

202(h)(4)(A) of the Housing Act of 1959 [12 U.S.C. 1701q(h)(4)(A)] for fiscal year 1988, publish in the Federal Register a notice of fund availability to implement the provisions of, and amendments made by, this section [amending this section and enacting and repealing provisions set out above]. The Secretary shall issue such rules as may be necessary to carry out such provisions and amendments for fiscal year 1989 and thereafter.”

#### HOUSING FOR THE ELDERLY OR HANDICAPPED FUND

Pub. L. 101-507, title II, Nov. 5, 1990, 104 Stat. 1361, provided: “That, notwithstanding section 202(a)(3) of the Housing Act of 1959 [12 U.S.C. 1701q(a)(3)], any such obligations [direct loan obligations made in fiscal year 1991] shall bear an interest rate which does not exceed 9.25 per centum, including the allowance adequate in the judgment of the Secretary to cover administrative costs and probable losses under the program.”

Similar provisions were contained in the following prior appropriation acts:

- Pub. L. 101-144, title II, Nov. 9, 1989, 103 Stat. 847.
- Pub. L. 100-404, title I, Aug. 19, 1988, 102 Stat. 1016.
- Pub. L. 100-202, §101(f) [title I], Dec. 22, 1987, 101 Stat. 1329-187, 1329-190.
- Pub. L. 99-500, §101(g) [H.R. 5313, title I], Oct. 18, 1986, 100 Stat. 1783-242, and Pub. L. 99-591, §101(g), Oct. 30, 1986, 100 Stat. 3341-242.
- Pub. L. 99-160, title I, Nov. 25, 1985, 99 Stat. 911.
- Pub. L. 98-371, title I, July 18, 1984, 98 Stat. 1216.
- Pub. L. 98-45, title I, as added Pub. L. 98-181, title I, Nov. 30, 1983, 97 Stat. 1153.

#### REPORTS RESPECTING ELDERLY AND HANDICAPPED HOUSING PROGRAMS IN RURAL AREAS, ETC.

Pub. L. 96-153, title III, §306(e), (f), Dec. 21, 1979, 93 Stat. 1113, required Secretary of Housing and Urban Development, not later than six months after Dec. 21, 1979, to report to Congress on housing needs of elderly and handicapped in rural areas and recommend to Congress on means to reduce costs of program carried out under this section.

#### FEASIBILITY AND MARKETABILITY OF PROJECTS; ASSISTANCE FOR PROJECTS SERVICING LOW- AND MODERATE-INCOME FAMILIES

Pub. L. 93-383, title II, §210(g), Aug. 22, 1974, 88 Stat. 671, provided that:

“(1) In determining the feasibility and marketability of a project under section 202 of the Housing Act of 1959 [this section], the Secretary shall consider the availability of monthly assistance payments pursuant to section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] with respect to such a project.

“(2) The Secretary shall insure that with the original approval of a project authorized pursuant to section 202 of the Housing Act of 1959, and thereafter at each annual revision of the assistance contract under section 8 of the United States Housing Act of 1937 with respect to units in such project, the project will serve both low- and moderate-income families in a mix which he determines to be appropriate for the area and for viable operation of the project; except that the Secretary shall not permit maintenance of vacancies to await tenants of one income level where tenants of another income level are available.”

### § 1701q-1. Civil money penalties against mortgagors under section 1701q of this title

#### (a) In general

The penalties set forth in this section shall be in addition to any other available civil remedy or criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions. The Secretary may not impose penalties under this section for violations a material cause of which are the failure of the

Department, an agent of the Department, or a public housing agency to comply with existing agreements.

#### (b) Penalty for violation of agreement as condition of transfer of physical assets, flexible subsidy loan, capital improvement loan, modification of mortgage terms, or workout agreement

##### (1) In general

Whenever a mortgagor of property that includes 5 or more living units and that has a mortgage held pursuant to section 1701q of this title, who has agreed in writing, as a condition of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a workout agreement, to use nonproject income to make cash contributions for payments due under the note and mortgage, for payments to the reserve for replacements, to restore the project to good physical condition, or to pay other project liabilities, knowingly and materially fails to comply with any of these commitments, the Secretary may impose a civil money penalty on the mortgagor in accordance with the provisions of this section.

##### (2) Amount

The amount of the penalty, as determined by the Secretary, for a violation of this subsection may not exceed the amount of the loss the Secretary would incur at a foreclosure sale, or sale after foreclosure, with respect to the property involved.

#### (c) Violations of regulatory agreement

##### (1) In general

The Secretary may also impose a civil money penalty on a mortgagor or property that includes 5 or more living units and that has a mortgage held pursuant to section 1701q of this title for any knowing and material violation of the regulatory agreement executed by the mortgagor, as follows:

(A) Conveyance, transfer, or encumbrance of any of the mortgaged property, or permitting the conveyance, transfer, or encumbrance of such property, without the prior written approval of the Secretary.

(B) Assignment, transfer, disposition, or encumbrance of any personal property of the project, including rents, or paying out any funds, except for reasonable operating expenses and necessary repairs, without the prior written approval of the Secretary.

(C) Conveyance, assignment, or transfer of any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property, without the prior written approval of the Secretary.

(D) Remodeling, adding to, reconstructing, or demolishing any part of the mortgaged property or subtracting from any real or personal property of the project, without the prior written approval of the Secretary.

(E) Requiring, as a condition of the occupancy or leasing of any unit in the project,

any consideration or deposit other than the prepayment of the first month's rent, plus a security deposit in an amount not in excess of 1 month's rent, to guarantee the performance of the covenants of the lease.

