

mortgage which is not required to meet actual and necessary expenses arising in connection with the operation of such property, including amortization charges under the mortgage, be held in trust by the mortgagor and distributed only with the consent of the Secretary; except that the Secretary may provide for the granting of consent to any request for an extension of the time for curing a default under any mortgage covering multifamily housing, or for a modification of the term of such mortgage, without regard to the foregoing requirement, in any case or class of cases in which an exemption from such requirement does not (as determined by the Secretary) jeopardize the interests of the United States.

(June 27, 1934, ch. 847, title II, §239, as added Pub. L. 90-448, title III, §302, Aug. 1, 1968, 82 Stat. 506; amended Pub. L. 100-242, title IV, §416(c), Feb. 5, 1988, 101 Stat. 1908.)

#### AMENDMENTS

1988—Pub. L. 100-242 struck out “insured” before “mortgages” in section catchline, and struck out subsec. (a) designation and subsec. (b) which related to violations and penalties imposed for violations of the provisions of former subsec. (a).

#### § 1715z-4a. Double damages remedy for unauthorized use of multifamily housing project assets and income

##### (a) Action to recover assets or income

(1) The Secretary of Housing and Urban Development (referred to in this section as the “Secretary”) may request the Attorney General to bring an action in a United States district court to recover any assets or income used by any person in violation of (A) a regulatory agreement that applies to a multifamily project, nursing home, intermediate care facility, board and care home, assisted living facility, or hospital whose mortgage is or, at the time of the violations, was insured or held by the Secretary under title II of the National Housing Act [12 U.S.C. 1707 et seq.]; (B) a regulatory agreement that applies to a multifamily project whose mortgage is or, at the time of the violations, was insured or held by the Secretary under section 1701q of this title (including property subject to section 1701q of this title as it existed before November 28, 1990); (C) a regulatory agreement or such other form of regulatory control as may be imposed by the Secretary that applies to mortgages insured or held or, at the time of the violations, was<sup>1</sup> insured or held by the Secretary under section 1715z-22 of this title, but not reinsured under section 1715z-22 of this title; or (D) any applicable regulation. For purposes of this section, a use of assets or income in violation of the regulatory agreement, or such other form of regulatory control as may be imposed by the Secretary, or any applicable regulation shall include any use for which the documentation in the books and accounts does not establish that the use was made for a reasonable operating expense or necessary repair of the property and has not been maintained in accordance with the

requirements of the Secretary and in reasonable condition for proper audit.

(2) For purposes of a mortgage insured or held by the Secretary under title II of the National Housing Act [12 U.S.C. 1707 et seq.], under section 1701q of this title (including section 1701q of this title as it existed before November 28, 1990) and under section 1715z-22 of this title, the term “any person” shall mean any person or entity that owns or operates a property, as identified in the regulatory agreement, including but not limited to—

(A) any stockholder holding 25 percent or more interest of a corporation that owns that property;

(B) any beneficial owner of the property under any business or trust;

(C) any officer, director, or partner of an entity owning or controlling the property;

(D) any nursing home lessee or operator;

(E) any hospital lessee or operator;

(F) any other person or entity that controls the property regardless of that person or entity’s official relationship to the property; and

(G) any heir, assignee, successor in interest, or agent of any person or entity described in the preceding subparagraphs.

##### (b) Initiation of proceedings and temporary relief

The Attorney General, upon request of the Secretary, shall have the exclusive authority to authorize the initiation of proceedings under this section. Pending final resolution of any action under this section, the court may grant appropriate temporary or preliminary relief, including restraining orders, injunctions, and acceptance of satisfactory performance bonds, to protect the interests of the Secretary and to prevent use of assets or income in violation of the regulatory agreement, or such other form of regulatory control as may be imposed by the Secretary, and any applicable regulation and to prevent loss of value of the realty and personalty involved.

##### (c) Amount recoverable

In any judgment favorable to the United States entered under this section, the Attorney General may recover double the value of the assets and income of the property that the court determines to have been used in violation of the regulatory agreement, or such other form of regulatory control as may be imposed by the Secretary, or any applicable regulation, plus all costs relating to the action, including but not limited to reasonable attorney and auditing fees. Notwithstanding any other provision of law, the Secretary may apply the recovery, or any portion of the recovery, to the property or to the applicable insurance fund under the National Housing Act [12 U.S.C. 1701 et seq.] or, in the case of any project for which the mortgage is held by the Secretary under section 1701q of this title (including property subject to section 1701q of this title as it existed before November 28, 1990), to the project or to the Department for use by the appropriate office within the Department for administrative costs related to enforcement of the requirements of the various programs administered by the Secretary, as appropriate.

<sup>1</sup> So in original.

**(d) Time limitation**

Notwithstanding any other statute of limitations, the Secretary may request the Attorney General to bring an action under this section at any time up to and including 6 years after the latest date that the Secretary discovers any use of a property's assets and income in violation of the regulatory agreement, or such other form of regulatory control as may be imposed by the Secretary, or any applicable regulation.

**(e) Continued availability of other remedies**

The remedy provided by this section is in addition to any other remedies available to the Secretary or the United States.

