

nate such efforts, to the greatest extent possible, with activities and responsibilities under section 8 of the Department of Housing and Urban Development Act [42 U.S.C. 3536].”

§ 3537. Separability

Notwithstanding any other evidence of the intent of Congress, it is hereby declared to be the intent of Congress that if any provision of this chapter, or the application thereof to any persons or circumstances, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this chapter or its application to other persons and circumstances, but shall be confined in its operation to the provision of this chapter, or the application thereof to the persons and circumstances, directly involved in the controversy in which such judgment shall have been rendered.

(Pub. L. 89-174, § 10, Sept. 9, 1965, 79 Stat. 671.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 89-174, Sept. 9, 1965, 79 Stat. 667, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3531 of this title and Tables.

CODIFICATION

Section was formerly classified to section 624f of former Title 5, Executive Departments and Government Officers and Employees, prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, § 1, Sept. 1, 1966, 80 Stat. 378.

§ 3537a. Prohibition of advance disclosure of funding decisions

(a) Prohibited actions

During any selection process, no officer or employee of the Department of Housing and Urban Development shall knowingly disclose any covered selection information regarding such selection, directly or indirectly, to any person other than a person authorized by the Secretary to receive such information.

(b) Administrative remedies

If the Secretary receives or obtains information providing a reasonable basis to believe that a violation of subsection (a) of this section has occurred, the Secretary shall—

(1) in the case of a selection that has not been made, determine whether to terminate the selection process or take other appropriate actions; and

(2) in the case of a selection that has been made, determine whether to—

(A) void or rescind the selection, subject to review and determination on the record after opportunity for a hearing;

(B) impose sanctions upon the violating applicant selected, subject to review and determination on the record after opportunity for a hearing;

(C) permit the violating applicant selected to continue to participate in the program; or

(D) take any other actions that the Secretary considers appropriate.

(c) Civil money penalties

(1) In general

Whenever any employee of the Department knowingly and materially violates the prohibition in subsection (a) of this section, the Secretary may impose a civil money penalty on the employee in accordance with the provisions of this subsection. This 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 takes other disciplinary actions.

(2) Amount

The amount of the penalty, as determined by the Secretary, may not exceed \$10,000 for each violation.

(3) Agency procedures

(A) Establishment

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

(i) shall provide for the Secretary or other official of the Department to make the determination to impose a penalty or to use an administrative entity to make the determination;

(ii) shall provide for the imposition of a penalty only after the employee has been given an opportunity for a hearing on the record; and

(iii) may provide for review of any determination or order, or interlocutory ruling, arising from a hearing.

(B) 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 order. 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.

(C) Factors in determining amount of penalty

In determining the amount of a penalty under paragraph (2), consideration shall be given to such factors as the gravity of the offense, any history of prior disclosures of information on pending funding decisions made after 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 in regulations to be appropriate.

(D) Reviewability of imposition of a penalty

The Secretary’s determination or order imposing a penalty under paragraph (1) shall not be subject to review, except as provided in paragraph (4).

(4) Judicial review of agency determination

(A) In general

After exhausting all administrative remedies established by the Secretary under

paragraph (3)(A), an employee against whom the Secretary has imposed a civil money penalty under paragraph (1) may obtain a review of the penalty and such ancillary issues (such as any administrative sanctions under 24 C.F.R. part 25) as may be addressed in the notice of determination to impose a penalty under paragraph (3)(A)(i) 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.

(B) Objections not raised in hearing

The court shall not consider any objection that was not raised in the hearing conducted pursuant to paragraph (3)(A) 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.

(C) Scope of review

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

(D) 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.

(5) Action to collect penalty

If any employee fails to comply with the Secretary's determination or order imposing a civil money penalty under paragraph (1), after the determination or order is no longer subject to review as provided by paragraphs (3)(A) and (4), 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 employee 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.

(6) Settlement by Secretary

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

(7) Deposit of penalties

The Secretary shall deposit all civil money penalties collected under this subsection into miscellaneous receipts of the Treasury.

(d) Criminal penalties

Whoever willfully violates subsection (a) of this section by making a disclosure prohibited

by subsection (a) of this section to any applicant, or any officer, employee, representative, agent, or consultant of any applicant, shall be imprisoned not more than 5 years, or fined in accordance with title 18, or both.

(e) Definitions

For purposes of this section:

(1) Applicant

The term "applicant" means any applicant or candidate that is being considered for receiving assistance.

(2) Assistance

The term "assistance" means any grant, loan, subsidy, guarantee, or other financial assistance under a program administered by the Secretary that provides by statute, regulation, or otherwise for the competitive distribution of such assistance. The term does not include any mortgage insurance provided under a program administered by the Secretary.

(3) Covered selection information

The term "covered selection information" means—

(A) any information that is contained in any application or request for assistance, or any information regarding the decision of the Secretary to make available assistance or other information that is determined by the Secretary to be information that is not generally available to the public (not including program requirements and timing of the decision to make assistance available); and

(B) any information that is required by statute, regulation, or order to be confidential.

