency, if such bonds, in whole or in part—

(1) are secured by a guarantee of the enterprise; or

(2) are purchased by the enterprise, except that the Director may give less than full credit for purchases of investment grade bonds, to the extent that such purchases do not provide a new market or add liquidity to an existing market.

(c) Measurement of performance

The Director shall monitor the performance of each enterprise in meeting the goals established under this section and shall evaluate such performance (for purposes of section 4566 of this title) based on whether the rent levels are affordable. A rent level shall be considered to be affordable for purposes of this subsection for low-income families if it does not exceed 30 percent of the maximum income level of such income category, with appropriate adjustments for unit size as measured by the number of bedrooms.

(d) Determination of compliance

The Director shall determine, for each year that the housing goal under this section is in effect pursuant to section 4561(a) of this title, whether each enterprise has complied with such goal and the additional requirements under subsection (a)(2).

(Pub. L. 102-550, title XIII, §1333, as added Pub. L. 110-289, div. A, title I, §1128(b), July 30, 2008, 122 Stat. 2700.)

Editorial Notes

PRIOR PROVISIONS

A prior section 4563, Pub. L. 102-550, title XIII, §1333, Oct. 28, 1992, 106 Stat. 3958, related to special affordable housing goal, prior to repeal by Pub. L. 110-289, div. A, title I, §1128(a), July 30, 2008, 122 Stat. 2696.

§ 4564. Discretionary adjustment of housing goals

(a) Authority

An enterprise may petition the Director in writing at any time during a year to reduce the level of any goal or subgoal for such year established pursuant to this subpart.

(b) Standard for reduction

The Director may reduce the level for a goal or subgoal pursuant to such a petition only if—

(1) market and economic conditions or the financial condition of the enterprise require such action; or

(2) efforts to meet the goal or subgoal would result in the constraint of liquidity, over-investment in certain market segments, or other consequences contrary to the intent of this subpart, or section 1716(3) of this title or section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 note), as applicable.

(c) Determination

The Director shall, promptly upon receipt of a petition regarding a reduction, seek public comment on the reduction for a period of 30 days. The Director shall make a determination re-

¹ So in original.

garding any proposed reduction within 30 days after the expiration of such public comment period. The Director may extend such determination period for a single additional 15-day period, but only if the Director requests additional information from the enterprise.

(Pub. L. 102-550, title XIII, §1334, as added Pub. L. 110-289, div. A, title I, §1128(b), July 30, 2008, 122 Stat. 2701.)

Editorial Notes

REFERENCES IN TEXT

Section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act, referred to in subsec. (b)(2), is section 301(b)(3) of Pub. L. 91-351, which is set out as a Short Title and Statement of Purpose note under section 1451 of this title.

PRIOR PROVISIONS

A prior section 4564, Pub. L. 102-550, title XIII, §1334, Oct. 28, 1992, 106 Stat. 3960, related to central cities, rural areas, and other underserved areas housing goal, prior to repeal by Pub. L. 110-289, div. A, title I, §1128(a), July 30, 2008, 122 Stat. 2696.

§ 4565. Duty to serve underserved markets and other requirements

(a) Duty to serve underserved markets

(1)¹ Duty

To increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets, each enterprise shall provide leadership to the market in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages for very low-, low-, and moderate-income families with respect to the following underserved markets:

(A) Manufactured housing

The enterprise shall develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on manufactured homes for very low-, low-, and moderate-income families.

(B) Affordable housing preservation

The enterprise shall develop loan products and flexible underwriting guidelines to facilitate a secondary market to preserve housing affordable to very low-, low-, and moderate-income families, including housing projects subsidized under ²

(i) the project-based and tenant-based rental assistance programs under section 1437f of title 42;

(ii) the program under section 1715z-1 of this title;

(iii) the below-market interest rate mortgage program under section 1715(d)(4) of this title;

(iv) the supportive housing for the elderly program under section 1701q of this title;

(v) the supportive housing program for persons with disabilities under section 8013 of title 42;

(vi) the programs under title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11360 et seq.], but only permanent supportive housing projects subsidized under such programs;

(vii) the rural rental housing program under section 1485 of title 42;

(viii) the low-income housing tax credit under section 42 of title 26; and

(ix) comparable state³ and local affordable housing programs.

(C) Rural markets

The enterprise shall develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, and low-, and moderate-income families in rural areas.

(b) In general

To meet the housing goals established under this subpart and to carry out the duty under subsection (a) of this section, each enterprise shall—

(1) design programs and products that facilitate the use of assistance provided by the Federal Government and State and local governments;

(2) develop relationships with nonprofit and for-profit organizations that develop and finance housing and with State and local governments, including housing finance agencies;

(3) take affirmative steps to—

(A) assist primary lenders to make housing credit available in areas with concentrations of low-income and minority families, and

(B) assist insured depository institutions to meet their obligations under the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.],

which shall include developing appropriate and prudent underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures; and

(4) develop the institutional capacity to help finance low- and moderate-income housing, including housing for first-time homebuyers.

(c) Additional categories

The Director may submit recommendations to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate for the establishment of additional categories under subsection (a), provided that the Director makes a preliminary determination that any such category is important to the mission of the enterprises, that the category is an underserved market, and that the establishment of such category is warranted.

(d) Evaluation and reporting of compliance

(1) In general

The Director shall, by regulation, establish effective for 2010 and thereafter a manner for evaluating whether, and the extent to which, the enterprises have complied with the duty under subsection (a) to serve underserved markets and for rating the extent of such compli-

¹ So in original. No par. (2) has been enacted.

² So in original.

³ So in original. Probably should be capitalized.

ance. Using such method, the Director shall, for 2010 and each year thereafter, evaluate such compliance and rate the performance of each enterprise as to extent of compliance. The Director shall include such evaluation and rating for each enterprise for a year in the report for that year submitted pursuant to section 4521(a) of this title.

(2) Separate evaluations

In determining whether an enterprise has complied with the duty referred to in paragraph (1), the Director shall separately evaluate whether the enterprise has complied with such duty with respect to each of the underserved markets identified in subsection (a), taking into consideration²

(A) the development of loan products, more flexible underwriting guidelines, and other innovative approaches to providing financing to each of such underserved markets;

(B) the extent of outreach to qualified loan sellers and other market participants in each of such underserved markets;

(C) the volume of loans purchased in each of such underserved markets relative to the market opportunities available to the enterprise, except that the Director shall not establish specific quantitative targets nor evaluate the enterprises based solely on the volume of loans purchased; and

(D) the amount of investments and grants in projects which assist in meeting the needs of such underserved markets.

(3) Manufactured housing market

In determining whether an enterprise has complied with the duty under subparagraph (A) of subsection (a)(1), the Director may consider loans secured by both real and personal property.

(4) Prohibition of consideration of affordable housing fund grants for meeting duty to serve

In determining whether an enterprise has complied with the duty referred to in paragraph (1), the Director may not consider any affordable housing fund grant amounts used under section 4567 of this title for eligible activities under subsection (g) of such section.

(Pub. L. 102-550, title XIII, § 1335, Oct. 28, 1992, 106 Stat. 3961; Pub. L. 105-65, title V, § 517(c), Oct. 27, 1997, 111 Stat. 1403; Pub. L. 110-289, div. A, title I, §§ 1128(c)(1), 1129(a), July 30, 2008, 122 Stat. 2701, 2703.)

Editorial Notes

REFERENCES IN TEXT

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (a)(1)(B)(vi), is Pub. L. 100-77, July 22, 1987, 101 Stat. 482. Title IV of the Act is classified principally to subchapter IV (§11360 et seq.) of chapter 119 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

The Community Reinvestment Act of 1977, referred to in subsec. (b)(3)(B), is title VIII of Pub. L. 95-128, Oct. 12, 1977, 91 Stat. 1147, which is classified generally to chapter 30 (§2901 et seq.) of this title. For complete

classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110-289, § 1129(a)(1), inserted “Duty to serve underserved markets and” before “other” in section catchline.

Subsec. (a). Pub. L. 110-289, § 1129(a)(4), added subsec. (a). Former subsec. (a) redesignated (b).

Pub. L. 110-289, § 1129(a)(3)(A)–(D), inserted “and to carry out the duty under subsection (a) of this section” before “, each enterprise shall” in introductory provisions and struck out par. (5) which read as follows: “assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring contracts, as defined under the Multifamily Assisted Housing Reform and Affordability Act of 1997.”