(Pub. L. 100-242, title IV, § 421, Feb. 5, 1988, 101 Stat. 1913; Pub. L. 105-65, title V, § 563, Oct. 27, 1997, 111 Stat. 1419; Pub. L. 108-447, div. I, title II, § 220, Dec. 8, 2004, 118 Stat. 3319; Pub. L. 109-115, div. A, title III, § 324, Nov. 30, 2005, 119 Stat. 2466.)

## REFERENCES IN TEXT

The National Housing Act, referred to in subsecs. (a) and (c), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§1701 et seq.). Title II of the National Housing Act is classified generally to this subchapter (§1707 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

## CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1987, and not as part of the National Housing Act which comprises this chapter.

## AMENDMENTS

2005—Subsec. (a)(1)(A). Pub. L. 109-115, § 324(1), inserted “or, at the time of the violations, was” after “is”.

Subsec. (a)(1)(C). Pub. L. 109-115, § 324(2), inserted “or, at the time of the violations, was insured or held” after “held”.

2004—Subsec. (a)(1). Pub. L. 108-447, § 220(3), substituted “property” for “project” in second sentence.

Subsec. (a)(1)(A). Pub. L. 108-447, § 220(1), inserted “, nursing home, intermediate care facility, board and care home, assisted living facility, or hospital” after “project”.

Subsec. (a)(1)(B). Pub. L. 108-447, § 220(2), inserted “or, at the time of the violations, was” after “whose mortgage is”.

Subsec. (a)(2). Pub. L. 108-447, § 220(4), substituted “that owns or operates a property, as identified in the regulatory agreement, including but not limited to—” and subpars. (A) to (G) for “which owns a project, as identified in the regulatory agreement, including but not limited to any stockholder holding 25 percent or more interest of a corporation that owns the project; any beneficial owner under any business or trust; any officer, director, or partner of an entity owning the project; and any heir, assignee, successor in interest, or agent of any owner.”

Subsec. (c). Pub. L. 108-447, § 220(5), substituted “property that the court determines” for “project that the court determines” and “property or to the applicable insurance fund” for “project or to the applicable insurance fund”.

Subsec. (d). Pub. L. 108-447, § 220(6), substituted “a property’s” for “project”.

1997—Subsec. (a)(1). Pub. L. 105-65, § 563(1), substituted “(B) a regulatory agreement that applies to a multi-family project whose mortgage is insured or held by the Secretary under section 1701q of this title (including property subject to section 1701q of this title as it existed before November 28, 1990); (C) a regulatory agreement or such other form of regulatory control as may

be imposed by the Secretary that applies to mortgages insured or held by the Secretary under section 542 of the Housing and Community Development Act of 1992, but not reinsured under section 542 of the Housing and Community Development Act of 1992; or (D)” for “(or (B)” in first sentence and inserted “, or such other form of regulatory control as may be imposed by the Secretary,” after “regulatory agreement” in second sentence.

Subsec. (a)(2). Pub. L. 105-65, § 563(2), inserted “under section 1701q of this title (including section 1701q of this title as it existed before November 28, 1990) and under section 542 of the Housing and Community Development Act of 1992,” after “title II of National Housing Act.”

Subsec. (b). Pub. L. 105-65, § 563(3), inserted “, or such other form of regulatory control as may be imposed by the Secretary,” after “regulatory agreement”.

Subsec. (c). Pub. L. 105-65, § 563(4), in first sentence, inserted “, or such other form of regulatory control as may be imposed by the Secretary,” after “regulatory agreement” and inserted before period at end of second sentence “or, in the case of any project for which the mortgage is held by the Secretary under section 1701q of this title (including property subject to section 1701q of this title as it existed before November 28, 1990), to the project or to the Department for use by the appropriate office within the Department for administrative costs related to enforcement of the requirements of the various programs administered by the Secretary, as appropriate”.

Subsec. (d). Pub. L. 105-65, § 563(5), inserted “, or such other form of regulatory control as may be imposed by the Secretary,” after “regulatory agreement”.

**§ 1715z-5. Purchase of fee simple title from lessors****(a) Authorization to insure loans for purpose of financing purchases**

The Secretary is authorized, upon such terms and conditions as he may prescribe, to make commitments to insure and to insure loans made by financial institutions for the purpose of financing purchases by homeowners of the fee simple title to property on which their homes are located.

**(b) Definitions**

As used in this section—

(1) the term “financial institution” means a lender approved by the Secretary as eligible for insurance under section 1703 of this title or a mortgagee approved under section 1709(b)(1) of this title; and

(2) the term “homeowner” means a lessee under a long-term ground lease.

**(c) Eligibility for insurance**

To be eligible for insurance under this section, a loan shall—

(1) relate to property on which there is located a dwelling designed principally for a one-, two-, three-, or four-family residence;

(2) not exceed the cost of purchasing the fee simple title, or \$10,000 (\$30,000, if the property is located in Hawaii) per family unit, whichever is the lesser;

(3) be limited to an amount which when added to any outstanding indebtedness related to the property (as determined by the Secretary) creates a total outstanding indebtedness which does not exceed the applicable mortgage limit prescribed in section 1709(b) of this title;

(4) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee;