

ments pursuant to section 236(f)(3) of the National Housing Act [12 U.S.C. 1715z-1(f)(3)] with respect only to periods commencing on or after such date.”

UNCOMMITTED BALANCES OF EXCESS RENTAL CHARGES

Pub. L. 110-161, div. K, title II, Dec. 26, 2007, 121 Stat. 2425, which provided in part for transfer from the Rental Housing Assistance Fund of all uncommitted balances of excess rental charges as of Sept. 30, 2007, and any collections made during fiscal year 2008 and all subsequent fiscal years, to the Flexible Subsidy Fund, was repealed by Pub. L. 113-76, div. L, title II, § 232, Jan. 17, 2014, 128 Stat. 634.

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 109-115, div. A, title III, Nov. 30, 2005, 119 Stat. 2453, repealed by Pub. L. 112-55, div. C, title II, § 235, Nov. 18, 2011, 125 Stat. 702.

Pub. L. 108-447, div. I, title II, Dec. 8, 2004, 118 Stat. 3308, repealed by Pub. L. 112-55, div. C, title II, § 235, Nov. 18, 2011, 125 Stat. 702.

Pub. L. 108-199, div. G, title II, Jan. 23, 2004, 118 Stat. 385.

Pub. L. 108-7, div. K, title II, Feb. 20, 2003, 117 Stat. 494.

Pub. L. 107-73, title II, Nov. 26, 2001, 115 Stat. 669.

Pub. L. 106-377, §1(a)(1) [title II], Oct. 27, 2000, 114 Stat. 1441, 1441A-19.

Pub. L. 106-74, title II, Oct. 20, 1999, 113 Stat. 1064.

Pub. L. 105-276, title II, Oct. 21, 1998, 112 Stat. 2480.

Pub. L. 105-65, title II, Oct. 27, 1997, 111 Stat. 1361.

Pub. L. 104-134, title I, §101(e) [title II], Apr. 26, 1996, 110 Stat. 1321-257, 1321-270.

SUBMISSION OF ELECTRONIC INVOICES

Pub. L. 109-115, div. A, title III, §325, Nov. 30, 2005, 119 Stat. 2466, provided that: “Notwithstanding any other provision of law, for fiscal year 2006 and thereafter, all mortgagees receiving interest reduction payments under section 236 of the National Housing Act (12 U.S.C. 1715z-1) shall submit only electronic invoices to the Department of Housing and Development in order to receive such payments. The mortgagees shall comply with this requirement no later than 90 days from the date of enactment of this provision [Nov. 30, 2005].”

TREATMENT OF EXCESS CHARGES PREVIOUSLY COLLECTED

Pub. L. 106-569, title VIII, §861(b), Dec. 27, 2000, 114 Stat. 3025, provided that: “Any excess charges that a project owner may retain pursuant to the amendments made by subsections (b) and (c) of section 532 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (Public Law 106-74; 113 Stat. 1116) [amending this section] that have been collected by such owner since the date of the enactment of such appropriations Act [Oct. 20, 1999] and that such owner has not remitted to the Secretary of Housing and Urban Development may be retained by such owner unless such Secretary otherwise provides. To the extent that a project owner has remitted such excess charges to the Secretary since such date of the enactment, the Secretary may return to the relevant project owner any such excess charges remitted. Notwithstanding any other provision of law, amounts in the Rental Housing Assistance Fund, or heretofore or subsequently transferred from the Rental Housing Assistance Fund to the Flexible Subsidy Fund, shall be available to make such return of excess charges previously remitted to the Secretary, including the return of excess charges referred to in section 532(e) of such appropriations Act [see Effective Date of 1998 Amendment note above].”

RENTAL HOUSING ASSISTANCE; EXTENSION OF TIME WITHIN WHICH TO SUBMIT APPLICATION

Pub. L. 101-45, title II, June 30, 1989, 103 Stat. 127, provided: “That notwithstanding the second sentence of such section 236(r) [12 U.S.C. 1715z-1(r)], an application

shall be eligible for assistance under such section if the mortgagee submits an application within five hundred and forty-eight days after the effective date of this Act [June 30, 1989].”

DIRECT FINANCING STUDY BY SECRETARY OF HOUSING AND URBAN DEVELOPMENT AND SECRETARY OF THE TREASURY; REPORT TO CONGRESS; TRANSMITTAL NOT LATER THAN ONE YEAR AFTER AUGUST 22, 1974

Pub. L. 93-383, title VIII, §822, Aug. 22, 1974, 88 Stat. 740, directed Secretary of Housing and Urban Development and Secretary of the Treasury to study feasibility of financing programs authorized under section 236 of the National Housing Act [this section] and section 802 of this Act [42 U.S.C. 1440] through various financing methods, including direct loans from Federal Financing Bank, with a view to determining whether there was any method that would result in net savings to Federal Government (after taking into account direct and indirect effects of such method) and to transmit to Congress a report on study not later than one year after Aug. 22, 1974.

TRANSFER OF INSURANCE OF MORTGAGES NOT FINALLY ENDORSED FOR INSURANCE UNDER SECTION 1715(d)(3) OF THIS TITLE

Pub. L. 90-448, title II, §201(c), Aug. 1, 1968, 82 Stat. 502, provided that: “The Secretary of Housing and Urban Development is authorized, upon such terms and conditions as he may prescribe, to transfer to section 236(j) of the National Housing Act [12 U.S.C. 1715z-1(j)] the insurance of a mortgage which has not been [sic] finally endorsed for insurance under section 221(d)(3) of such Act [12 U.S.C. 1715(d)(3)] and which has been approved for the below-market interest rate prescribed in the proviso of section 221(d)(5) of such Act [12 U.S.C. 1715(d)(5)].”

INSURANCE OF MORTGAGES GIVEN TO REFINANCE MORTGAGE LOANS MADE UNDER SECTION 1701q OF THIS TITLE

Pub. L. 90-448, title II, §201(d), Aug. 1, 1968, 82 Stat. 502, provided that: “The Secretary of Housing and Urban Development is authorized, upon such terms and conditions as he may prescribe, to insure under section 236(j) of the National Housing Act [12 U.S.C. 1715z-1(j)] a mortgage meeting the requirements of such section which is given to refinance a mortgage loan made under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q]; *Provided*, That the application for such insurance is filed with the Secretary on or before the date of project completion, or within such reasonable time thereafter as the Secretary may permit.”

CEILING ON TOTAL INTEREST REDUCTION PAYMENTS IN ANY FISCAL YEAR

Pub. L. 90-608, ch. IV, §401, Oct. 21, 1968, 82 Stat. 1193, provided in part that the total payments that may be required in any fiscal year by all contracts entered into under section 236 of the National Housing Act [this section] shall not exceed \$25,000,000.

Pub. L. 91-47, title II, §201, July 22, 1969, 83 Stat. 53, increased by \$45,000,000 the limitation on total payments that may be required in any fiscal year by all contracts entered into under section 236 of the National Housing Act (82 Stat. 498) [this section].

§ 1715z-1a. Assistance for troubled multifamily housing projects

(a) Purpose

The purposes of this section are to provide assistance to restore or maintain the financial soundness, to assist in the improvement of the management, to permit capital improvements to be made to maintain certain projects as decent, safe, and sanitary housing, and to maintain the low- to moderate-income character of certain

projects assisted or approved for assistance under the National Housing Act [12 U.S.C. 1701 et seq.], the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the Housing Act of 1959, or the Housing and Urban Development Act of 1965, without regard to whether such projects are insured under the National Housing Act.

(b) Availability of financial assistance

The Secretary of Housing and Urban Development (hereinafter referred to in this section as the "Secretary") may make available, and contract to make available, to such extent and in such amounts as may be approved in appropriation Acts, financial assistance to owners of rental or cooperative housing projects meeting the requirements of this section. Such assistance shall be made on an annual basis and in accordance with the provisions of this section, without regard to whether such projects are insured under the National Housing Act [12 U.S.C. 1701 et seq.].