(4) Knowingly

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

(5) Selection

The term "selection" means the determination of which applicants for assistance are to receive assistance under the program.

(6) Selection process

The term "selection process" means the period with respect to a selection for assistance that begins with the development, preparation, and issuance of a solicitation or request for applications for the assistance and concludes with the selection of recipients of assistance, and includes the evaluation of applications.

(f) Regulations

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

(g) Applicability

This section shall apply only with respect to violations that occur on or after December, 15, 1989.

(Pub. L. 89-174, §12, as added Pub. L. 101-235, title I, §103, Dec. 15, 1989, 103 Stat. 1995.)

§ 3537b. Repealed. Pub. L. 104-65, § 11(b)(1), Dec. 19, 1995, 109 Stat. 701

Section, Pub. L. 89-174, § 13, as added Pub. L. 101-235, title I, § 112, Dec. 15, 1989, 103 Stat. 2016; amended Pub. L. 102-550, title IX, § 926, Oct. 28, 1992, 106 Stat. 3885, related to registration of and reports by persons spending money to influence Department decisions.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1996, except as otherwise provided, see section 24 of Pub. L. 104-65, set out as an Effective Date note under section 1601 of Title 2, The Congress.

§ 3537c. Prohibition of lump-sum payments

In providing relocation assistance in connection with any program administered by the Department of Housing and Urban Development, the Secretary may not make lump-sum payments to any displaced residential tenant, except where necessary to cover—

- (1) moving expenses;
- (2) a downpayment on the purchase of a replacement residence, including a condominium unit or membership in a cooperative housing association; or
- (3) any incidental expenses related to paragraph (1) or (2).

(Pub. L. 89-174, § 14, as added Pub. L. 102-550, title IX, § 922, Oct. 28, 1992, 106 Stat. 3884.)

§ 3538. Rescheduling and refinancing of Federal loans

The Secretary of Housing and Urban Development is authorized to refinance any note or other obligation which is held by him in connection with any loan made by the Department of Housing and Urban Development or its predecessor in interest, or which is included within the revolving fund for liquidating programs established by the Independent Offices Appropriation Act of 1955 [12 U.S.C. 1701g-5], where he finds such refinancing necessary because of the loss, destruction, or damage (as a result of a major disaster) to property or facilities securing such obligations. The Secretary may authorize a suspension in the payment of principal and interest charges on, and an additional extension in the maturity of, any such loan for a period not to exceed five years if he determines that such action is necessary to avoid severe financial hardship.

(Pub. L. 91-606, title II, § 236(b), Dec. 31, 1970, 84 Stat. 1754.)

REFERENCES IN TEXT

The Independent Offices Appropriation Act of 1955, referred to in text, is act June 24, 1954, ch. 359, 68 Stat. 272. Provisions of the act which established the revolving fund for liquidating programs are classified to section 1701g-5 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was not enacted as part of the Department of Housing and Urban Development Act which comprises this chapter.

Section was formerly classified to section 4455(b) of this title.

EFFECTIVE DATE

Section effective Dec. 31, 1970, see section 304 of Pub. L. 91-606, set out as an Effective Date of 1970 Amend-

ment note under section 165 of Title 26, Internal Revenue Code.

§ 3539. Housing and Urban Development Disaster Assistance Fund

The Secretary of Housing and Urban Development is authorized to establish a fund and to transfer to such fund from appropriations or funds available to the Department of Housing and Urban Development, such amounts as may be necessary to provide disaster assistance for which the Secretary has been requested by the President to make resources available pursuant to the authority of the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.].

(Pub. L. 92-383, title IV, § 406, Aug. 14, 1972, 86 Stat. 553; 1973 Reorg. Plan No. 1, §§ 1, 3(a)(1), eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089; Ex. Ord. No. 11749, § 2(1), Dec. 10, 1973, 38 F.R. 34177; Ex. Ord. No. 12148, § 4-201, July 20, 1979, 44 F.R. 43239; Pub. L. 100-707, title I, § 109(s), Nov. 23, 1988, 102 Stat. 4710.)

REFERENCES IN TEXT

The Disaster Relief and Emergency Assistance Act, referred to in text, is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, known as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Department of Housing and Urban Development Act which comprises this chapter.

Section was formerly classified to section 4413a of this title.

AMENDMENTS

1988—Pub. L. 100-707 substituted “Disaster Relief and Emergency Assistance Act” for “Disaster Relief Act of 1970 (84 Stat. 1744)”.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

“President” substituted in text for “Director of the Office of Emergency Preparedness” pursuant to section 1 of Reorganization Plan No. 1 of 1973, eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089, set out in the Appendix to Title 5, Government Organization and Employees.

Previously, functions of Director of Office of Emergency Preparedness under Disaster Relief Act of 1970, transferred to President by Reorg. Plan No. 1 of 1973, had been transferred to Secretary of Housing and Urban Development by Ex. Ord. No. 11749, Dec. 10, 1973, 38 F.R. 34177, which superseded Ex. Ord. No. 11725, June