

MEMORANDUM

July 3, 2018



U.S. DEPARTMENT
OF HOUSING
AND URBAN
DEVELOPMENT

To: Dana Wade
General Deputy Assistant Secretary for Housing, H

From: 
Brian T. Pattison
Assistant Inspector General for Evaluation, Office of Inspector General, G

Subject: Final Evaluation Report: Mortgage Review Board Administrative Actions, 2017-OE-0005

Please see the attached final report on our evaluation of the U.S. Department of Housing and Urban Development's Mortgage Review Board administrative actions. It contains two findings and no recommendations. This report will be posted to our website within 3 days.

Thank you for providing a response to our evaluation. In it, you said that the Mortgage Review Board is continuing to take steps to improve its process.

I appreciate the assistance you and your staff provided throughout the evaluation. Please contact Director Paul Bergstrand at (202) 402-2728 if you have any questions.

Attachment

cc

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U.S. Department of Housing and Urban Development

Office of Inspector General Office of Evaluation



Mortgagee Review Board Administrative Actions

Program Evaluations Division



Executive Summary

Mortgagee Review Board Administrative Actions

Report Number: 2017-OE-0005

July 3, 2018

Why We Did This Evaluation

We evaluated the Mortgagee Review Board's (MRB) use of administrative actions and its compliance with Federal law. The MRB's use of administrative actions aims to ensure the integrity of the Federal Housing Administration's (FHA) outstanding insured portfolio of almost \$1.2 trillion. The size of FHA's portfolio and the MRB's vital role in ensuring the integrity of FHA's insurance program suggest a need to understand the MRB's enforcement operations. We issued a prior evaluation report in May 2009. In that evaluation, we raised concerns with the speed of the MRB process, the number of cases on which the MRB ruled, and the magnitude of the penalties the MRB levied.

Results of Evaluation

The MRB rules on cases against FHA-approved lenders in which there is evidence of serious violations relating to loan origination, servicing activity, and failure to comply with FHA operational guidelines. When the MRB learns that a lender may not be in compliance with FHA requirements, it may take administrative actions to resolve problems with lenders. It does not consider "loss to the government" in these actions. Administrative actions may include notices of violation, civil monetary penalties, withdrawals and suspensions, and settlement agreements.

Conclusion

The MRB regularly takes administrative actions on FHA-approved single-family lenders but does not hear many larger multifamily cases. For fiscal years 2014, 2015, and 2016, the MRB issued 436 administrative actions and 56 civil monetary penalties, withdrawals of FHA approval, suspensions, probations, reprimands, administrative payments, and settlements. The value of the MRB decisions totaled approximately \$1.96 billion.

The MRB has also taken steps to improve since our last evaluation. Specifically, it has increased the consistency of penalties given to lenders for similar violations, it has met the requirement to publish each administrative action in the Federal Register, and it has resolved a longstanding backlog of cases.

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Introduction

Objective

We evaluated the Mortgagee Review Board's (MRB) use of administrative actions and its compliance with Federal law. Specifically, the MRB's administrative actions include notices of violation (NOV), civil monetary penalties (CMP), suspensions and withdrawals, and settlement agreements. The size of the Federal Housing Administration's (FHA) portfolio and the MRB's vital role in ensuring the integrity of FHA's insurance program suggest a need to understand the MRB's enforcement operations.

Background

Issues Observed in a Prior Evaluation of the MRB's Enforcement Actions¹

In 2009, the U.S. Department of Housing and Urban Development's Office of Inspector General (HUD OIG) studied the MRB's enforcement actions as part of HUD's oversight of FHA single-family mortgage lenders. According to a congressional request, HUD OIG responded to 10 questions and assessed the MRB's effectiveness in deterring abuse in FHA mortgage lending for the MRB rulings in fiscal year (FY) 2008. The report made five observations on the MRB's ineffectiveness as an enforcement body. Specifically,

1. few lenders were referred to the MRB and mostly for violations that did not warrant removal of FHA lending authority,
2. CMPs were frequently mitigated to administrative fines,
3. the MRB process was slow to deter or stop noncompliant lending practices,
4. the MRB's rulings were not published in the Federal Register or otherwise disseminated on HUD's website in FY 2008, and
5. the workload increased in FY 2008.

At the time, HUD OIG concluded that the MRB had a lengthy referral process, ruled on few cases, and imposed penalties that did not have a substantive financial consequence to lenders.