(c) Eligibility for financial assistance

A rental or cooperative housing project is eligible for assistance under this section only if such project—

(1)(A) is assisted under section 236 [12 U.S.C. 1715z-1] or the proviso of section 221(d)(5) of the National Housing Act [12 U.S.C. 1715(d)(5)], or under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], or received a loan under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q] more than 15 years before the date on which assistance is made available under this section;

(B) is assisted under section 23 of the United States Housing Act of 1937 [42 U.S.C. 1421b], as in effect immediately before January 1, 1975, section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] following conversion to such assistance from assistance under section 236 of the National Housing Act [12 U.S.C. 1715z-1] or section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s]; or

(C) met the criteria specified in subparagraph (A) of this paragraph before the acquisition of such project by the Secretary and has been sold by the Secretary, subject to a mortgage insured or held by the Secretary and subject to an agreement (in effect during the period of assistance under this section) which provides that the low- and moderate-income character of the project will be maintained; except that, with respect to projects sold after October 1, 1978, assistance shall be available for a period not to exceed three years; and

(2) meets such other requirements consistent with the purposes of this section as the Secretary may prescribe.

(d) Criteria for granting financial assistance

No assistance may be made available under this section unless the Secretary has determined that—

(1) such assistance, when considered with other resources available to the project, is necessary and, in the determination of the Secretary, will restore or maintain the financial or physical soundness of the project and maintain the low- and moderate-income char-

acter of the project, and the owner has agreed to maintain the low- and moderate-income character of such project for a period at least equal to the remaining term of the project mortgage;

(2) the assistance which could reasonably be expected to be provided over the useful life of the project will be less costly to the Federal Government than other reasonable alternatives by which the Secretary could maintain the low- and moderate-income character of the project;

(3) the owner of the project, together with the mortgagee in the case of a project not insured under the National Housing Act [12 U.S.C. 1701 et seq.], has provided or has agreed to provide assistance to the project in such manner as the Secretary may determine;

(4) the project is or can reasonably be made structurally sound, as determined on the basis of information obtained as a result of an on-site inspection of the project;

(5) the management of the project is being conducted by persons who meet minimum levels of competency and experience prescribed by the Secretary;

(6) the project is being operated and managed in accordance with a management-improvement-and-operating plan which is designed to reduce the operating costs of the project, which has been approved by the Secretary, and which includes the following: (A) a detailed maintenance schedule; (B) a schedule for correcting past deficiencies in maintenance, repairs, and replacements; (C) a plan to upgrade the project to meet cost-effective energy efficiency standards prescribed by the Secretary; (D) a plan to improve financial and management control systems; (E) a detailed annual operating budget taking into account such standards for operating costs in the area as may be determined by the Secretary; and (F) such other requirements as the Secretary may determine; except that the Secretary may excuse an owner from compliance with the plan requirement set forth in this paragraph in any case in which such owner seeks only assistance for capital improvements under this section; and except that the Secretary shall review and approve or disapprove each plan not later than the expiration of the 30-day period beginning upon the date of submission of the plan to the Secretary by the owner, but if the Secretary fails to inform the owner of approval or disapproval of the plan within such period the plan shall be considered to have been approved;

(7) all reasonable attempts have been made to take all appropriate actions and provide suitable housing for project residents;

(8) the project has a feasible plan to involve the residents in project decisions;

(9) the affirmative fair housing marketing plan meets applicable requirements; and

(10) the owner certifies that it will comply with various equal opportunity statutes.

