

erally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, and amended. Title II of the Act, which was classified generally to subchapter II (§1437aa et seq.) of chapter 8 of this title, was repealed by Pub. L. 104-330, title V, §501(a), Oct. 26, 1996, 110 Stat. 4041. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The amendments made by subsection (c)(1), referred to in subsec. (d)(2), (3), mean the amendments made by section 904(c)(1) of Pub. L. 100-628, which enacted section 503(i) and amended section 504(a)(2) of this title. See Codification note below.

#### CODIFICATION

Section is comprised of section 904 of Pub. L. 100-628. Subsec. (c)(1) of section 904 of Pub. L. 100-628 amended sections 503 and 504 of this title.

Section was enacted as part of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, and not as part of the Department of Housing and Urban Development Act which comprises this chapter.

#### AMENDMENTS

1999—Subsec. (b)(4). Pub. L. 106-74 inserted “, or the owner responsible for determining the participant’s eligibility or level of benefits,” after “appropriate public housing agency” and substituted “verifying income” for “the public housing agency verifying income”.

1998—Subsec. (b)(4). Pub. L. 105-276, §508(d)(2)(A), which directed the amendment of subsec. (b) by adding par. (4) at end, was executed by adding par. (4) after par. (3), to reflect the probable intent of Congress.

Subsec. (c)(2)(A). Pub. L. 105-276, §508(d)(2)(B)(i), in introductory provisions, inserted “, pursuant to section 3(d)(1) of the United States Housing Act of 1937 from the applicant or participant,” after “unemployment compensation law” and “or 3(d)(1)” after “such section 503(i)”.

Subsec. (c)(3)(A). Pub. L. 105-276, §508(d)(2)(B)(ii)(I), (II), in first sentence, inserted “, section 3(d)(1) of the United States Housing Act of 1937,” after “503(i) of this title” and “or agreement, as applicable,” after “consent”.

Subsec. (c)(3)(B). Pub. L. 105-276, §508(d)(2)(B)(ii)(III), (IV), in first sentence, inserted “section 3(d)(1) of the United States Housing Act of 1937,” after “503(i) of this title,” and “such section 3(d)(1),” after “such section 503(i),” wherever appearing.

1993—Subsec. (a)(4). Pub. L. 103-66, §3003(1), added par. (4).

Subsec. (b). Pub. L. 103-66, §3003(2)(D), in concluding provisions, substituted “Except as provided in this subsection, this” for “This”.

Subsec. (b)(3). Pub. L. 103-66, §3003(2)(A)-(C), added par. (3).

Subsec. (c). Pub. L. 103-66, §3003(5), struck out “State employment” after “Access to” in heading.

Subsec. (c)(2)(A). Pub. L. 103-66, §3003(3)(A)(i), in introductory provisions, inserted “or pursuant to section 6103(l)(7)(D)(ix) of title 26 from the Commissioner of Social Security or the Secretary of the Treasury” after “compensation law” and “(in the case of information obtained pursuant to such section 503(i))” before “representatives”.

Subsec. (c)(2)(A)(ii). Pub. L. 103-66, §3003(3)(A)(ii), substituted “owner or public housing agency” for “owner” wherever appearing.

Subsec. (c)(2)(B)(i) to (iii). Pub. L. 103-66, §3003(3)(B), substituted “wages, other earnings or income,” for “wages” wherever appearing.

Subsec. (c)(3)(A). Pub. L. 103-66, §3003(4)(A), inserted “or section 6103(l)(7)(D)(ix) of title 26 without consent pursuant to subsection (b) of this section or” after “section 503(i) of this title”.

Subsec. (c)(3)(B)(i). Pub. L. 103-66, §3003(4)(B)(i), added cl. (i) and struck out former cl. (i) which read as follows: “a negligent or knowing disclosure of information referred to in this section or in section 503(i) of this

title about such person by an officer or employee of any public housing agency or owner (or employee thereof), which disclosure is not authorized by this section, such section 503(i), or any regulation implementing this section or such section 503(i), or”.