MRB Authorized To Take Administrative Actions

When the MRB learns that a lender may not be in compliance with FHA requirements, it may take administrative actions, such as imposing CMPs or entering into settlement agreements to resolve problems with lenders.² Such actions help ensure the integrity of FHA's outstanding insured portfolio of almost \$1.2 trillion. Section 1708 of the National Housing Act established

¹ Evaluation of Mortgagee Review Board Enforcement Actions (HUD OIG IED-09-003)

² Alternatively put, this refers to resolving outstanding grounds for action against lenders. A lender is an organization or person that lends money.

the MRB.³ The authorizing statute provides the MRB with authority to perform administrative actions, such as

- issuing letters of reprimand,
- placing a mortgagee on probation for not more than 6 months,⁴
- ordering the suspension of a mortgagee for not less than 6 months or more than 1 year,
- ordering a withdrawal of the mortgagee for not less than 1 year, and
- entering into settlement agreements to resolve outstanding grounds for action.

A lender's failure to comply with the provisions of a settlement agreement can result in its suspension or withdrawal as an FHA-approved lender. These provisions may include

- termination of any violation;
- correction or mitigation of the effects of any violation;
- repayment of any sums of money wrongfully or incorrectly paid to the mortgagee by a borrower, a seller, or FHA;
- actions to collect sums of money wrongfully or incorrectly paid by the mortgagee to a third party;
- indemnification of FHA for mortgage insurance claims on mortgages originated in violation of FHA requirements;
- modification of the length of the penalty imposed; or
- implementation of other corrective measures acceptable to the HUD Secretary.

HUD Authorized To Impose CMPs and Adjust Them for Inflation

Section 1735 of the HUD Reform Act of 1989 authorizes HUD to impose CMPs on mortgagees, lenders, and other FHA participants across HUD that knowingly and materially violate the statute.⁵ Although the statute does not specify that the MRB should be responsible for CMPs, it states that the Secretary may delegate the authority to impose CMPs to the MRB. The 2010 charter states that the MRB may impose CMPs.

Section 2461 of the Federal Civil Penalties Inflation Adjustment Act of 1990 provides a mechanism for HUD to adjust CMPs for inflation. In 2015, Congress passed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Adjustment Act).⁶ The Adjustment Act requires agencies, including HUD, to use rulemaking to establish a catchup adjustment. The catchup adjustment is based on inflation, as measured by the Consumer Price Index, between 2015 and the year in which the relevant agency's CMP authority was enacted. Based on the Adjustment Act, HUD has implemented both the catchup adjustment and the annual adjustment. With revised adjustments, CMPs are limited to \$9,623 per violation, and the annual per entity limit is approximately \$1.92 million.

³ 24 CFR (Code of Federal Regulations) 25.2

⁴ A mortgagee is a person who holds mortgaged property as security for repayment of a loan.

⁵ 24 CFR 25.2

⁶ Public Law 114-74

The MRB's role is enforcement, not recovery. The MRB cannot recover a "loss to the government" because it is not in the MRB's statute. If the MRB were to consider loss to the government, a court might find it was doing so in an arbitrary and capricious manner. The Program Fraud and Civil Remedies Act and the False Claims Act are designed to consider the potential loss to the government. However, the Acts do not apply to the MRB.

The MRB Staff, the Board members, and the MRB Process

As previously discussed, the MRB may take administrative actions against lenders. The Board members, senior officials identified by statute, vote to take these actions. They include the Assistant Secretary for Housing-Federal Housing Commissioner, the General Counsel, the President of the Government National Mortgage Association, the Assistant Secretary for Administration, the Assistant Secretary for Fair Housing and Equal Opportunity, and the Chief Financial Officer.⁷ Advisors to the Board members include HUD's Inspector General, the Director of the Office of Lender Activities and Program Compliance, the Chief Risk Officer, the Office of General Counsel's (OGC) Office of Program Enforcement, and OGC's Office of Insured Housing.

Before board meetings, the MRB staff should hold an internal options meeting to determine (1) whether the lender's response to the NOV mitigated the allegations, (2) the seriousness of the violations, and (3) whether HUD made errors in the allegations. The members of the internal options meeting include the MRB staff, OGC attorneys, the Office of Program Enforcement, Program Counsel, the Quality Assurance Division from the Homeownership Centers, headquarters Quality Assurance Division staff, and Lender Recertification staff. The MRB staff should identify actions taken in the past for similar violations by other lenders to maintain consistency and should recommend a dollar amount for a penalty that accounts for the CMP cap.