(e) Consultation with local officials

Prior to making assistance available to a project, the Secretary shall consult with the appropriate officials of the unit of local government

in which such project is located and seek assurances that—

(1) the community in which the project is located is or will provide essential services to the project in keeping with the community's general level of such services;

(2) the real estate taxes on the project are or will be no greater than would be the case if the property were assessed in a manner consistent with normal property assessment procedures for the community; and

(3) assistance to the project under this section would not be inconsistent with local plans and priorities.

(f) Amount of financial assistance

(1) The Secretary may, with respect to any year, provide assistance under this section, and make commitments to provide such assistance, with respect to any project (except a project assisted only for capital improvements) in any amount which the Secretary determines is consistent with the project's management-improvement-and-operating plan described in subsection (d)(6) and which does not exceed the sum of—

(A) an amount determined by the Secretary to be necessary to correct deficiencies in the project which exist at the beginning of the first year with respect to which assistance is made available for the project under this section, which were caused by the deferral of regularly scheduled maintenance and repairs or the failure to make necessary and timely replacements of equipment and other components of the project, and for which payment has not previously been made;

(B) an amount determined by the Secretary to be necessary to maintain the low- and moderate-income character of the project by reducing deficiencies, which exist at the beginning of the first year with respect to which assistance is made available for the project under this section and for which payment has not previously been made, in the reserve funds established by the project owner for the purpose of replacing capital items;

(C) an amount not greater than the amount by which the estimated operating expenses (as described in paragraph (2) of this subsection) for the year with respect to which such assistance is made available exceeds the estimated revenues to be received (as described in paragraph (2) of this subsection) by the project during such year; and

(D) an amount determined by the Secretary to be necessary to carry out a plan to upgrade the project to meet cost-effective energy efficiency standards prescribed by the Secretary.

(2) The estimated revenues for any project under paragraph (1)(C) of this subsection with respect to any year shall be equal to the sum of—

(A) the estimated amount of rent which is to be expended by the tenants of such project during such year, as determined by the Secretary without regard to section 236(f)(1) of the National Housing Act [12 U.S.C. 1715z-1(f)(1)];

(B) the estimated amount of rental assistance payments to be made on behalf of such tenants during such year, other than assistance made under this section;

(C) the estimated amount of assistance payments to be made on behalf of the owner of such project under section 221(d)(5) or section 236 of the National Housing Act [12 U.S.C. 1715l(d)(5) or 1715z-1] during such year; and

(D) other income attributable to the project as determined by the Secretary;

except that—

(E) in computing the estimated amount of rent to be expended by tenants, the Secretary shall provide that (i) at least 25 percent (or such lesser percentage as is provided for under any other Federal housing assistance program in which such tenant is participating) of the income of each such tenant is included, or (ii) in the case of a tenant paying his or her own utilities, a percentage of income which is less than 25 percent and which takes into account the reasonable costs of such utilities; except that no amount shall be provided for any tenant under clause (i) or (ii) which exceeds the fair market rental charge as determined pursuant to section 236(f)(1) of the National Housing Act [12 U.S.C. 1715z-1(f)(1)] for such tenant; and

(F) in computing the estimated amount of rent to be expended by tenants and the estimated amount of rental assistance payments to be made on behalf of such tenants, the Secretary may permit a delinquency-and-vacancy allowance of not more than 6 per centum of the estimated amount of such rent and payments computed without regard to such allowance; except that, with respect to the first three years in which assistance is provided to a project under this section, the Secretary may permit such allowance for such project to exceed such 6 percent by an amount which the Secretary determines is appropriate to carry out the purposes of this section.

For purposes of computing estimated operating expenses of any such project with respect to any year, the Secretary shall include all estimated operating costs which the Secretary determines to be necessary and consistent with the management-improvement-and-operating plan for the project for such year, including, but not limited to, taxes, utilities, maintenance and repairs (except for maintenance and repairs which should have been performed in previous years), management, insurance, debt service, and payments made by the owner for the purpose of establishing or maintaining a reserve fund for replacement costs. The Secretary may not include in such estimated operating expenses any return on the equity investment of the owner in such project.