Subsec. (c)(3)(B)(ii). Pub. L. 103-66, §3003(4)(B)(ii), inserted “such section 6103(l)(7)(D)(ix),” after “503(i)”.

1992—Subsec. (e). Pub. L. 102-550 added subsec. (e).

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105-276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105-276, set out as a note under section 1437 of this title.

#### RELEASE FORMS

Pub. L. 102-550, title IX, §903(b), Oct. 28, 1992, 106 Stat. 3868, directed Secretary of Housing and Urban Development, not later than the expiration of the 180-day period beginning Oct. 28, 1992, to develop a release form that fulfilled the requirements of this section and provided that during the period beginning Oct. 28, 1992, and ending upon implementation of the use of the new form, the benefits provided to an applicant or participant under any program of Department of Housing and Urban Development, or eligibility for such benefits, could not be terminated, denied, suspended, or reduced because of any failure to sign any form authorizing the release of information from any third party, if the applicant or participant otherwise disclosed all financial information relating to the application or recertification.

### § 3545. HUD accountability

#### (a) Notice regarding assistance

##### (1) Publication of notice of availability

The Secretary shall publish in the Federal Register notice of the availability of any assistance under any program or discretionary fund administered by the Secretary.

##### (2) Publication of application procedures

The Secretary shall publish in the Federal Register a description of the form and procedures by which application for the assistance may be made, and any deadlines relating to the award or allocation of the assistance. Such description shall be designed to help eligible applicants to apply for such assistance.

##### (3) Publication of selection criteria

Not less than 30 days before any deadline by which applications or requests for assistance under any program or discretionary fund administered by the Secretary must be submitted, the Secretary shall publish in the Federal Register the criteria by which selection for the assistance will be made. Subject to section 1439 of this title, such criteria shall include any objective measures of housing need, project merit, or efficient use of resources that the Secretary determines are appropriate and consistent with the statute under which the assistance is made available.

##### (4) Documentation of decisions

(A) The Secretary shall award or allocate assistance only in response to a written application in a form approved in advance by the Secretary, except where other award or allocation procedures are specified in statute.

(B) The Secretary shall ensure that documentation and other information regarding each application for assistance is sufficient to indicate the basis on which any award or allocation was made or denied. The preceding sentence shall apply to—

(i) any application for an award or allocation of assistance made by the Secretary to a State, unit of general local government, or other recipient of assistance, and

(ii) any application for a subsequent award or allocation of such assistance by such State, unit of general local government or other recipient.

(C)(i) The Secretary shall notify the public of all funding decisions made by the Department. The Secretary shall require any State or unit of general local government to notify the public of the award or allocation of such funding to subsequent recipients. The notification shall include the following elements for each funding decision:

(I) the name and address of each funding recipient;

(II) the name or other means of identifying the project, activity, or undertaking for each funding recipient;

(III) the dollar amount of the funding for each project, activity, or undertaking;

(IV) the citation to the statutory, regulatory, or other criteria under which the funding decision was made; and

(V) such additional information as the Secretary deems appropriate for a clear and full understanding of the funding decision.

(ii) The notification referred to in clause (i) of this subsection shall be published as a Notice in the Federal Register at least quarterly.

(iii) For purposes of this subparagraph, the term “funding decision” means the decision of the Secretary to make available grants, loans, or any other form of financial assistance to an individual or to an entity, including (but not limited to) a State or local government or agency thereof (including a public housing agency), an Indian tribe, or a nonprofit organization, under any program administered by the Department that provides, by statute, regulation, or otherwise, for the competitive distribution of financial assistance.

(D) The Secretary shall publish a notice in the Federal Register at least annually informing the public of the allocation of assistance under section 1439(d)(1)(A) of this title.

(E) The Secretary shall ensure that each application and all related documentation and other information referred to in subparagraph (B), including each letter of support, is readily available for public inspection for a period of not less than 5 years, beginning not less than 30 days following the date on which the award or allocation is made.