The MRB staff and attorneys from the Office of Program Enforcement invite the lender to a lenders meeting. During the lenders meeting, the MRB staff discusses the case with the lender, explains to the lender why it has not mitigated the violations, and provides the lender the opportunity to settle for the amount determined during the internal options meeting.

After the meeting with the lender, the MRB staff prepares a meeting book for the Board members. This meeting book is the culmination of premeeting work performed by the MRB staff to enable it to present the case to the Board members. The meeting book contains the NOV; the lender's response, if any, to the NOV; and an OGC-prepared memorandum that summarizes the allegations against each lender at issue and the analysis of the pertinent facts and law. The memorandum includes OGC's and the Secretary's recommendations to the Board members on the appropriate action to remedy the violations.

⁷ The Assistant Secretary for Housing-Federal Housing Commissioner serves as the chairperson of the MRB and also appoints a person to serve as the secretary to the MRB. The Assistant Secretary for Administration was the Chief Human Capital Officer in the last administration. The Assistant Secretary for Fair Housing and Equal Opportunity is a Board member in cases involving violations of nondiscrimination requirements.

The MRB generally meets bimonthly to hear cases against FHA-approved single-family lenders and occasional multifamily cases in which there is evidence of serious violations relating to loan origination, servicing activity, or failure to comply with FHA operational guidelines.⁸ The MRB staff presents its cases on the agenda to the voting members of the MRB for its consideration of possible actions to be taken against lenders. For each lender case identified in the agenda, the secretary to the Board presents (1) the facts as presented in the NOV, (2) the lender's response to the NOV, (3) the FHA requirements that have been violated, (4) whether the lender has mitigated the violation, and (5) any other important factors for consideration. The Board members are responsible for hearing the case and deciding what action it will take for the violations presented.

The Board members' administrative actions are required by regulation to be reported in the Federal Register.⁹ The MRB publishes a description of and the cause for administrative actions taken. Administrative actions taken may include CMPs, withdrawals of FHA approval, suspensions, probations, reprimands, settlements, and administrative payments. In the Federal Register, the MRB also publishes a listing of lenders that failed to meet requirements for annual recertification of HUD-FHA approval

- in a timely manner,
- at all, and
- in a timely manner but came into compliance later.

Scope and Methodology

We completed this evaluation under the authority of the Inspector General Act of 1978 as amended and in accordance with the "Quality Standards for Inspection and Evaluation," issued by the Council of the Inspectors General on Integrity and Efficiency (January 2012).

Scope

We reviewed the 23 MRB meeting books and Federal Register notices for FY 2014-2016, which listed enforcement actions the MRB took. From November 2017 to January 2018, we interviewed personnel involved in the MRB process, including the Director of the MRB, two MRB specialists, and a program analyst for the Office of the Single Family Deputy Assistant Secretary.

Methodology

To address our objective, we reviewed the following applicable laws and Federal regulations, HUD and MRB-specific policies and procedures addressing the MRB process, and previous reports external to the MRB:

- National Housing Act, 12 U.S.C. (United States Code) 1708 (Section 1708)

⁸ For less serious violations, the MRB enters into settlement agreements with lenders to bring them into compliance. For serious violations, the MRB may withdraw the lender's FHA approval so the lender cannot participate in FHA programs.

⁹ 12 CFR Part 1708

- HUD Reform Act of 1989, 12 U.S.C. 1735f-14 (Section 1735)
- Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 (Section 2461) Adjustment Act
- Federal Register 2014; Vol. 80, No. 65; Monday, April 6, 2015
- Federal Register 2015; Vol.81, No. 91; Wednesday, May 11, 2016
- Federal Register 2016; Vol. 82, No. 63; Tuesday, April 4, 2017
- MRB meeting books, dated December 2013, February 2014, April 2014, June 2014, August 2014, October 2014, February 2015 (special meeting book), March 2015, May 2015, July 2015, October 2015, December 2015, March 2016, April 2016 (books 1 and 2), June 2016, August 2016 (books 1-3), September 2016 (special meeting book), October 2016 (books 1 and 2), and January 2016 (special meeting book)
- HUD OIG Evaluation of MRB Enforcement Actions, IED-09-003, May 2009

Limitations

We experienced no limitations in the conduct of this evaluation.