(3) In order to carry out the purposes of this section, the Secretary may, notwithstanding the provisions of section 236(f)(1) of the National Housing Act [12 U.S.C. 1715z-1(f)(1)], provide that, for purposes of establishing a rental charge under such section, there may be excluded from the computation of the cost of operating a project an amount equivalent to the amount of assistance payments made for the project under this section.

(4) Any assistance payments made pursuant to this section with respect to any project shall be made on an annual basis, payable at such inter-

vals, but at least quarterly, as the Secretary may determine, and may be in any amount (which the Secretary determines to be consistent with the purpose of this section), except that the sum of such assistance payments for any year for a project (other than a project receiving assistance only for capital improvements) may not exceed the amount computed pursuant to paragraph (1) of this subsection. The Secretary shall review the operations of the project at the time of such payments to determine that such operations are consistent with the management-improvement-and-operating plan.

(g) Rules and regulations

The Secretary is authorized to issue such rules and regulations as may be necessary to carry out the provisions and purposes of this section, including regulations requiring the establishment of a project reserve or such other safeguards as the Secretary determines to be necessary for the financial soundness of any project for which assistance payments are provided, to the extent applicable.

(h) Limitation on use of financial assistance

The Secretary may not use any of the assistance available under this section during any fiscal year beginning on or after October 1, 1981, to supplement any contract to make rental assistance payments which was made pursuant to section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s].

(i) Repealed. Pub. L. 103-233, title I, § 103(b)(1), Apr. 11, 1994, 108 Stat. 359

(j) Flexible Subsidy Fund

(1) For purposes of carrying out the provisions of this section, there is hereby established in the Treasury of the United States a revolving fund, to be known as the Flexible Subsidy Fund. The Fund shall, to the extent approved in appropriation Acts, be available to the Secretary to provide assistance under this section (including assistance for capital improvements) and shall not (except as provided in Public Law 100-4-4¹ (102 Stat. 1018), as in effect on October 1, 1988) be available for any other purpose.

(2) The Fund shall consist of (A) any amount appropriated to carry out the purposes of this section; (B) any amount repaid on any assistance provided under this section; (C) any amounts credited to the reserve fund described in section 236(g) of the National Housing Act [12 U.S.C. 1715z-1(g)]; (D) any other amount received by the Secretary under this section (including any amount realized under paragraph (3)),² and (E) any amount received by the Secretary pursuant to section 537 of the National Housing Act [12 U.S.C. 1735f-15] and section 202a of the Housing Act of 1959 [12 U.S.C. 1701q-1].

(3) Any amounts in the Fund determined by the Secretary to be in excess of the amounts currently required to carry out the provisions of this section shall be invested by the Secretary in obligations of, or obligations guaranteed as to both principal and interest by, the United States or any agency of the United States.

(4) The Secretary shall, to the extent of approvable applications and subject to paragraph (1), use not less than \$30,000,000 or 40 percent (whichever is less) of the amounts available from the Fund in any fiscal year for purposes of providing assistance for capital improvements in accordance with this section. Any amount reserved under this paragraph for assistance for capital improvements that is not used before the last 60 days of a fiscal year shall become available for other assistance under this section.

(5) There is authorized to be appropriated for assistance under the flexible subsidy fund not to exceed \$52,200,000 for fiscal year 1993 and \$54,392,400 for fiscal year 1994.

(k) Assistance for capital improvements; loans as medium of assistance; owner contributions; priority of projects

(1) Assistance for capital improvements under this section shall include assistance for any major repair or replacement of a capital item in a multifamily housing project, including any such repair or replacement required as a result of deferred or inadequate maintenance. Capital improvements do not include maintenance of any such item. Assistance for capital improvements under this section shall be in the form of a loan.

(2) The owner of a project receiving assistance for capital improvements shall agree to contribute assistance to such project in such amounts, from such sources, and in such manner as the Secretary determines to be appropriate.