#### **(5) Emergency exception**

The Secretary may waive the requirements of paragraphs (1), (2), and (3) if the Secretary determines that the waiver is required for appropriate response to an emergency. Not less than 30 days after providing a waiver under the preceding sentence, the Secretary shall

publish in the Federal Register the Secretary's reasons for so doing.

#### **(b) Disclosures by applicants**

The Secretary shall require the disclosure of information with respect to any application for assistance within the jurisdiction of the Department for a project application submitted to the Secretary or to any State or unit of general local government by any applicant who has received or, in the determination of the Secretary, can reasonably be expected to receive assistance within the jurisdiction of the Department in excess of \$200,000 in the aggregate during any fiscal year or such lower amount as the Secretary may establish by regulation. Such information shall include the following:

##### **(1) Other government assistance**

Information regarding any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is expected to be made available with respect to the project or activities for which the applicant is seeking assistance. Such related assistance shall include but not be limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

##### **(2) Interested parties**

The name and pecuniary interest of any person who has a pecuniary interest in the project or activities for which the applicant is seeking assistance. Persons with a pecuniary interest in the project or activity shall include but not be limited to any developers, contractors, and consultants involved in the application for assistance or the planning, development, or implementation of the project or activity. For purposes of this paragraph, residency of an individual in housing for which assistance is being sought shall not, by itself, be considered a pecuniary interest.

##### **(3) Expected sources and uses**

A report satisfactory to the Secretary of the expected sources and uses of funds that are to be made available for the project or activity.

##### **(c) Updating of disclosure**

During the period when an application is pending or assistance is being provided, the applicant shall update the disclosure required under the previous subsection within 30 days of any substantial change.

##### **(d) Limitation of assistance**

The Secretary shall certify that assistance within the jurisdiction of the Department, as such term is defined in subsection (m), except that for purposes of this subsection such term shall not include any mortgage insurance provided pursuant to title II of the National Housing Act (12 U.S.C. 1707 et seq.)<sup>1</sup> to any housing project shall not be more than is necessary to provide affordable housing after taking account of assistance described in subsection (b)(1) of this section. The Secretary shall adjust the amount of such assistance awarded or allocated

<sup>1</sup> So in original. Probably should be followed by a comma.

to an applicant to compensate in whole or in part, as the Secretary determines to be appropriate, for any changes reported under subsection (c) of this section.

**(e) Administrative remedies**

If the Secretary receives or obtains information providing a reasonable basis to believe that a violation of subsection (b) or (c) 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 violator, including debarment, subject to review and determination on the record after opportunity for a hearing;

(C) recapture any funds that have been disbursed;

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

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

The Secretary shall publish in the Federal Register a descriptive statement of each determination made and action taken under this subsection.

**(f) Civil money penalties**

**(1) In general**

Whenever any person knowingly and materially violates any provision of subsection (b) or (c) of this section, the Secretary may impose a civil money penalty on that person in accordance with the provisions of this section. 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 imposes other administrative sanctions.

**(2) Amount of penalty**

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

**(g) Agency procedures**

**(1) In general**

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

(A) shall provide for the Secretary to make the determination to impose the penalty or to use an administrative entity to make the determination;

(B) shall provide for the imposition of a penalty only after the person 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.

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, the determination or order shall be final.

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

In determining the amount of a penalty under subsection (f) of this section, consideration shall be given to such factors as the gravity of the offense, 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.

**(3) Reviewability of imposition of a penalty**

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

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

**(1) In general**

After exhausting all administrative remedies established by the Secretary under subsection (g)(1) of this section, a person against whom the Secretary has imposed a civil money penalty under subsection (f) 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 (g)(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 order or determination of the Secretary 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 (g)(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 the 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.

**(i) Action to collect penalty**

If any person fails to comply with the determination or order of the Secretary imposing a civil money penalty under subsection (f) of this section, after the determination or order is no

longer subject to review as provided by subsections (g)(1) and (h) 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 person 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.

