

(3) Factors in determining amount of penalty

In determining the amount of a penalty under subsection (b) or (c), 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) shall not be subject to review, except as provided in subsection (e).

(e) Judicial review of agency determination**(1) In general**

After exhausting all administrative remedies established by the Secretary under subsection (d)(1), a mortgagor against whom the Secretary has imposed a civil money penalty under subsection (b) or (c) 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) 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) 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), after the determination or order is no longer subject to review as provided by subsections (d)(1) and (e), 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 mort-

gagor 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) 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—

- (1) a description of the substantial capital repairs or the proposed conversion activities for either an assisted living facility or service-enriched housing for which a grant under this section is requested;
- (2) the amount of the grant requested to complete the substantial capital repairs or conversion activities;
- (3) a description of the resources that are expected to be made available, if any, in conjunction with the grant under this section; and
- (4) such other information or certifications that the Secretary determines to be necessary or appropriate.

(d) Requirements for services**(1) Sufficient evidence of firm funding commitments**

The Secretary may not make a grant under this section for conversion activities unless an application for a grant submitted pursuant to subsection (c) contains sufficient evidence, in the determination of the Secretary, of firm commitments for the funding of services to be provided in the assisted living facility or service-enriched housing, which may be provided by third parties.

(2) Required evidence

The Secretary shall require evidence that each recipient of a grant for service-enriched housing under this section provides relevant and timely disclosure of information to residents or potential residents of such housing relating to—

- (A) the services that will be available at the property to each resident, including—
 - (i) the right to accept, decline, or choose such services and to have the choice of provider;

- (ii) the services made available by or contracted through the grantee;

- (iii) the identity of, and relevant information for, all agencies or organizations providing any services to residents, which agencies or organizations shall provide information regarding all procedures and requirements to obtain services, any charges or rates for the services, and the rights and responsibilities of the residents related to those services;

(B) the availability, identity, contact information, and role of the service coordinator; and

(C) such other information as the Secretary determines to be appropriate to ensure that residents are adequately informed of the services options available to promote resident independence and quality of life.

(e) Selection criteria

The Secretary shall select applications for grants under this section based upon selection criteria, which shall be established by the Secretary and shall include—

(1) in the case of a grant for substantial capital repairs, the extent to which the project to be repaired is in need of such repair, including such factors as the age of improvements to be repaired, and the impact on the health and safety of residents of failure to make such repairs;

(2) in the case of a grant for conversion activities, the extent to which the conversion is likely to provide assisted living facilities or service-enriched housing that are needed or are expected to be needed by the categories of elderly persons that the assisted living facility¹ service-enriched housing is intended to serve, with a special emphasis on very low-income elderly persons who need assistance with activities of daily living;

(3) the inability of the applicant to fund the repairs or conversion activities from existing financial resources, as evidenced by the applicant's financial records, including assets in the applicant's residual receipts account and reserves for replacement account;

(4) the extent to which the applicant has evidenced community support for the repairs or conversion, by such indicators as letters of support from the local community for the repairs or conversion and financial contributions from public and private sources;

(5) in the case of a grant for conversion activities, the extent to which the applicant demonstrates a strong commitment to promoting the autonomy and independence of the elderly persons that the assisted living facility or service-enriched housing is intended to serve;

(6) in the case of a grant for conversion activities, the quality, completeness, and managerial capability of providing the services which the assisted living facility or service-enriched housing intends to provide to elderly residents, especially in such areas as meals, 24-hour staffing, and on-site health care; and

(7) such other criteria as the Secretary determines to be appropriate to ensure that

¹ So in original. Probably should be followed by "or".

funds made available under this section are used effectively.

(f) Section 8 project-based assistance

(1) Eligibility

Notwithstanding any other provision of law, a multifamily project which includes one or more dwelling units that have been converted to assisted living facilities or service-enriched housing using grants made under this section shall be eligible for project-based assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], in the same manner in which the project would be eligible for such assistance but for the assisted living facilities or service-enriched housing in the project.