Findings

The MRB takes administrative actions on noncompliant lenders in accordance with its statutory authority, and it has taken steps to improve its processes. When the MRB learns that a lender may not be in compliance with FHA requirements, it may take administrative actions to resolve problems with lenders. Such actions aim to ensure the integrity of FHA's outstanding insured portfolio of almost \$1.2 trillion.

The MRB Takes Administrative Actions Against Lenders in Accordance With Its Statutory Authority

When the MRB learns that a lender may not be in compliance with FHA requirements, it takes administrative actions, including NOV's, CMP's, withdrawals and suspensions, and settlement agreements. Section 1708 of the National Housing Act provides the MRB with authority to perform these administrative actions. If a lender does not comply with the provisions of a settlement agreement, it can result in the lender's suspension or withdrawal as an FHA-approved lender. We studied the administrative actions the MRB took from FY 2014 to 2016. Using the Federal Register, we determined that during this period, the MRB

- issued 436 administrative actions and
- issued 56 CMP's, withdrawals of FHA approval, suspensions, probations, reprimands, administrative payments, and settlements.

For FY 2014, FY 2015, and FY 2016, the MRB issued 17, 14, and 25 CMP's, respectively. The amount of the MRB decisions totaled approximately \$1.96 billion. During this period, the Federal Register recorded 132 lenders that failed to meet requirements for annual recertification of HUD-FHA approval in a timely manner. It also recorded 248 lenders that failed to meet requirements for annual recertification of HUD-FHA approval during the same period.

According to the Director of the MRB, the Board members rarely disagree with a settlement or ask for a different CMP. The MRB may discuss instances in which the lender has presented mitigating circumstances to influence an increase or decrease in the CMP proposed by the MRB staff.

The MRB regularly takes administrative actions on FHA-approved single-family lenders but does not hear many larger multifamily cases. Our review found that the case against Prudential was the only multifamily case that the MRB addressed during FY 2014-2016. According to the Director of the MRB, the MRB seldom receives multifamily referrals, and the Director could recall only two multifamily cases – U.S. Bank and Prudential. Multifamily cases do not account for many referrals because they follow a different process. HUD program officials approve multifamily loans, and it is difficult to sanction a lender for something HUD has approved.

The MRB Has Taken Steps To Improve

During interviews, the Director of the MRB told us that the MRB previously had not consistently applied penalties to lenders. Based on our review of the meeting books, we noted that the MRB has improved in this area. The MRB meeting books for FY 2016 showed that the MRB is consistently enforcing its mandates and applying penalties to lenders. They indicated that 19 lenders with the same violation received the same penalty.

The MRB has taken steps to meet its statutory mandate by dedicating the MRB staff to addressing the observations identified in the prior HUD OIG evaluation. The prior HUD OIG evaluation observed that the MRB did not publish rulings in the Federal Register or on HUD's website. We observed that the MRB has improved in this area as it has consistently published each administrative action taken by the Board members against a mortgagee from FY 2014 to 2016 in the Federal Register.

The prior HUD OIG evaluation observed an increase in the MRB's workload in FY 2008. The current Director of the MRB told us that when she joined the MRB in 2010, there was a backlog of cases. During interviews, the Director said that the MRB began addressing its backlog of cases in FY 2013. She said that the MRB had completely resolved this backlog by the end of 2016.

The prior HUD OIG evaluation observed that the MRB process was slow. Similarly, the U.S. Government Accountability Office criticized the timeliness of the MRB process.¹⁰ As discussed earlier, there are several steps to the MRB process. The MRB works with lenders to ensure that the process is easy to follow and to reach settlement agreements. Because this process requires continuous communications with the MRB staff, the Board members, OGC, and lenders, the process can be extended and time consuming. However, we could not find criteria to dictate more expedient processing.

¹⁰ Single-Family Housing: Progress Made, but Opportunities Exist to Improve HUD's Oversight of FHA Lenders (GAO-05-13)

Conclusion

The MRB rules on cases against FHA-approved lenders in which there is evidence of serious violations relating to loan origination, servicing activity, and failure to comply with FHA operational guidelines. When the MRB learns that a lender may not be in compliance with FHA requirements, it may take administrative actions to resolve problems with lenders. It does not consider “loss to the government” in these actions. Administrative actions may include NOVs, CMPs, withdrawals and suspensions, and settlement agreements. The MRB regularly takes administrative actions on FHA-approved single-family lenders but does not hear many larger multifamily cases.