**(j) Settlement by Secretary**

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

**(k) Regulations**

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

**(l) Deposit of penalties**

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

**(m) Definitions**

For the purpose of this section—

(1) The term "Department" means the Department of Housing and Urban Development.

(2) The term "Secretary" means the Secretary of Housing and Urban Development.

(3) The term "person" means an individual (including a consultant, lobbyist, or lawyer), corporation, company, association, authority, firm, partnership, society, State, local government, or any other organization or group of people.

(4) The term "assistance within the jurisdiction of the Department" includes any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or pool of mortgages.

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

**(n) Effective date**

This section shall take effect on the date specified in regulations implementing this section that are issued by the Secretary after notice and public comment.

(Pub. L. 101-235, title I, § 102, Dec. 15, 1989, 103 Stat. 1990; Pub. L. 110-289, div. B, title VIII, § 2834(a), July 30, 2008, 122 Stat. 2869.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (d), is act June 27, 1934, ch. 847, 48 Stat. 1246. Title II of the Act is classified generally to subchapter II (§ 1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

CODIFICATION

Section was enacted as part of the Department of Housing and Urban Development Reform Act of 1989,

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

AMENDMENTS

2008—Subsec. (d). Pub. L. 110-289 inserted “, as such term is defined in subsection (m), except that for purposes of this subsection such term shall not include any mortgage insurance provided pursuant to title II of the National Housing Act (12 U.S.C. 1707 et seq.)” after “Department” and “such” after “amount of”.

SUBSIDY LAYERING REVIEW

Pub. L. 102-550, title IX, § 911, Oct. 28, 1992, 106 Stat. 3875, as amended by Pub. L. 103-233, title III, § 308, Apr. 11, 1994, 108 Stat. 379, provided that:

“(a) CERTIFICATION OF SUBSIDY LAYERING COMPLIANCE.—The requirements of section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 [42 U.S.C. 3545(d)] may be satisfied in connection with a project receiving assistance under a program that is within the jurisdiction of the Department of Housing and Urban Development and under section 42 of the Internal Revenue Code of 1986 [26 U.S.C. 42] by a certification by a housing credit agency to the Secretary, submitted in accordance with guidelines established by the Secretary, that the combination of assistance within the jurisdiction of the Secretary and other government assistance provided in connection with a property for which assistance is to be provided within the jurisdiction of the Department of Housing and Urban Development and under section 42 of the Internal Revenue Code of 1986 shall not be any greater than is necessary to provide affordable housing.

“(b) IN PARTICULAR.—The guidelines established pursuant to subsection (a) shall—

“(1) require that the amount of equity capital contributed by investors to a project partnership is not less than the amount generally contributed by investors in current market conditions, as determined by the housing credit agency; and

“(2) require that project costs, including developer fees, are within a reasonable range, taking into account project size, project characteristics, project location and project risk factors, as determined by the housing credit agency.

“(c) REVOCATION BY SECRETARY.—If the Secretary determines that a housing credit agency has failed to comply with the guidelines established under subsection (a), the Secretary—

“(1) may inform the housing credit agency that the agency may no longer submit certification of subsidy layering compliance under this section; and

“(2) shall carry out section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 [42 U.S.C. 3545(d)] relating to affected projects allocated a low-income housing tax credit pursuant to section 42 of the Internal Revenue Code of 1986 [26 U.S.C. 42].

“(d) APPLICABILITY.—Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(d)) shall apply only to projects for which an application for assistance or insurance was filed after the date of enactment of the Housing and Urban Development Reform Act [probably should be Department of Housing and Urban Development Reform Act of 1989, enacted Dec. 15, 1989].”

**§ 3545a. Notification of issuance of electronic notice of availability of assistance or funding to be competitively awarded for certain programs or discretionary funds**

The Secretary of the Department of Housing and Urban Development shall, for fiscal year 2014 and subsequent fiscal years, notify the public through the Federal Register and other means, as determined appropriate, of the issuance of a notice of the availability of assistance or notice of funding availability (NOFA) for any