(2) Calculation of rent

For assistance pursuant to this subsection, the maximum monthly rent of a dwelling unit that is an assisted living facility or service-enriched housing with respect to which assistance payments are made shall not include charges attributable to services relating to assisted living.

(g) Definitions

For purposes of this section—

(1) the term “assisted living facility” has the meaning given such term in section 1715w(b) of this title;

(2) the term “service-enriched housing” means housing that—

(A) makes available through licensed or certified third party service providers supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money, using the telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing and therapy;

(B) includes the position of service coordinator, which may be funded as an operating expense of the property;

(C) provides separate dwelling units for residents, each of which contains a full kitchen and bathroom and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the housing; and

(D) provides residents with control over health care and supportive services decisions, including the right to accept, decline, or choose such services, and to have the choice of provider; and

(3) the definitions in section 1701(q)(k)² of this title shall apply.

(h) Authorization of appropriations

There is authorized to be appropriated for providing grants under this section such sums as may be necessary for fiscal year 2000.

² See References in Text note below.

(Pub. L. 86-372, title II, §202b, as added and amended Pub. L. 106-74, title V, §§522, 523(b), Oct. 20, 1999, 113 Stat. 1103, 1105; Pub. L. 111-372, title III, §301, Jan. 4, 2011, 124 Stat. 4082.)

REFERENCES IN TEXT

Section 1701(q)(k) of this title, referred to in subsec. (g)(3), probably should be a reference to section 202(k) of this Act, which is classified to section 1701q(k) of this title.

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.

AMENDMENTS

2011—Pub. L. 111-372, §301(a), inserted “and other purposes” after “assisted living facilities” in section catchline.

Subsec. (a)(2). Pub. L. 111-372, §301(b), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (c)(1). Pub. L. 111-372, §301(c), inserted “for either an assisted living facility or service-enriched housing” after “activities”.

Subsec. (d). Pub. L. 111-372, §301(d), amended subsec. (d) generally. Prior to amendment, text read as follows: “The Secretary may not make a grant under this section for conversion activities unless the application contains sufficient evidence, in the determination of the Secretary, of firm commitments for the funding of services to be provided in the assisted living facility, which may be provided by third parties.”

Subsec. (e)(2). Pub. L. 111-372, §301(e)(1), inserted “or service-enriched housing” after “facilities” and “service-enriched housing” after “facility”.

Subsec. (e)(5). Pub. L. 111-372, §301(e)(2), inserted “or service-enriched housing” after “facility”.

Subsec. (e)(6). Pub. L. 111-372, §301(e)(3), inserted “or service-enriched housing” after “facility”.

Subsec. (f)(1). Pub. L. 111-372, §301(f)(1), inserted “or service-enriched housing” after “facilities” in two places.

Subsec. (f)(2). Pub. L. 111-372, §301(f)(2), inserted “or service-enriched housing” after “facility”.

Subsec. (g). Pub. L. 111-372, §301(g), amended subsec. (g) generally. Prior to amendment, subsec. (g) related to definitions for purposes of this section.

1999—Subsecs. (f) to (h). Pub. L. 106-74 added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

§ 1701q-3. Funds for housing for elderly and persons with disabilities available for cost of maintenance and disposal of such properties

Notwithstanding any other provision of law, for this fiscal year and every fiscal year thereafter, funds appropriated for housing for the elderly, as authorized by section 1701q of this title, as amended, and for supportive housing for persons with disabilities, as authorized by section 8013 of title 42, shall be available for the cost of maintaining and disposing of such properties that are acquired or otherwise become the responsibility of the Department.

(Pub. L. 109-115, div. A, title III, §313, Nov. 30, 2005, 119 Stat. 2463.)

CODIFICATION

Section was enacted as part of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006, and also as part of the Transportation, Treasury, Housing and Urban Develop-