Pub. L. 110-289, § 1128(c)(1), substituted “housing goals established under this subpart” for “low- and moderate-income housing goal under section 4562 of this title, the special affordable housing goal under section 4563 of this title, and the central cities, rural areas, and other underserved areas housing goal under section 4564 of this title” in introductory provisions.

Subsec. (b). Pub. L. 110-289, § 1129(a)(3)(E), redesignated subsec. (a) as (b).

Pub. L. 110-289, § 1129(a)(2), struck out subsec. (b). Text read as follows: “Actions taken under subsection (a)(5) of this section shall constitute part of the contribution of each entity in meeting its affordable housing goals under sections 4562, 4563, and 4564 of this title for any fiscal year, as determined by the Secretary.”

Subsecs. (c), (d). Pub. L. 110-289, § 1129(a)(5), added subsecs. (c) and (d).

1997—Subsec. (a). Pub. L. 105-65, § 517(c)(3), designated existing provisions as subsec. (a) and inserted heading.

Subsec. (a)(5). Pub. L. 105-65, § 517(c)(1), (2), (4), added par. (5).

Subsec. (b). Pub. L. 105-65, § 517(c)(4), added subsec. (b).

§ 4566. Monitoring and enforcing compliance with housing goals

(a) In general

(1) Authority

The Director shall monitor and enforce compliance with the housing goals established under this subpart and with the duty under section 4565(a) of this title of each enterprise with respect to underserved markets, as provided in this section.

(2) Guidelines

The Director shall establish guidelines to measure the extent of compliance with the housing goals, which, except as provided in paragraph (5), may assign full credit, partial credit, or no credit toward achievement of the housing goals to different categories of mortgage purchase activities of the enterprises, based on such criteria as the Director deems appropriate.

(3) Extent of compliance

In determining compliance with the housing goals established under this subpart, the Director—

(A) shall consider any single mortgage purchased by an enterprise as contributing to the achievement of each housing goal for which such mortgage purchase qualifies; and

(B) may take into consideration the number of housing units financed by any mortgage on housing purchased by an enterprise.

(4) Enforcement of duty to provide mortgage credit to underserved markets

The duty under section 4565(a) of this title of each enterprise to serve underserved markets (as determined in accordance with section 4565(c) of this title) shall be enforceable under this section to the same extent and under the same provisions that the housing goals established under this subpart are enforceable. Such duty shall be enforceable only under this section, except that such duty shall not be subject to subsection (c)(7) of this section and shall not be enforceable under any other provision of this chapter (including subpart 3 of this part) or under any provision of the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.] or the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.].

(5) Additional credit

The Director may assign additional credit toward achievement, under this section, of the housing goals for mortgage purchase activities of the enterprises that comply with the requirements of such goals and support housing that includes a licensed childcare center. The availability of additional credit under this paragraph shall not be used to increase any housing goal, subgoal, or target established under this subpart.

(b) Notice and preliminary determination of failure to meet goals

(1) Notice

If the Director preliminarily determines that an enterprise has failed, or that there is a substantial probability that an enterprise will fail, to meet any housing goal under this subpart, the Director shall provide written notice to the enterprise of such a preliminary determination, the reasons for such determination, and the information on which the Director based the determination.

(2) Response period

(A) In general

During the 30-day period beginning on the date on which an enterprise is provided notice under paragraph (1), the enterprise may submit to the Director any written information that the enterprise considers appropriate for consideration by the Director in finally determining whether such failure has occurred or whether the achievement of such goal was or is feasible.

(B) Extended period

The Director may extend the period under subparagraph (A) for good cause for not more than 30 additional days.

(C) Shortened period

The Director may shorten the period under subparagraph (A) for good cause.

(D) Failure to respond

The failure of an enterprise to provide information during the 30-day period under this paragraph (as extended or shortened) shall waive any right of the enterprise to comment on the proposed determination or action of the Director.

(3) Consideration of information and final determination

(A) In general

After the expiration of the response period under paragraph (2), or upon receipt of information provided during such period by the enterprise, whichever occurs earlier, the Director shall issue a final determination on—

(i) whether the enterprise has failed, or there is a substantial probability that the enterprise will fail, to meet the housing goal; and

(ii) whether (taking into consideration market and economic conditions and the financial condition of the enterprise) the achievement of the housing goal was or is feasible.

(B) Considerations

In making a final determination under subparagraph (A), the Director shall take into consideration any relevant information submitted by the enterprise during the response period.

(C) Notice

The Director shall provide written notice, including a response to any information submitted during the response period, to the enterprise, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, of—

(i) each final determination under this paragraph that an enterprise has failed, or that there is a substantial probability that the enterprise will fail, to meet a housing goal;

(ii) each final determination that the achievement of a housing goal was or is feasible; and

(iii) the reasons for each such final determination.

(c) Cease and desist, civil money penalties, and remedies including housing plans

(1) Requirement

If the Director finds, pursuant to subsection (b), that there is a substantial probability that an enterprise will fail, or has actually failed, to meet any housing goal under this subpart, and that the achievement of the housing goal was or is feasible, the Director may require that the enterprise submit a housing plan under this subsection. If the Director makes such a finding and the enterprise refuses to submit such a plan, submits an unacceptable plan, or fails to comply with the plan, the Director may issue a cease and desist order in accordance with section 4581 of this title and impose civil money penalties in accordance with section 4585 of this title.

(2) Housing plan

If the Director requires a housing plan under this subsection, such a plan shall be—

(A) a feasible plan describing the specific actions the enterprise will take—

(i) to achieve the goal for the next calendar year; and

(ii) if the Director determines that there is a substantial probability that the enter-

prise will fail to meet a goal in the current year, to make such improvements and changes in its operations as are reasonable in the remainder of such year; and

(B) sufficiently specific to enable the Director to monitor compliance periodically.

(3) Deadline for submission

The Director shall establish a deadline for an enterprise to submit a housing plan to the Director, which may not be more than 45 days after the enterprise is provided notice. The Director may extend the deadline to the extent that the Director determines necessary. Any extension of the deadline shall be in writing and for a time certain.

(4) Approval

The Director shall review each submission by an enterprise, including a housing plan submitted under this subsection, and, not later than 30 days after submission, approve or disapprove the plan or other action. The Director may extend the period for approval or disapproval for a single additional 30-day period if the Director determines it necessary. The Director shall approve any plan that the Director determines is likely to succeed, and conforms with the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.] or the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.] (as applicable), this chapter, and any other applicable provision of law.

(5) Notice of approval and disapproval

The Director shall provide written notice to any enterprise submitting a housing plan of the approval or disapproval of the plan (which shall include the reasons for any disapproval of the plan) and of any extension of the period for approval or disapproval.

(6) Resubmission

If the initial housing plan submitted by an enterprise under this section is disapproved, the enterprise shall submit an amended plan acceptable to the Director not later than 15 days after such disapproval, or such longer period that the Director determines is in the public interest.

(7) Cease and desist orders; civil money penalties

Solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, if the Director requires an enterprise to submit a housing plan under this subsection and the enterprise refuses to submit such a plan, submits an unacceptable plan, or fails to comply with the plan, the Director may issue a cease and desist order in accordance with section 4581 of this title, impose civil money penalties in accordance with section 4585 of this title, exercise other appropriate enforcement authority or seek other appropriate actions.

(Pub. L. 102-550, title XIII, § 1336, Oct. 28, 1992, 106 Stat. 3962; Pub. L. 110-289, div. A, title I, §§ 1122(a)(1), 1128(c)(2), 1129(b), (c), 1130(a), July 30, 2008, 122 Stat. 2689, 2702, 2705, 2706.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(4) and (c)(4), was in the original “this title”, meaning title XIII of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

The Federal National Mortgage Association Charter Act, referred to in subsecs. (a)(4) and (c)(4), is title III of act June 27, 1934, ch. 847, 48 Stat. 1252, which is classified generally to subchapter III (§ 1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in subsecs. (a)(4) and (c)(4), is title III of Pub. L. 91-351, July 24, 1970, 84 Stat. 451, which is classified generally to chapter 11A (§ 1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-289, § 1122(a)(1), substituted “Director” for “Secretary” wherever appearing in pars. (1) to (3).