(3) The Secretary may provide assistance for capital improvements under this section if the Secretary finds that the reserve funds established by the owner of a project for the purpose of making capital improvements are insufficient to finance both the capital improvements for which such assistance is to be used and other capital improvements that are reasonably expected to be required in the near future, and such insufficiency is not the result of the failure of such owner to comply with any standard established by the Secretary for management of such reserve funds.

(l) Amount of assistance for capital improvements; term of loan; rate of interest; allowance for administrative costs and probable program losses; nondischargeable liability; other forms for loans

(1) The principal amount of any assistance for capital improvements under this section that is provided to the owner of a project shall not exceed the difference between the contribution made by the owner in accordance with subsection (k)(2) and the sum of—

(A) the amount determined by the Secretary to be necessary for such owner to make capital improvements with respect to capital items that have failed, or are likely to deteriorate seriously or fail in the near future, in such projects;

(B) the amount determined by the Secretary to be necessary to carry out a plan to upgrade the capital items being improved, and any other capital items determined by the Secretary to be associated with such capital items being improved and to require upgrading, to meet cost-effective energy efficiency standards prescribed by the Secretary; and

¹ See References in Text note below.

² So in original. The comma probably should be a semicolon.

(C) the amount determined by the Secretary to be necessary to comply with the requirements of section 794 of title 29.

(2)(A) The term of any assistance for capital improvements in the form of a loan under this section shall not exceed the remaining term of the mortgage of the project with respect to which such loan is provided.

(B) Each loan for capital improvements provided under this section shall bear interest at a rate determined by the Secretary to be appropriate, except that—

(i) such rate shall not be more than 3 percentage points below a rate determined by the Secretary of the Treasury taking into consideration the average interest rate on all interest bearing obligations of the United States then forming a part of the public debt, computed at the end of the fiscal year next preceding date on which the loan is made, adjusted to the nearest 1/8 of 1 percent, plus an allowance adequate in the judgment of the Secretary of Housing and Urban Development to cover administrative costs and probable losses under the program; and

(ii) such interest rate plus such allowance shall not exceed 6 percent per annum nor be less than 3 percent per annum.

(C) Each loan for capital improvements provided under this section shall be considered to be a liability of the project involved, and shall not be dischargeable in any bankruptcy proceeding under section 727, 1141, or 1328(b) of title 11.

(D) The Secretary may establish such additional conditions on loans provided under this section as the Secretary determines to be appropriate. The Secretary may require owners receiving assistance for capital improvements under this section to retain the housing as housing affordable for very low-income families or persons, low-income families or persons and moderate-income families or persons for the remaining useful life of the housing. For purposes of this section, the term “remaining useful life” means, with respect to housing assisted under this section, the period during which the physical characteristics of the housing remain in a condition suitable for occupancy, assuming normal maintenance and repairs are made and major systems and capital components are replaced as becomes necessary.

(E) The Secretary may provide more than one loan or assistance in any other form to any project under this section, if each loan or other assistance complies with the provisions of this section.

(m) Rental payment increases; minimization of increases

(1) Increases in rental payments that may occur as a result of the debt service and other expenses of a loan for capital improvements provided under this section for a project subject to a plan of action approved under subtitle B of the Emergency Low Income Housing Preservation Act of 1987 shall be governed by the rent agreements entered into under such subtitle.

(2) In order to minimize any increases in rental payments that may occur as a result of the debt service and other expenses of a loan for

capital improvements provided under this section for a project and that would be incurred by lower income residents of the project involved whose rental payments are, or would as a result of such expenses be, in excess of the amount allowable if section 3(a) of the United States Housing Act of 1937 [42 U.S.C. 1437a(a)] were applicable to such residents, or where appropriate to implement a plan of action under subtitle B of the Emergency Low Income Housing Preservation Act of 1987, the Secretary may take any or all of the following actions:

(A) Provide assistance with respect to such project under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], to the extent amounts are available for such assistance and without regard to section 16 of such Act [42 U.S.C. 1437n].

