

**TITLE 12 - BANKS AND BANKING**  
**CHAPTER 13 - NATIONAL HOUSING**  
**SUBCHAPTER III - NATIONAL MORTGAGE ASSOCIATIONS**

**§ 1723i. Civil money penalties against issuers**

**(a) In general**

**(1) Authority**

Whenever an issuer or custodian approved under section 1721 (g) of this title knowingly and materially violates any provisions of subsection (b) of this section, the Secretary of Housing and Urban Development may impose a civil money penalty on the issuer or the custodian in accordance with the provisions of this section. The penalty shall be in addition to any other available civil remedy or any available criminal penalty and may be imposed whether or not the Secretary imposes other administrative sanctions.

**(2) Amount of penalty**

The amount of the penalty, as determined by the Secretary, may not exceed \$5,000 for each violation, except that the maximum penalty for all violations by a particular issuer or custodian during any one-year period shall not exceed \$1,000,000. Each violation of a provision of subsection (b)(1) of this section shall constitute a separate violation with respect to each pool of mortgages. In the case of a continuing violation, as determined by the Secretary, each day shall constitute a separate violation.

**(b) Violations for which penalty may be imposed**

**(1) Violations**

The violations by an issuer or a custodian for which the Secretary may impose a civil money penalty under subsection (a) of this section are the following:

**(A)** Failure to make timely payments of principal and interest to holders of securities guaranteed under section 1721 (g) of this title.

**(B)** Failure to segregate cash flow from pooled mortgages or to deposit either principal and interest funds or escrow funds into special accounts with a depository institution whose accounts are insured by the National Credit Union Administration or by the Federal Deposit Insurance Corporation through the Deposit Insurance Fund.

**(C)** Use of escrow funds for any purpose other than that for which they were received.

**(D)** Transfer of servicing for a pool of mortgages to an issuer not approved under this subchapter, unless expressly permitted by statute, regulation, or contract approved by the Secretary.

**(E)** Failure to maintain a minimum net worth in accordance with requirements prescribed by the Association;

**(F)** Failure to promptly notify the Association in writing of any changes that materially affect the business status of an issuer.

**(G)** Submission to the Association of false information in connection with any securities guaranteed, or mortgages pooled, under section 1721 (g) of this title.

**(H)** Hiring, or retaining in employment, an officer, director, principal, or employee whose duties involve, directly or indirectly, programs administered by the Association while such person was under suspension or debarment by the Secretary.

**(I)** Submission to the Association of a false certification either on its own behalf or on behalf of another person or entity.

(J) Failure to comply with an agreement, certification, or condition of approval set forth on, or applicable to, the application for approval as an issuer of securities under section 1721 (g) of this title.

(K) Violation of any provisions of this subchapter or any implementing regulation, handbook, or participant letter issued under authority of this subchapter.

**(2) Notification to Attorney General**

Before taking action to impose a civil money penalty for a violation under paragraph (1)(G) or paragraph (1)(I), the Secretary shall inform the Attorney General of the United States.

**(c) Agency procedures**

**(1) Establishment**

The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (a) of this section. The standards and procedures—

(A) shall provide for the Secretary to make the determination to impose the penalty;

(B) shall provide for the imposition of a penalty only after an issuer or a custodian has been given notice of, and opportunity for, a hearing on the record; and

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

**(2) Final orders**

If no hearing is requested within 15 days of receipt of a notice of opportunity for hearing, the imposition of a penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

**(3) Factors in determining amount of penalty**

In determining the amount of a penalty under subsection (a) of this section, consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before December 15, 1989), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine by regulations.

**(4) Reviewability of imposition of penalty**

The Secretary's determination or order imposing a penalty under subsection (a) of this section shall not be subject to review, except as provided in subsection (d) of this section.

**(d) Judicial review of agency determination**

**(1) In general**

After exhausting all administrative remedies established by the Secretary under subsection (c)(1) of this section, an issuer or a custodian against which the Secretary has imposed a civil money penalty under subsection (a) of this section may obtain a review of the penalty and such ancillary issues as may be addressed in the notice provided under subsection (c)(1)(A) of this section in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

**(2) Objections not raised in hearing**

A court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (c)(1) of this section unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence, which was not presented at such hearing, is material and that there were

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).*

reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

**(3) Scope of review**

The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5.

**(4) Order to pay penalty**

Notwithstanding any other provision of law, the court shall have the power in any such review to order payment of the penalty imposed by the Secretary.

**(e) Action to collect penalty**

If any issuer or custodian fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (a) of this section, after the determination or order is no longer subject to review as provided by subsections (c)(1) and (d) of this section, the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the issuer or custodian and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any 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 Secretary's determination or order imposing the penalty shall not be subject to review.

**(f) Settlement by Secretary**

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

**(g) "Knowingly" defined**

The term "knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

**(h) Regulations**

The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

**(i) Deposit of penalties**

The Secretary shall deposit all civil money penalties collected under this section into moneys of the Association pursuant to section 1722 of this title.

(June 27, 1934, ch. 847, title III, § 317, as added Pub. L. 101–235, title I, § 110(a), Dec. 15, 1989, 103 Stat. 2011; amended Pub. L. 104–208, div. A, title II, § 2704(d)(13)(A), Sept. 30, 1996, 110 Stat. 3009–490; Pub. L. 109–171, title II, § 2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, § 9(f)(1), Feb. 15, 2006, 119 Stat. 3618.)

**Amendments**

2006—Subsec. (b)(1)(B). Pub. L. 109–173 substituted "Deposit Insurance Fund" for "Bank Insurance Fund for banks or through the Savings Association Insurance Fund for savings associations".

Pub. L. 109–171 repealed Pub. L. 104–208, § 2704(d)(13)(A). See 1996 Amendment note below.

1996—Subsec. (b)(1)(B). Pub. L. 104–208, § 2704(d)(13)(A), which directed substitution of "Deposit Insurance Fund" for "Bank Insurance Fund for banks or through the Savings Association Insurance Fund for savings associations", was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

**Effective Date of 2006 Amendment**

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109–173, set out as a note under section 24 of this title.

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Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

### **Effective Date of 1996 Amendment**

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

### **Effective Date**

Section 110(b) of Pub. L. 101–235 provided that: “The amendment made by subsection (a) [enacting this section] shall apply only with respect to—

“(1) violations referred to in the amendment that occur on or after the effective date of this section [Dec. 15, 1989]; and

“(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation referred to in the amendment that occurs on or after such date.”