Subsec. (a)(1). Pub. L. 110-289, § 1129(b)(1), inserted “and with the duty under section 4565(a) of this title of each enterprise with respect to underserved markets,” before “as provided in this section”.

Pub. L. 110-289, § 1128(c)(2), substituted “this subpart” for “sections 4562, 4563, and 4564 of this title.”

Subsec. (a)(2). Pub. L. 110-289, § 1129(c)(1), inserted “, except as provided in paragraph (5),” before “may assign”.

Subsec. (a)(4). Pub. L. 110-289, § 1129(b)(2), added par. (4).

Subsec. (a)(5). Pub. L. 110-289, § 1129(c)(2), added par. (5).

Subsecs. (b), (c). Pub. L. 110-289, § 1130(a), added subsecs. (b) and (c) and struck out former subsecs. (b) and (c) which related to notice and determination of failure to meet housing goals and submission of housing plans, respectively.

§ 4567. Affordable housing allocations

(a) Set aside and allocation of amounts by enterprises

Subject to subsection (b), in each fiscal year—

(1) the Federal Home Loan Mortgage Corporation shall—

(A) set aside an amount equal to 4.2 basis points for each dollar of the unpaid principal balance of its total new business purchases; and

(B) allocate or otherwise transfer—

(i) 65 percent of such amounts to the Secretary of Housing and Urban Development to fund the Housing Trust Fund established under section 4568 of this title; and

(ii) 35 percent of such amounts to fund the Capital Magnet Fund established pursuant to section 4569 of this title; and

(2) the Federal National Mortgage Association shall—

(A) set aside an amount equal to 4.2 basis points for each dollar of unpaid principal balance of its total new business purchases; and

(B) allocate or otherwise transfer—

(i) 65 percent of such amounts to the Secretary of Housing and Urban Development to fund the Housing Trust Fund established under section 4568 of this title; and

(ii) 35 percent of such amounts to fund the Capital Magnet Fund established pursuant to section 4569 of this title.

(b) Suspension of contributions

The Director shall temporarily suspend allocations under subsection (a) by an enterprise upon a finding by the Director that such allocations—

- (1) are contributing, or would contribute, to the financial instability of the enterprise;
- (2) are causing, or would cause, the enterprise to be classified as undercapitalized; or
- (3) are preventing, or would prevent, the enterprise from successfully completing a capital restoration plan under section 4622 of this title.

(c) Prohibition of pass-through of cost of allocations

The Director shall, by regulation, prohibit each enterprise from redirecting the costs of any allocation required under this section, through increased charges or fees, or decreased premiums, or in any other manner, to the originators of mortgages purchased or securitized by the enterprise.

(d) Enforcement of requirements on enterprise

Compliance by the enterprises with the requirements under this section shall be enforceable under subpart 3. Any reference in such subpart to this part or to an order, rule, or regulation under this part specifically includes this section and any order, rule, or regulation under this section.

(e) Required amount for HOPE reserve fund

Of the aggregate amount allocated under subsection (a), 25 percent shall be deposited into a fund established in the Treasury of the United States by the Secretary of the Treasury for such purpose.

(f) Limitation

No funds under this chapter may be used in conjunction with property taken by eminent domain, unless eminent domain is employed only for a public use, except that, for purposes of this section, public use shall not be construed to include economic development that primarily benefits any private entity.

(Pub. L. 102-550, title XIII, §1337, as added Pub. L. 110-289, div. A, title I, §1131(b), July 30, 2008, 122 Stat. 2711.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (f), was in the original “this title”, meaning title XIII of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

PRIOR PROVISIONS

A prior section 4567, Pub. L. 102-550, title XIII, §1337, Oct. 28, 1992, 106 Stat. 3964, related to reports during transition, prior to repeal by Pub. L. 110-289, div. A, title I, §1131(a), July 30, 2008, 122 Stat. 2711.

§ 4568. Housing Trust Fund

(a) Establishment and purpose

(1) In general

The Secretary of Housing and Urban Development (in this section referred to as the “Secretary”) shall establish and manage a Housing Trust Fund, which shall be funded with amounts allocated by the enterprises under section 4567 of this title and any amounts as are or may be appropriated, transferred, or credited to such Housing Trust Fund under any other provisions of law. The purpose of the Housing Trust Fund under this section is to provide grants to States (as such term is defined in section 4502 of this title) for use—

- (A) to increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families; and
- (B) to increase homeownership for extremely low- and very low-income families.

(2) Federal assistance

For purposes of the application of Federal civil rights laws, all assistance provided from the Housing Trust Fund shall be considered Federal financial assistance.

(b) Allocations for HOPE bond payments

(1) In general

Notwithstanding subsection (c), to help address the mortgage crisis, of the amounts allocated pursuant to clauses (i) and (ii) of section 4567(a)(1)(B) of this title and clauses (i) and (ii) of section 4567(a)(2)(B) of this title in excess of amounts described in section 4567(e) of this title—

- (A) 100 percent of such excess shall be used to reimburse the Treasury for payments made pursuant to section 1715z-23(w)(1)(C) of this title in calendar year 2009;
- (B) 50 percent of such excess shall be used to reimburse the Treasury for such payments in calendar year 2010; and
- (C) 25 percent of such excess shall be used to reimburse the Treasury for such payments in calendar year 2011.

(2) Excess funds

At the termination of the HOPE for Homeowners Program established under section 1715z-23 of this title, if amounts used to reimburse the Treasury under paragraph (1) exceed the total net cost to the Government of the HOPE for Homeowners Program, such amounts shall be used for their original purpose, as described in paragraphs (1)(B) and (2)(B) of section 4567(a) of this title.

(3) Treasury fund

The amounts referred to in subparagraphs (A) through (C) of paragraph (1) shall be deposited into a fund established in the Treasury of the United States by the Secretary of the Treasury for such purpose.

(c) Allocation for Housing Trust Fund in fiscal year 2010 and subsequent years

(1) In general

Except as provided in subsection (b), the Secretary shall distribute the amounts allo-

cated for the Housing Trust Fund under this section to provide affordable housing as described in this subsection.

(2) Permissible designees

A State receiving grant amounts under this subsection may designate a State housing finance agency, housing and community development entity, tribally designated housing entity (as such term is defined in section 4103 of title 25), or any other qualified instrumentality of the State to receive such grant amounts.

(3) Distribution to States by needs-based formula

(A) In general

The Secretary shall, by regulation, establish a formula within 12 months of July 30, 2008, to distribute amounts made available under this subsection to each State to provide affordable housing to extremely low- and very low-income households.

(B) Basis for formula

The formula required under subparagraph (A) shall include the following:

(i) The ratio of the shortage of standard rental units both affordable and available to extremely low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to extremely low-income renter households in all the States.

(ii) The ratio of the shortage of standard rental units both affordable and available to very low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to very low-income renter households in all the States.

(iii) The ratio of extremely low-income renter households in the State living with either (I) incomplete kitchen or plumbing facilities, (II) more than 1 person per room, or (III) paying more than 50 percent of income for housing costs, to the aggregate number of extremely low-income renter households living with either (IV) incomplete kitchen or plumbing facilities, (V) more than 1 person per room, or (VI) paying more than 50 percent of income for housing costs in all the States.

(iv) The ratio of very low-income renter households in the State paying more than 50 percent of income on rent relative to the aggregate number of very low-income renter households paying more than 50 percent of income on rent in all the States.

(v) The resulting sum calculated from the factors described in clauses (i) through (iv) shall be multiplied by the relative cost of construction in the State. For purposes of this subclause,¹ the term “cost of construction”—

(I) means the cost of construction or building rehabilitation in the State relative to the national cost of construction or building rehabilitation; and

(II) shall be calculated such that values higher than 1.0 indicate that the

State’s construction costs are higher than the national average, a value of 1.0 indicates that the State’s construction costs are exactly the same as the national average, and values lower than 1.0 indicate that the State’s cost of construction are lower than the national average.

(C) Priority

The formula required under subparagraph (A) shall give priority emphasis and consideration to the factor described in subparagraph (B)(i).

(4) Allocation of grant amounts

(A) Notice

Not later than 60 days after the date that the Secretary determines the formula amounts described in paragraph (3), the Secretary shall caused² to be published in the Federal Register a notice that such amounts shall be so available.