(B) Notwithstanding subsection (l)(2)(B), reduce the rate of interest charged on such loan to a rate of not less than 1 percent.

(C) Increase the term of such loan to a term that does not exceed the remaining term of the mortgage on such project.

(D) Increase the amount of assistance to be provided by the owner of such project under subsection (k)(2), if applicable, to an amount not to exceed 30 percent of the total estimated cost of the capital improvements involved.

(E) Permit repayment of the debt service to be deferred as long as the low and moderate income character of the project is maintained in accordance with subsection (d).

(n) Allocation of assistance

(1) Set-aside

In providing, and contracting to provide, assistance for capital improvements under this section, in each fiscal year the Secretary shall set aside an amount, as determined by the Secretary, for projects that are eligible for incentives under section 224(b) of the Emergency Low Income Housing Preservation Act of 1987, as such section existed before November 28, 1990. The Secretary may make such assistance available on a noncompetitive basis.

(2) General rules for allocation

Except as provided in paragraph (3), with respect to assistance under this section not set aside for projects under paragraph (1), the Secretary—

(A) may award assistance on a noncompetitive basis; and

(B) shall award assistance to eligible projects on the basis of—

(i) the extent to which the project is physically or financially troubled, as evidenced by the comprehensive needs assessment submitted in accordance with title IV of the Housing and Community Development Act of 1992; and

(ii) the extent to which such assistance is necessary and reasonable to prevent the default of federally insured mortgages.

(3) Exceptions

The Secretary may make exceptions to selection criteria set forth in paragraph (2)(B) to permit the provision of assistance to eligible projects based upon—

(A) the extent to which such assistance is necessary to prevent the imminent fore-

closure or default of a project whose owner has not submitted a comprehensive needs assessment pursuant to title IV of the Housing and Community Development Act of 1992;

(B) the extent to which the project presents an imminent threat to the life, health, and safety of project residents; or

(C) such other criteria as the Secretary may specify by regulation or by notice printed in the Federal Register.

(4) Considerations

In providing assistance under this section, the Secretary shall take into consideration—

(A) the extent to which there is evidence that there will be significant opportunities for residents (including a resident council or resident management corporation, as appropriate) to be involved in the management of the project (except that this paragraph shall have no application to projects that are owned as cooperatives); and

(B) the extent to which there is evidence that the project owner has provided competent management and complied with all regulatory and administrative requirements.

(o) Coordination of assistance

The Secretary shall coordinate the allocation of assistance under this section with assistance made available under section 8(v) of the United States Housing Act of 1937 [42 U.S.C. 1437f(v)] and section 1701z-11 of this title to enhance the cost effectiveness of the Federal response to troubled multifamily housing.

(p) Enhanced voucher eligibility

Notwithstanding any other provision of law, any project that receives or has received assistance under this section and which is the subject of a transaction under which the project is preserved as affordable housing, as determined by the Secretary, shall be considered eligible low-income housing under section 229 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4119) for purposes of eligibility of residents of such project for enhanced voucher assistance provided under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)) (pursuant to section 223(f) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4113(f))).

(Pub. L. 95-557, title II, §201, Oct. 31, 1978, 92 Stat. 2084; Pub. L. 96-153, title II, §§205(a), 211(c), Dec. 21, 1979, 93 Stat. 1108, 1110; Pub. L. 96-399, title II, §204(a), Oct. 8, 1980, 94 Stat. 1629; Pub. L. 97-35, title III, §§321(f)(1), (2), 329C, Aug. 13, 1981, 95 Stat. 399, 400, 409; Pub. L. 98-181, title I [title II, §217(a), (b)], Nov. 30, 1983, 97 Stat. 1186; Pub. L. 98-479, title II, §204(n)(1), (2), Oct. 17, 1984, 98 Stat. 2234; Pub. L. 100-242, title I, §§185, 186(b), Feb. 5, 1988, 101 Stat. 1873, 1877; Pub. L. 100-628, title X, §1011(a), Nov. 7, 1988, 102 Stat. 3268; Pub. L. 101-235, title I, §109(c), title II, §203(a)(2), Dec. 15, 1989, 103 Stat. 2011, 2037; Pub. L. 101-625, title V, §578(b), (c), Nov. 28, 1990, 104 Stat. 4244, 4245; Pub. L. 102-550, title IV, §§405, 406, 408(a), Oct. 28, 1992, 106 Stat. 3776, 3778; Pub. L. 103-233, title I, §103(b), Apr. 11, 1994, 108 Stat. 359; Pub. L. 105-276, title V, §550(g), Oct. 21, 1998, 112 Stat. 2610; Pub. L. 106-74, title V, §536, Oct. 20, 1999, 113 Stat. 1121.)