In a 2009 evaluation, we observed issues with the MRB’s process and its use of administrative actions. Since that time, we have found that the MRB takes administrative actions against lenders in accordance with its statutory authority. For FY 2014, 2015, and 2016, the MRB issued 436 administrative actions and 56 civil monetary penalties, withdrawals of FHA approval, suspensions, probations, reprimands, administrative payments, and settlements. The amount of the MRB decisions totaled approximately \$1.96 billion.

MRB has also taken steps to improve since our last evaluation. Specifically, it has increased the consistency of penalties given to lenders for similar violations, it has met the requirement to publish each administrative action in the Federal Register, and it has resolved a longstanding backlog of cases.

Appendixes

Appendix A – Agency Comments and OIG Response

Response from the Mortgage Review Board

Reference to OIG Response

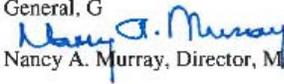


U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, D.C. 20410-8000

OFFICE OF HOUSING

MEMORANDUM FOR: Brian T. Pattison
Assistant Inspector General for Evaluation, Office of Inspector
General, G

FROM: 
Nancy A. Murray, Director, Mortgage Review Board

SUBJECT: Mortgage Review Board Administrative Actions 2017-OE-005

In accordance with our conversation at the exit interview, please find the only formal comment the Mortgage Review Board has regarding the OIG evaluation of the Board's performance for the fiscal years 2014, 2015, and 2016.

Comment 1

As discussed, the Office of Lender Activities & Program Compliance's Division of Lender Approval and Recertification implemented a new automated system, Lender Electronic Assessment Portal (LEAP), for the approval of new lenders and for the annual recertification of existing FHA lenders, with this latter component implemented during the 2013 annual recertification cycle. At the time of this implementation, there existed a backlog of recertification packages. The MRB staff worked diligently with the Lender Recertification Branch (LRB) and lenders to clear the backlog and bring the process to a current state. By the end of 2016, all recertification packages had been reviewed and appropriate action taken by the MRB. As more lenders received real time Notices of Violation for late recertification packages, and were properly sanctioned by the Board, the succeeding year saw a significant decrease in the number of late lenders. This decrease in the number of noncompliant lenders provided the LRB the opportunity to provide additional processes to insure enhanced compliance with FHA requirements.

If Financial data submitted by a lender through LEAP passes the system's automated checks, the recertification package will go to the status of "Complete" without a review by Lender Recertification Branch staff. These are referred to as "AutoComplete" packages.

The LRB has instituted a policy of performing quality control reviews of 100% of AutoComplete packages to ensure the accuracy of the data and confirm compliance with FHA's requirements.

Submissions are evaluated to ensure all the required documents are included, the financial data audited if required, all the required reports included, the financial information in LEAP is

consistent with the audited financial statements or unaudited regulatory report, and to determine if the lender experience an operating loss during the fiscal year.

Once the review is complete, the auditor will note the results in LEAP and proceed with any required follow up activities if deficiencies are noted in the review.

This policy has increased compliance with FHA's financial requirements for approved lenders, and the Lender Approval and Recertification Division's referrals to the Mortgagee Review Board.

OIG's Response to the Mortgagee Review Board's Comments

- Comment 1** Thank you for providing formal comments to the MRB evaluation. Based on your response, it appears that your office is continuing to take steps to improve the MRB process.

Appendix B – Acknowledgements

This report was prepared under the direction of Brian T. Pattison, Assistant Inspector General for Evaluation, and Paul H. Bergstrand, Director of Program Evaluations. The Office of Evaluation staff members who contributed are recognized below.

Major Contributors

Rashee Nelson, Senior Evaluator (team leader)
Angelina Johnston, Senior Evaluator

Other Contributors

Lindsay K. Clarke Brubaker, Supervisory Evaluator
Brendan Bacon, Senior Evaluator
Robert Fisher, Senior Forensic Auditor
Christa Kidd, Senior Evaluator

Appendix C – Acronyms

ACRONYM	DEFINITION
CMP	civil monetary penalty
FHA	Federal Housing Administration
FY	fiscal year
HUD	U.S. Department of Housing and Urban Development
MRB	Mortgagee Review Board
NOV	notice of violation
OGC	Office of General Counsel
OIG	Office of Inspector General



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Report fraud, waste, and mismanagement in HUD programs and operations by

Completing this online form: <https://www.hudoig.gov/report-fraud>

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