(B) Grant amount

In each fiscal year other than fiscal year 2009, the Secretary shall make a grant to each State in an amount that is equal to the formula amount determined under paragraph (3) for that State.

(C) Minimum State allocations

If the formula amount determined under paragraph (3) for a fiscal year would allocate less than \$3,000,000 to any of the 50 States of the United States or the District of Columbia, the allocation for such State of the United States or the District of Columbia shall be \$3,000,000, and the increase shall be deducted pro rata from the allocations made to all other of the States (as such term is defined in section 4502 of this title).

(5) Allocation plans required

(A) In general

For each year that a State or State designated entity receives a grant under this subsection, the State or State designated entity shall establish an allocation plan. Such plan shall—

(i) set forth a plan for the distribution of grant amounts received by the State or State designated entity for such year;

(ii) be based on priority housing needs, as determined by the State or State designated entity in accordance with the regulations established under subsection (g)(2)(D);

(iii) comply with paragraph (6); and

(iv) include performance goals that comply with the requirements established by the Secretary pursuant to subsection (g)(2).

(B) Establishment

In establishing an allocation plan under this paragraph, a State or State designated entity shall—

(i) notify the public of the establishment of the plan;

¹ So in original. Probably should be “this clause.”

² So in original. Probably should be “cause”.

- (ii) provide an opportunity for public comments regarding the plan;
- (iii) consider any public comments received regarding the plan; and
- (iv) make the completed plan available to the public.

(C) Contents

An allocation plan of a State or State designated entity under this paragraph shall set forth the requirements for eligible recipients under paragraph (8) to apply for such grant amounts, including a requirement that each such application include—

- (i) a description of the eligible activities to be conducted using such assistance; and
- (ii) a certification by the eligible recipient applying for such assistance that any housing units assisted with such assistance will comply with the requirements under this section.

(6) Selection of activities funded using Housing Trust Fund grant amounts

Grant amounts received by a State or State designated entity under this subsection may be used, or committed for use, only for activities that—

- (A) are eligible under paragraph (7) for such use;
- (B) comply with the applicable allocation plan of the State or State designated entity under paragraph (5); and
- (C) are selected for funding by the State or State designated entity in accordance with the process and criteria for such selection established pursuant to subsection (g)(2)(D).

(7) Eligible activities

Grant amounts allocated to a State or State designated entity under this subsection shall be eligible for use, or for commitment for use, only for assistance for—

- (A) the production, preservation, and rehabilitation of rental housing, including housing under the programs identified in section 4565(a)(2)(B) of this title and for operating costs, except that not less than 75 percent of such grant amounts shall be used for the benefit only of extremely low-income families or families with incomes at or below the poverty line (as such term is defined in section 9902 of title 42, including any revision required by such section) applicable to a family of the size involved, and not more than 25 percent for the benefit only of very low-income families; and
- (B) the production, preservation, and rehabilitation of housing for homeownership, including such forms as down payment assistance, closing cost assistance, and assistance for interest rate buy-downs, that—

- (i) is available for purchase only for use as a principal residence by families that qualify both as—
 - (I) extremely low- and very low-income families at the times described in subparagraphs (A) through (C) of section 215(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745(b)(2)); and
 - (II) first-time homebuyers, as such term is defined in section 104 of the

Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704), except that any reference in such section to assistance under title II of such Act [42 U.S.C. 12721 et seq.] shall for purposes of this subsection be considered to refer to assistance from affordable housing fund grant amounts;

- (ii) has an initial purchase price that meets the requirements of section 215(b)(1) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12745(b)(1)];

(iii) is subject to the same resale restrictions established under section 215(b)(3) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12745(b)(3)] and applicable to the participating jurisdiction that is the State in which such housing is located; and

- (iv) is made available for purchase only by, or in the case of assistance under this subsection, is made available only to homebuyers who have, before purchase completed a program of independent financial education and counseling from an eligible organization that meets the requirements of section 132 of the Federal Housing Finance Regulatory Reform Act of 2008.³

(8) Tenant protections and public participation

All amounts from the Trust Fund shall be allocated in accordance with, and any eligible activities carried out in whole or in part with grant amounts under this subchapter (including housing provided with such grant amounts) shall comply with and be operated in compliance with—

- (A) laws relating to tenant protections and tenant rights to participate in decision making regarding their residences;
- (B) laws requiring public participation, including laws relating to Consolidated Plans, Qualified Allocation Plans, and Public Housing Agency Plans; and
- (C) fair housing laws and laws regarding accessibility in federally assisted housing, including section 794 of title 29.

(9) Eligible recipients

Grant amounts allocated to a State or State designated entity under this subsection may be provided only to a recipient that is an organization, agency, or other entity (including a for-profit entity or a nonprofit entity) that—

- (A) has demonstrated experience and capacity to conduct an eligible activity under paragraph (7), as evidenced by its ability to—
 - (i) own, construct or rehabilitate, manage, and operate an affordable multifamily rental housing development;
 - (ii) design, construct or rehabilitate, and market affordable housing for homeownership; or
 - (iii) provide forms of assistance, such as down payments, closing costs, or interest rate buy-downs for purchasers;

³ See References in Text note below.

(B) demonstrates the ability and financial capacity to undertake, comply, and manage the eligible activity;

(C) demonstrates its familiarity with the requirements of any other Federal, State, or local housing program that will be used in conjunction with such grant amounts to ensure compliance with all applicable requirements and regulations of such programs; and

(D) makes such assurances to the State or State designated entity as the Secretary shall, by regulation, require to ensure that the recipient will comply with the requirements of this subsection during the entire period that begins upon selection of the recipient to receive such grant amounts and ending upon the conclusion of all activities under paragraph (8) that are engaged in by the recipient and funded with such grant amounts.

(10) Limitations on use

(A) Required amount for homeownership activities

Of the aggregate amount allocated to a State or State designated entity under this subsection not more than 10 percent shall be used for activities under subparagraph (B) of paragraph (7).

(B) Deadline for commitment or use

Grant amounts allocated to a State or State designated entity under this subsection shall be used or committed for use within 2 years of the date that such grant amounts are made available to the State or State designated entity. The Secretary shall recapture any such amounts not so used or committed for use and reallocate such amounts under this subsection in the first year after such recapture.

(C) Use of returns

The Secretary shall, by regulation, provide that any return on a loan or other investment of any grant amount used by a State or State designated entity to provide a loan under this subsection shall be treated, for purposes of availability to and use by the State or State designated entity, as a grant amount authorized under this subsection.

(D) Prohibited uses

The Secretary shall, by regulation—

(i) set forth prohibited uses of grant amounts allocated under this subsection, which shall include use for—

(I) political activities;

(II) advocacy;

(III) lobbying, whether directly or through other parties;

(IV) counseling services;

(V) travel expenses; and

(VI) preparing or providing advice on tax returns;

and for the purposes of this subparagraph, the prohibited use of funds for political activities includes influencing the selection, nomination, election, or appointment of one or more candidates to any Federal, State or local office as codified in section 501 of title 26;

(ii) provide that, except as provided in clause (iii), grant amounts of a State or State designated entity may not be used for administrative, outreach, or other costs of—

(I) the State or State designated entity; or

(II) any other recipient of such grant amounts; and

(iii) limit the amount of any grant amounts for a year that may be used by the State or State designated entity for administrative costs of carrying out the program required under this subsection, including home ownership counseling, to a percentage of such grant amounts of the State or State designated entity for such year, which may not exceed 10 percent.

(E) Prohibition of consideration of use for meeting housing goals or duty to serve

In determining compliance with the housing goals under this subpart and the duty to serve underserved markets under section 4565 of this title, the Director may not consider any grant amounts used under this section for eligible activities under paragraph (7). The Director shall give credit toward the achievement of such housing goals and such duty to serve underserved markets to purchases by the enterprises of mortgages for housing that receives funding from such grant amounts, but only to the extent that such purchases by the enterprises are funded other than with such grant amounts.