(F) Not holding any funds collected as security deposits separate and apart from all other funds of the project in a trust account, the amount of which at all times equals or exceeds the aggregate of all outstanding obligations under the account.

(G) Payment for services, supplies, or materials which exceeds \$500 and substantially exceeds the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.

(H) Failure to maintain at any time the mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other related papers (including failure to keep copies of all written contracts or other instruments which affect the mortgaged property) in reasonable condition for proper audit and for examination and inspection at any reasonable time by the Secretary or any duly authorized agents of the Secretary.

(I) Failure to maintain the books and accounts of the operations of the mortgaged property and of the project in accordance with requirements prescribed by the Secretary.

(J) Failure to furnish the Secretary, by the expiration of the 60-day period beginning on the 1st day after the completion of each fiscal year, with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared in accordance with requirements prescribed by the Secretary, and prepared and certified to by an independent public accountant or a certified public accountant and certified to by an officer of the mortgagor, unless the Secretary has approved an extension of the 60-day period in writing. The Secretary shall approve an extension where the mortgagor demonstrates that failure to comply with this subparagraph is due to events beyond the control of the mortgagor.

(K) At the request of the Secretary, the agents of the Secretary, the employees of the Secretary, or the attorneys of the Secretary, failure to furnish monthly occupancy reports or failure to provide specific answers to questions upon which information is sought relative to income, assets, liabilities, contracts, the operation and condition of the property, or the status of the mortgage.

(L) Failure to make promptly all payments due under the note and mortgage, including tax and insurance escrow payments, and payments to the reserve for replacements when there is adequate project income available to make such payments.

(M) Amending the articles of incorporation or bylaws, other than as permitted under the terms of the articles of incorporation as approved by the Secretary, without the prior written approval of the Secretary.

## **(2) Amount of penalty**

A penalty imposed for a violation under this subsection, as determined by the Secretary, may not exceed \$25,000 for a violation of any of the subparagraphs of paragraph (1).

## **(d) Agency procedures**

### **(1) Establishment**

The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsections (b) and (c) of this section. These standards and procedures—

(A) shall provide for the Secretary or other department official (such as the Assistant Secretary for Housing) to make the determination to impose a penalty;

(B) shall provide for the imposition of a penalty only after the mortgagor has been given an 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 the notice of opportunity for hearing, the imposition of the 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 (b) or (c) 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 tenants, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

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

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

## **(e) Judicial review of agency determination**

### **(1) In general**

After exhausting all administrative remedies established by the Secretary under subsection (d)(1) of this section, a mortgagor against whom the Secretary has imposed a civil money penalty under subsection (b) or (c) of this section may obtain a review of the penalty and such ancillary issues as may be addressed in the notice of determination to impose a penalty under subsection (d)(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**

The court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (d)(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 not presented at such hearing is material and that there were 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, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

**(f) Action to collect penalty**

If a mortgagor fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (b) or (c) of this section, after the determination or order is no longer subject to review as provided by subsections (d)(1) and (e) 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 mortgagor 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 Secretary's determination or order imposing the penalty shall not be subject to review.

**(g) Settlement by Secretary**

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

**(h) "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.

**(i) Regulations**

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

**(j) Deposit of penalties in insurance funds**

Notwithstanding any other provision of law, all civil money penalties collected under this section shall be deposited in the fund established under section 1715z-1a(j) of this title.

(Pub. L. 86-372, title II, §202a, as added Pub. L. 101-235, title I, §109(a), Dec. 15, 1989, 103 Stat. 2007.)

CODIFICATION

Section was enacted as part of the Housing Act of 1959, and not as part of the National Housing Act which comprises this chapter.

EFFECTIVE DATE

Pub. L. 101-235, title I, §109(b), Dec. 15, 1989, 103 Stat. 2011, provided that: "The amendment made by subsection (a) [enacting this section] shall apply only with respect to violations referred to in the amendment that occur on or after the effective date of this section [Dec. 15, 1989]."

**§ 1701q-2. Grants for conversion of elderly housing to assisted living facilities and other purposes**

**(a) Grant authority**

The Secretary of Housing and Urban Development may make grants in accordance with this section to owners of eligible projects described in subsection (b) of this section for one or both of the following activities:

**(1) Repairs**

Substantial capital repairs to projects that are needed to rehabilitate, modernize, or retrofit aging structures, common areas, or individual dwelling units.

**(2) Conversion**

**(A) Assisted living facilities**

Activities designed to convert dwelling units in the eligible project to assisted living facilities for elderly persons.

**(B) Service-enriched housing**

Activities designed to convert dwelling units in the eligible project to service-enriched housing for elderly persons.

**(b) Eligible projects**

An eligible project described in this subsection is a multifamily housing project that is—

(1)(A) described in subparagraph (B), (C), (D), (E), (F), or (G) of section 13641(2) of title 42, or (B) only to the extent amounts of the Department of Agriculture are made available to the Secretary of Housing and Urban Development for such grants under this section for such projects, subject to a loan made or insured under section 1485 of title 42;

(2) owned by a private nonprofit organization (as such term is defined in section 1701q of this title); and

(3) designated primarily for occupancy by elderly persons.

Notwithstanding any other provision of this subsection or this section, an unused or underutilized commercial property may be considered an eligible project under this subsection, except that the Secretary may not provide grants under this section for more than three such properties. For any such projects, any reference under this section to dwelling units shall be considered to refer to the premises of such properties.

**(c) Applications**

Applications for grants under this section shall be submitted to the Secretary in accordance with such procedures as the Secretary shall establish. Such applications shall contain—