(d) Reduction for failure to obtain return of misused funds

If in any year a State or State designated entity fails to obtain reimbursement or return of the full amount required under subsection (e)(1)(B) to be reimbursed or returned to the State or State designated entity during such year—

(1) except as provided in paragraph (2)—

(A) the amount of the grant for the State or State designated entity for the succeeding year, as determined pursuant to this section, shall be reduced by the amount by which such amounts required to be reimbursed or returned exceed the amount actually reimbursed or returned; and

(B) the amount of the grant for the succeeding year for each other State or State designated entity whose grant is not reduced pursuant to subparagraph (A) shall be increased by the amount determined by applying the formula established pursuant to this section to the total amount of all reductions for all State or State designated entities for such year pursuant to subparagraph (A); or

(2) in any case in which such failure to obtain reimbursement or return occurs during a year immediately preceding a year in which grants under this section will not be made, the State or State designated entity shall pay to the Secretary for reallocation among the other grantees an amount equal to the amount of the reduction for the entity that would otherwise apply under paragraph (1)(A).

(e) Accountability of recipients and grantees**(1) Recipients****(A) Tracking of funds**

The Secretary shall—

(i) require each State or State designated entity to develop and maintain a system to ensure that each recipient of assistance under this section uses such amounts in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and

(ii) establish minimum requirements for agreements, between the State or State designated entity and recipients, regarding assistance under this section, which shall include—

(I) appropriate periodic financial and project reporting, record retention, and audit requirements for the duration of the assistance to the recipient to ensure compliance with the limitations and requirements of this section and the regulations under this section; and

(II) any other requirements that the Secretary determines are necessary to ensure appropriate administration and compliance.

(B) Misuse of funds**(i) Reimbursement requirement**

If any recipient of assistance under this section is determined, in accordance with clause (ii), to have used any such amounts in a manner that is materially in violation of this section, the regulations issued under this section, or any requirements or conditions under which such amounts were provided, the State or State designated entity shall require that, within 12 months after the determination of such misuse, the recipient shall reimburse the State or State designated entity for such misused amounts and return to the State or State designated entity any such amounts that remain unused or uncommitted for use. The remedies under this clause are in addition to any other remedies that may be available under law.

(ii) Determination

A determination is made in accordance with this clause if the determination is made by the Secretary or made by the State or State designated entity, provided that—

(I) the State or State designated entity provides notification of the determination to the Secretary for review, in the discretion of the Secretary, of the determination; and

(II) the Secretary does not subsequently reverse the determination.

(2) Grantees**(A) Report****(i) In general**

The Secretary shall require each State or State designated entity receiving grant amounts in any given year under this sec-

tion to submit a report, for such year, to the Secretary that—

(I) describes the activities funded under this section during such year with such grant amounts; and

(II) the⁴ manner in which the State or State designated entity complied during such year with any allocation plan established pursuant to subsection (c).

(ii) Public availability

The Secretary shall make such reports pursuant to this subparagraph publicly available.

(B) Misuse of funds

If the Secretary determines, after reasonable notice and opportunity for hearing, that a State or State designated entity has failed to comply substantially with any provision of this section, and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary shall—

(i) reduce the amount of assistance under this section to the State or State designated entity by an amount equal to the amount of grant amounts which were not used in accordance with this section;

(ii) require the State or State designated entity to repay the Secretary any amount of the grant which was not used in accordance with this section;

(iii) limit the availability of assistance under this section to the State or State designated entity to activities or recipients not affected by such failure to comply; or

(iv) terminate any assistance under this section to the State or State designated entity.

(f) Definitions

For purposes of this section, the following definitions shall apply:

(1) Extremely low-income renter household

The term “extremely low-income renter household” means a household whose income is not in excess of 30 percent of the area median income, with adjustments for smaller and larger families, as determined by the Secretary.

(2) Recipient

The term “recipient” means an individual or entity that receives assistance from a State or State designated entity from amounts made available to the State or State designated entity under this section.

(3) Shortage of standard rental units both affordable and available to extremely low-income renter households**(A) In general**

The term “shortage of standard rental units both affordable and available to extremely low-income renter households” means for any State or other geographical area the gap between—

(i) the number of units with complete plumbing and kitchen facilities with a

⁴So in original. A word appears to be missing before “the”.

rent that is 30 percent or less of 30 percent of the adjusted area median income as determined by the Secretary that are occupied by extremely low-income renter households or are vacant for rent; and

(ii) the number of extremely low-income renter households.

(B) Rule of construction

If the number of units described in subparagraph (A)(i) exceeds the number of extremely low-income households as described in subparagraph (A)(ii), there is no shortage.

(4) Shortage of standard rental units both affordable and available to very low-income renter households

(A) In general

The term “shortage of standard rental units both affordable and available to very low-income renter households” means for any State or other geographical area the gap between—

(i) the number of units with complete plumbing and kitchen facilities with a rent that is 30 percent or less of 50 percent of the adjusted area median income as determined by the Secretary that are occupied by very low-income renter households or are vacant for rent; and

(ii) the number of very low-income renter households.

(B) Rule of construction

If the number of units described in subparagraph (A)(i) exceeds the number of very low-income households as described in subparagraph (A)(ii), there is no shortage.

(5) Very low-income family

The term “very low-income family” has the meaning given such term in section 4502 of this title, except that such term includes any family that resides in a rural area that has an income that does not exceed the poverty line (as such term is defined in section 9902(2) of title 42, including any revision required by such section) applicable to a family of the size involved.

(6) Very low-income renter households

The term “very low-income renter households” means a household whose income is in excess of 30 percent but not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by the Secretary.

(g) Regulations

(1) In general

The Secretary shall issue regulations to carry out this section.

(2) Required contents

The regulations issued under this subsection shall include—

(A) a requirement that the Secretary ensure that the use of grant amounts under this section by States or State designated entities is audited not less than annually to ensure compliance with this section;

(B) authority for the Secretary to audit, provide for an audit, or otherwise verify a

State or State designated entity’s activities to ensure compliance with this section;

(C) a requirement that, for the purposes of subparagraphs (A) and (B), any financial statement submitted by a grantee or recipient to the Secretary shall be reviewed by an independent certified public accountant in accordance with Statements on Standards for Accounting and Review Services, issued by the American Institute of Certified Public Accountants;

(D) requirements for a process for application to, and selection by, each State or State designated entity for activities meeting the State or State designated entity’s priority housing needs to be funded with grant amounts under this section, which shall provide for priority in funding to be based upon—

(i) geographic diversity;

(ii) ability to obligate amounts and undertake activities so funded in a timely manner;

(iii) in the case of rental housing projects under subsection (c)(7)(A), the extent to which rents for units in the project funded are affordable, especially for extremely low-income families;

(iv) in the case of rental housing projects under subsection (c)(7)(A), the extent of the duration for which such rents will remain affordable;

(v) the extent to which the application makes use of other funding sources; and

(vi) the merits of an applicant’s proposed eligible activity;

(E) requirements to ensure that grant amounts provided to a State or State designated entity under this section that are used for rental housing under subsection (c)(7)(A) are used only for the benefit of extremely low- and very low-income families; and

(F) requirements and standards for establishment, by a State or State designated entity, for use of grant amounts in 2009 and subsequent years of performance goals, benchmarks, and timetables for the production, preservation, and rehabilitation of affordable rental and homeownership housing with such grant amounts.

(h) Affordable housing trust fund

If, after July 30, 2008, in any year, there is enacted any provision of Federal law establishing an affordable housing trust fund other than under this chapter for use only for grants to provide affordable rental housing and affordable homeownership opportunities, and the subsequent year is a year referred to in subsection (c), the Secretary shall in such subsequent year and any remaining years referred to in subsection (c) transfer to such affordable housing trust fund the aggregate amount allocated pursuant to subsection (c) in such year. Notwithstanding any other provision of law, assistance provided using amounts transferred to such affordable housing trust fund pursuant to this subsection may not be used for any of the activities specified in clauses (i) through (vi) of subsection (c)(9)(D).

(i) Funding accountability and transparency

Any grant under this section to a grantee by a State or State designated entity, any assistance provided to a recipient by a State or State designated entity, and any grant, award, or other assistance from an affordable housing trust fund referred to in subsection (h) shall be considered a Federal award for purposes of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note). Upon the request of the Director of the Office of Management and Budget, the Secretary shall obtain and provide such information regarding any such grants, assistance, and awards as the Director of the Office of Management and Budget considers necessary to comply with the requirements of such Act, as applicable, pursuant to the preceding sentence.

(Pub. L. 102-550, title XIII, §1338, as added Pub. L. 110-289, div. A, title I, §1131(b), July 30, 2008, 122 Stat. 2712.)

Editorial Notes**REFERENCES IN TEXT**

Section 4103 of title 25, referred to in subsec. (c)(2), was in the original “section 4 of the Native American Housing Assistance and Self-Determination Act of 1997 (25 U.S.C. 4103)”, and was translated as meaning section 4 of the Native American Housing Assistance and Self-Determination Act of 1996, to reflect the probable intent of Congress.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (c)(7)(B)(i)(II), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, known as the HOME Investment Partnerships Act, is classified principally to subchapter II (§12721 et seq.) of chapter 130 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of Title 42 and Tables.

Section 132 of the Federal Housing Finance Regulatory Reform Act of 2008, referred to in subsec. (c)(7)(B)(iv), probably means section 1132 of Pub. L. 110-289, which is set out as a note under section 1701x of this title.

This chapter, referred to in subsec. (h), was in the original “this title”, meaning title XIII of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

The Federal Funding Accountability and Transparency Act of 2006, referred to in subsec. (i), is Pub. L. 109-282, Sept. 26, 2006, 120 Stat. 1186, which is set out as a note under section 6101 of Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 1338 of Pub. L. 102-550, title XIII, Oct. 28, 1992, 106 Stat. 3964, was set out as a note under section 4562 of this title, prior to repeal by Pub. L. 110-289, div. A, title I, §1122(a)(2), July 30, 2008, 122 Stat. 2689.

§ 4569. Capital Magnet Fund**(a) Establishment**

There is established in the Treasury of the United States a trust fund to be known as the Capital Magnet Fund, which shall be a special account within the Community Development Financial Institutions Fund.

(b) Deposits to Trust Fund

The Capital Magnet Fund shall consist of—

(1) any amounts transferred to the Fund pursuant to section 4567 of this title; and

(2) any amounts as are or may be appropriated, transferred, or credited to such Fund under any other provisions of law.

(c) Expenditures from Trust Fund

Amounts in the Capital Magnet Fund shall be available to the Secretary of the Treasury to carry out a competitive grant program to attract private capital for and increase investment in—

(1) the development, preservation, rehabilitation, or purchase of affordable housing for primarily extremely low-, very low-, and low-income families; and

(2) economic development activities or community service facilities, such as day care centers, workforce development centers, and health care clinics, which in conjunction with affordable housing activities implement a concerted strategy to stabilize or revitalize a low-income area or underserved rural area.

(d) Federal assistance

For purposes of the application of Federal civil rights laws, all assistance provided using amounts in the Capital Magnet Fund shall be considered Federal financial assistance.

(e) Eligible grantees

A grant under this section may be made, pursuant to such requirements as the Secretary of the Treasury shall establish for experience and success in attracting private financing and carrying out the types of activities proposed under the application of the grantee, only to—

(1) a Treasury certified community development financial institution; or

(2) a nonprofit organization having as 1 of its principal purposes the development or management of affordable housing.

(f) Eligible uses

Grant amounts awarded from the Capital Magnet Fund pursuant to this section may be used for the purposes described in paragraphs (1) and (2) of subsection (c), including for the following uses:

(1) To provide loan loss reserves.

(2) To capitalize a revolving loan fund.

(3) To capitalize an affordable housing fund.

(4) To capitalize a fund to support activities described in subsection (c)(2).

(5) For risk-sharing loans.

(g) Applications**(1) In general**

The Secretary of the Treasury shall provide, in a competitive application process established by regulation, for eligible grantees under subsection (e) to submit applications for Capital Magnet Fund grants to the Secretary at such time and in such manner as the Secretary shall determine.

(2) Content of application

The application required under paragraph (1) shall include a detailed description of—

(A) the types of affordable housing, economic, and community revitalization projects that support or sustain residents of an affordable housing project funded by a

grant under this section for which such grant amounts would be used, including the proposed use of eligible grants as authorized under this section;

(B) the types, sources, and amounts of other funding for such projects; and

(C) the expected time frame of any grant used for such project.

(h) Grant limitation

(1) In general

Any 1 eligible grantee and its subsidiaries and affiliates may not be awarded more than 15 percent of the aggregate funds available for grants during any year from the Capital Magnet Fund.

(2) Geographic diversity

(A) Goal

The Secretary of the Treasury shall seek to fund activities in geographically diverse areas of economic distress, including metropolitan and underserved rural areas in every State.

(B) Diversity defined

For purposes of this paragraph, geographic diversity includes those areas that meet objective criteria of economic distress developed by the Secretary of the Treasury, which may include—

- (i) the percentage of low-income families or the extent of poverty;
- (ii) the rate of unemployment or underemployment;
- (iii) extent of blight and disinvestment;
- (iv) projects that target extremely low-, very low-, and low-income families in or outside a designated economic distress area; or
- (v) any other criteria designated by the Secretary of the Treasury.

(3) Leverage of funds

Each grant from the Capital Magnet Fund awarded under this section shall be reasonably expected to result in eligible housing, or economic and community development projects that support or sustain an affordable housing project funded by a grant under this section whose aggregate costs total at least 10 times the grant amount.

(4) Commitment for use deadline

Amounts made available for grants under this section shall be committed for use within 2 years of the date of such allocation. The Secretary of the Treasury shall recapture into the Capital Magnet Fund any amounts not so used or committed for use and allocate such amounts in the first year after such recapture.

(5) Prohibited uses

The Secretary shall, by regulation, set forth prohibited uses of grant amounts awarded under this section, which shall include use for—

- (A) political activities;
- (B) advocacy;
- (C) lobbying, whether directly or through other parties;
- (D) counseling services;

(E) travel expenses; and

(F) preparing or providing advice on tax returns;

and for the purposes of this paragraph, the prohibited use of funds for political activities includes influencing the selection, nomination, election, or appointment of one or more candidates to any Federal, State or local office as codified in section 501 of title 26.

(6) Additional lobbying restrictions

No assistance or amounts made available under this section may be expended by an eligible grantee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan, or cooperative agreement as such terms are defined in section 1352 of title 31.

(7) Prohibition of consideration of use for meeting housing goals or duty to serve

In determining the compliance of the enterprises with the housing goals under this section and the duty to serve underserved markets under section 4565 of this title, the Director of the Federal Housing Finance Agency may not consider any Capital Magnet Fund amounts used under this section for eligible activities under subsection (f). The Director of the Federal Housing Finance Agency shall give credit toward the achievement of such housing goals and such duty to serve underserved markets to purchases by the enterprises of mortgages for housing that receives funding from Capital Magnet Fund grant amounts, but only to the extent that such purchases by the enterprises are funded other than with such grant amounts.

(8) Accountability of recipients and grantees

(A) Tracking of funds

The Secretary of the Treasury shall—

- (i) require each grantee to develop and maintain a system to ensure that each recipient of assistance from the Capital Magnet Fund uses such amounts in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and
- (ii) establish minimum requirements for agreements, between the grantee and the Capital Magnet Fund, regarding assistance from the Capital Magnet Fund, which shall include—

(I) appropriate periodic financial and project reporting, record retention, and audit requirements for the duration of the grant to the recipient to ensure compliance with the limitations and requirements of this section and the regulations under this section; and

(II) any other requirements that the Secretary determines are necessary to ensure appropriate grant administration and compliance.

(B) Misuse of funds

If the Secretary of the Treasury determines, after reasonable notice and oppor-

tunity for hearing, that a grantee has failed to comply substantially with any provision of this section and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary shall—

- (i) reduce the amount of assistance under this section to the grantee by an amount equal to the amount of Capital Magnet Fund grant amounts which were not used in accordance with this section;
- (ii) require the grantee to repay the Secretary any amount of the Capital Magnet Fund grant amounts which were not used in accordance with this section;
- (iii) limit the availability of assistance under this section to the grantee to activities or recipients not affected by such failure to comply; or
- (iv) terminate any assistance under this section to the grantee.

(i) Periodic reports

(1) In general

The Secretary of the Treasury shall submit a report, on a periodic basis, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the activities to be funded under this section.

(2) Reports available to public

The Secretary of the Treasury shall make the reports required under paragraph (1) publicly available.

(j) Regulations

(1) In general

The Secretary of the Treasury shall issue regulations to carry out this section.

(2) Required contents

The regulations issued under this subsection shall include—

- (A) authority for the Secretary to audit, provide for an audit, or otherwise verify an enterprise's activities, to ensure compliance with this section;
- (B) a requirement that the Secretary ensure that the allocation of each enterprise is audited not less than annually to ensure compliance with this section;
- (C) a requirement that, for the purposes of subparagraphs (A) and (B), any financial statement submitted by a grantee to the Secretary shall be reviewed by an independent certified public accountant in accordance with Statements on Standards for Accounting and Review Services, issued by the American Institute of Certified Public Accountants; and
- (D) requirements for a process for application to, and selection by, the Secretary for activities to be funded with amounts from the Capital Magnet Fund, which shall provide that—
 - (i) funds be fairly distributed to urban, suburban, and rural areas; and
 - (ii) selection shall be based upon specific criteria, including a prioritization of funding based upon—
 - (I) the ability to use such funds to generate additional investments;

(II) affordable housing need (taking into account the distinct needs of different regions of the country); and

(III) ability to obligate amounts and undertake activities so funded in a timely manner.

(Pub. L. 102-550, title XIII, §1339, as added Pub. L. 110-289, div. A, title I, §1131(b), July 30, 2008, 122 Stat. 2723.)

SUBPART 3—ENFORCEMENT

§ 4581. Cease and desist proceedings

(a) Grounds for issuance

The Director may issue and serve a notice of charges under this section upon an enterprise if the Director determines that—

- (1) the enterprise has failed to submit a report under section 4547¹ of this title, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;
- (2) the enterprise has failed to submit the information required under subsection (m) or (n) of section 1723a of this title, or subsection (e) or (f) of section 1456 of this title;
- (3) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, the enterprise has failed to submit a housing plan that complies with section 4566(c) of this title within the applicable period; or
- (4) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, the enterprise has failed to comply with a housing plan under section 4566(c) of this title.

(b) Procedure

(1) Notice of charges

Each notice of charges issued under this section shall contain a statement of the facts constituting the alleged conduct and shall fix a time and place at which a hearing will be held to determine on the record whether an order to cease and desist from such conduct should issue.

(2) Issuance of order

If the Director finds on the record made at a hearing described in paragraph (1) that any conduct specified in the notice of charges has been established (or the enterprise consents pursuant to section 4582(a)(4) of this title), the Director may issue and serve upon the enterprise an order requiring the enterprise to—

- (A) submit a report under section 4547¹ of this title;
- (B) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, submit a housing plan in compliance with section 4566(c) of this title;
- (C) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, comply with the housing plan in compliance with section 4566(c) of this title; or

¹ See References in Text note below.

(D) provide the information required under subsection (m) or (n) of section 1723a of this title, or subsection (e) or (f) of section 1456 of this title.

(c) Effective date

An order under this section shall become effective upon the expiration of the 30-day period beginning on the date of service of the order upon the enterprise (except in the case of an order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Director or otherwise, as provided in this subpart.

(Pub. L. 102-550, title XIII, §1341, as added Pub. L. 110-289, div. A, title I, §1130(c)(2), July 30, 2008, 122 Stat. 2708.)

Editorial Notes

REFERENCES IN TEXT

Section 4547 of this title, referred to in subsecs. (a)(1) and (b)(2)(A), was repealed by Pub. L. 110-289, div. A, title I, §1104(b), July 30, 2008, 122 Stat. 2667.

PRIOR PROVISIONS

A prior section 4581, Pub. L. 102-550, title XIII, §1341, Oct. 28, 1992, 106 Stat. 3964, related to cease-and-desist proceedings, prior to repeal by Pub. L. 110-289, div. A, title I, §1130(c)(1), July 30, 2008, 122 Stat. 2708.

§ 4582. Hearings

(a) Requirements

(1) Venue and record

Any hearing under section 4581 or 4585 of this title shall be held on the record and in the District of Columbia.

(2) Timing

Any such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of the notice of charges under section 4581(b)(1) of this title or determination to impose a penalty under section 4585(c)(1) of this title, unless an earlier or a later date is set by the hearing officer at the request of the enterprise served.

(3) Procedure

Any such hearing shall be conducted in accordance with chapter 5 of title 5.

(4) Failure to appear

If the enterprise served fails to appear at the hearing through a duly authorized representative, such enterprise shall be deemed to have consented to the issuance of the cease-and-desist order or the imposition of the penalty for which the hearing is held.

(b) Issuance of order

(1) In general

After any such hearing, and within 90 days after the enterprise has been notified that the case has been submitted to the Director for final decision, the Director shall render the decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon the enterprise an

order or orders consistent with the provisions of this subpart.

(2) Modification

Judicial review of any such order shall be exclusively as provided in section 4583 of this title. Unless such a petition for review is timely filed as provided in section 4583 of this title, and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, modify, terminate, or set aside any such order, upon such notice and in such manner as the Director considers proper. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

(Pub. L. 102-550, title XIII, §1342, Oct. 28, 1992, 106 Stat. 3965; Pub. L. 110-289, div. A, title I, §1130(e)(3)(A), July 30, 2008, 122 Stat. 2711.)

Editorial Notes

AMENDMENTS

2008—Subsec. (b). Pub. L. 110-289 substituted “Director” for “Secretary” wherever appearing.

§ 4583. Judicial review

(a) Commencement

An enterprise that is a party to a proceeding under section 4581 or 4585 of this title may obtain review of any final order issued under such section by filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. The clerk of the court shall transmit a copy of the petition to the Director.

(b) Filing of record

Upon receiving a copy of a petition, the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28.

(c) Jurisdiction

Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the Director shall (except as provided in the last sentence of section 4582(b)(2) of this title) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director.

(d) Review

Review of such proceedings shall be governed by chapter 7 of title 5.

(e) Order to pay penalty

Such court shall have the authority in any such review to order payment of any penalty imposed by the Director under this subpart.

(f) No automatic stay

The commencement of proceedings for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.

(Pub. L. 102-550, title XIII, §1343, Oct. 28, 1992, 106 Stat. 3966; Pub. L. 110-289, div. A, title I, §1130(e)(3)(B), July 30, 2008, 122 Stat. 2711.)

Editorial Notes**AMENDMENTS**

2008—Pub. L. 110-289 substituted “Director” for “Secretary” wherever appearing.

§ 4584. Enforcement and jurisdiction**(a) Enforcement**

The Director may bring a civil action in the United States District Court for the District of Columbia for the enforcement of any effective notice or order issued under section 4581 or 4585 of this title. Such court shall have jurisdiction and power to order and require compliance herewith.

(b) Limitation on jurisdiction

Except as otherwise provided in this subpart, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order under section 4581 or 4585 of this title, or to review, modify, suspend, terminate, or set aside any such notice or order.

(Pub. L. 102-550, title XIII, §1344, Oct. 28, 1992, 106 Stat. 3966; Pub. L. 110-289, div. A, title I, §1130(e)(1), July 30, 2008, 122 Stat. 2711.)

Editorial Notes**AMENDMENTS**

2008—Subsec. (a). Pub. L. 110-289, which directed substitution of “The Director may bring a civil action” for “The Secretary may request the Attorney General of the United States to bring a civil action”, was executed by making the substitution for “The Secretary may request the Attorney General of the United States to bring an action” to reflect the probable intent of Congress.

§ 4585. Civil money penalties**(a) Authority**

The Director may impose a civil money penalty, in accordance with the provisions of this section, on any enterprise that has failed to—

(1) submit a report under section 4547¹ of this title, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;

(2) submit the information required under subsection (m) or (n) of section 1723a of this title or subsection (e) or (f) of section 1456 of this title;

(3) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, submit a housing plan or perform its responsibilities under a remedial order issued pursuant to section 4566(c) of this title within the required period; or

(4) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, comply with a housing plan for the enterprise under section 4566(c) of this title.

(b) Amount of penalty

The amount of a penalty under this section, as determined by the Director, may not exceed—

(1) for any failure described in paragraph (1), (5), or (6) of subsection (a), \$100,000 for each day that the failure occurs; and

(2) for any failure described in paragraph (2), (3), or (4) of subsection (a), \$50,000 for each day that the failure occurs.

(c) Procedures**(1) Establishment**

The Director shall establish standards and procedures governing the imposition of civil money penalties under this section. Such standards and procedures—

(A) shall provide for the Director to notify the enterprise in writing of the determination of the Director to impose the penalty, which shall be made on the record;

(B) shall provide for the imposition of a penalty only after the enterprise has been given an opportunity for a hearing on the record pursuant to section 4582 of this title; and

(C) may provide for review by the Director of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Factors in determining amount of penalty

In determining the amount of a penalty under this section, the Director shall give consideration to factors including—

(A) the gravity of the offense;

(B) any history of prior offenses;

(C) ability to pay the penalty;

(D) injury to the public;

(E) benefits received;

(F) deterrence of future violations;

(G) the length of time that the enterprise should reasonably take to achieve the goal; and

(H) such other factors as the Director may determine, by regulation, to be appropriate.

(d) Action to collect penalty

If an enterprise fails to comply with an order by the Director imposing a civil money penalty under this section, after the order is no longer subject to review, as provided in sections 4582 and 4583 of this title, the Director may bring an action in the United States District Court for the District of Columbia to obtain a monetary judgment against the enterprise, and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys' 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 shall not be subject to review.

(e) Settlement by Director

The Director may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(f) Deposit of penalties

The Director shall use any civil money penalties collected under this section to help fund the Housing Trust Fund established under section 4568 of this title.

(Pub. L. 102-550, title XIII, §1345, as added Pub. L. 110-289, div. A, title I, §1130(d)(2), July 30, 2008, 122 Stat. 2709.)

¹ See References in Text note below.

Editorial Notes

REFERENCES IN TEXT

Section 4547 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 110-289, div. A, title I, § 1104(b), July 30, 2008, 122 Stat. 2667.

PRIOR PROVISIONS

A prior section 4585, Pub. L. 102-550, title XIII, § 1345, Oct. 28, 1992, 106 Stat. 3966, related to civil money penalties, prior to repeal by Pub. L. 110-289, div. A, title I, § 1130(d)(1), July 30, 2008, 122 Stat. 2709.

§ 4586. Public disclosure of final orders and agreements**(a) In general**

The Director shall make available to the public—

(1) any written agreement or other written statement for which a violation may be redressed by the Director or any modification to or termination thereof, unless the Director, in the Secretary's¹ discretion, determines that public disclosure would be contrary to the public interest or determines under subsection (c) that public disclosure would seriously threaten the financial health or security of the enterprise;

(2) any order that is issued with respect to any administrative enforcement proceeding initiated by the Director under this subpart and that has become final in accordance with sections 4582 and 4583 of this title; and

(3) any modification to or termination of any final order made public pursuant to this subsection.

(b) Hearings

All hearings with respect to any notice of charges issued by the Director shall be open to the public, unless the Director, in the Secretary's¹ discretion, determines that holding an open hearing would be contrary to the public interest.

(c) Delay of public disclosure under exceptional circumstances

If the Director makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) would seriously threaten the financial soundness of the enterprise, the Director may delay the public disclosure of such order for a reasonable time.

(d) Documents filed under seal in public enforcement hearings

The Director may file any document or part thereof under seal in any hearing under this subpart if the Director determines in writing that disclosure thereof would be contrary to the public interest.

(e) Retention of documents

The Director shall keep and maintain a record, for not less than 6 years, of all documents described in subsection (a) and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the Director under this subpart.

¹ So in original. Probably should be "Director's".

(f) Disclosures to Congress

This section may not be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

(Pub. L. 102-550, title XIII, § 1346, Oct. 28, 1992, 106 Stat. 3968; Pub. L. 110-289, div. A, title I, § 1130(e)(3)(C), July 30, 2008, 122 Stat. 2711.)

Editorial Notes

AMENDMENTS

2008—Subsecs. (a) to (e). Pub. L. 110-289 substituted "Director" for "Secretary" wherever appearing.

§ 4587. Notice of service

Any service required or authorized to be made by the Director under this subpart may be made by registered mail or in such other manner reasonably calculated to give actual notice, as the Director may by regulation or otherwise provide.

(Pub. L. 102-550, title XIII, § 1347, Oct. 28, 1992, 106 Stat. 3968; Pub. L. 110-289, div. A, title I, § 1130(e)(3)(D), July 30, 2008, 122 Stat. 2711.)

Editorial Notes

AMENDMENTS

2008—Pub. L. 110-289 substituted "Director" for "Secretary" in two places in text.

§ 4588. Subpoena authority**(a) In general**

In the course of or in connection with any administrative proceeding under this subpart, the Director shall have the authority—

(1) to administer oaths and affirmations;

(2) to take and preserve testimony under oath;

(3) to issue subpoenas and subpoenas duces tecum; and

(4) to revoke, quash, or modify subpoenas and subpoenas duces tecum issued by the Director.

(b) 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.

(c) Enforcement

The Director may bring an action or 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 the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section. Such courts shall have jurisdiction and power to order and require compliance therewith.

(d) 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 by an enterprise 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 enterprise or from its assets.

(Pub. L. 102-550, title XIII, § 1348, Oct. 28, 1992, 106 Stat. 3968; Pub. L. 110-289, div. A, title I, § 1130(e)(2), (3)(E), July 30, 2008, 122 Stat. 2711.)

Editorial Notes

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-289, § 1130(e)(3)(E), substituted “Director” for “Secretary” in introductory provisions and in par. (4).

Subsec. (c). Pub. L. 110-289, § 1130(e)(3)(E), substituted “Director” for “Secretary”.

Pub. L. 110-289, § 1130(e)(2), inserted “may bring an action or” before “may request”.

§ 4589. Repealed. Pub. L. 110-289, div. A, title I, § 1122(a)(2), July 30, 2008, 122 Stat. 2689

Section, Pub. L. 102-550, title XIII, § 1349, Oct. 28, 1992, 106 Stat. 3969, related to issuance by Secretary of final regulations to implement this part.

PART C—MISCELLANEOUS PROVISIONS

§ 4601. Review of underwriting guidelines

(a) Study

Each of the enterprises shall conduct a study to review the underwriting guidelines of the enterprise. The studies shall examine—

(1) the extent to which the underwriting guidelines prevent or inhibit the purchase or securitization of mortgages for housing located in mixed-use, urban center, and predominantly minority neighborhoods and for housing for low- and moderate-income families;

(2) the standards employed by private mortgage insurers and the extent to which such standards inhibit the purchase and securitization by the enterprises of mortgages described in paragraph (1); and

(3) the implications of implementing underwriting standards that—

(A) establish a downpayment requirement for mortgagors of 5 percent or less;

(B) allow the use of cash on hand as a source for downpayments; and

(C) approve borrowers who have a credit history of delinquencies if the borrower can demonstrate a satisfactory credit history for at least the 12-month period ending on the date of the application for the mortgage.

(b) Report

Not later than the expiration of the 1-year period beginning on October 28, 1992, each enterprise shall submit to the Secretary, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate a report regarding the study conducted by the enterprise under subsection (a). Each report shall include any recommendations of the enterprise for better meeting the housing needs of low- and moderate-income families.

(Pub. L. 102-550, title XIII, § 1354, Oct. 28, 1992, 106 Stat. 3970.)

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 4602. Studies of effects of privatization of FNMA and FHLMC

(a) In general

The Comptroller General of the United States, the Secretary of Housing and Urban Development, the Secretary of the Treasury, and the Director of the Congressional Budget Office shall each conduct and submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than the expiration of the 2-year period beginning on October 28, 1992, a study regarding the desirability and feasibility of repealing the Federal charters of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, eliminating any Federal sponsorship of the enterprises, and allowing the enterprises to continue to operate as fully private entities.

(b) Requirements

Each study shall particularly examine the effects of such privatization on—

(1) the requirements applicable to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation under Federal law and the costs to the enterprises;

(2) the cost of capital to the enterprises;

(3) housing affordability and availability and the cost of homeownership;

(4) the level of secondary mortgage market competition subsequently available in the private sector;

(5) whether increased amounts of capital would be necessary for the enterprises to continue operation;

(6) the secondary market for residential loans and the liquidity of such loans; and

(7) any other factors that the Comptroller General, the Secretary of Housing and Urban Development, the Secretary of the Treasury, or the Director of the Congressional Budget Office deems appropriate to enable the Congress to evaluate the desirability and feasibility of privatization of the enterprises.

(c) Information

The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall provide full and prompt access to the