REFERENCES IN TEXT

The National Housing Act, as amended, referred to in subsecs. (a), (b), (c)(1)(A), and (d)(3), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§1701 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (a), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The Housing Act of 1959, referred to in subsec. (a), is Pub. L. 86-372, Sept. 23, 1959, 73 Stat. 654, as amended. For complete classification of this Act to the Code, see Short Title of 1959 Amendment note set out under section 1701 of this title and Tables.

The Housing and Urban Development Act of 1965, as amended, referred to in subsecs. (a), (c)(1)(A), (B), and (h), is Pub. L. 89-117, Aug. 10, 1965, 79 Stat. 451, as amended. Section 101 of the Act enacted section 1701s of this title and amended sections 1451 and 1465 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title of 1965 Amendment note set out under section 1701 of this title and Tables.

Section 23 of the United States Housing Act of 1937, referred to in subsec. (c)(1)(B), was classified to section 1421b of Title 42 and was omitted in the general revision of the United States Housing Act of 1937 by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653.

Public Law 100-4-4 (102 Stat. 1018), referred to in subsec. (j)(1), probably means Pub. L. 100-404, Aug. 19, 1988, 102 Stat. 1014, known as the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989. Provisions appearing on 102 Stat. 1018 of Pub. L. 100-404 relating to transfer of funds from the “Flexible subsidy fund” for carrying out community development grants programs are not classified to the Code.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsecs. (m) and (n)(1), is title II of Pub. L. 100-242, Feb. 5, 1988, 101 Stat. 1877, which, as amended by Pub. L. 101-625, is known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, and is classified principally to chapter 42 (§4101 et seq.) of this title. Section 224(b) and subtitle B of title II, which were formerly set out as a note under section 1715l of this title and which amended section 1715z-6 of this title, were amended generally by Pub. L. 101-625 on Nov. 28, 1990, and are classified generally to subchapter I (§4101 et seq.) of chapter 42 of this title. For provisions similar to those contained in former section 224(b), see section 4109(b) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The Housing and Community Development Act of 1992, referred to in subsec. (n)(2)(B)(i), (3)(A), is Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3672. Title IV of the Act amended this section, section 1715z-1 of this title, and section 12710 of Title 42, The Public Health and Welfare, and enacted provisions set out as a note below. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of Title 42 and Tables.

CODIFICATION

Another subsec. (k) of section 201 of Pub. L. 95-557 amended section 1715z-1 of this title.

Section was enacted as part of the Housing and Community Development Amendments of 1978, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1999—Subsec. (p). Pub. L. 106-74 added subsec. (p).

1998—Subsec. (m)(2)(A). Pub. L. 105-276 substituted “section 8” for “section 8(b)(1)”.

1994—Subsec. (i). Pub. L. 103-233, §103(b)(1), struck out subsec. (i) which read as follows: “Notwithstanding any other provision of law, in exercising any authority relating to the approval or disapproval of rentals charged tenants residing in projects which are eligible for assistance under this section, the Secretary—

“(1) shall consider whether the mortgagor could control increases in utility costs by securing more favorable utility rates, by undertaking energy conservation measures which are financially feasible and cost effective, or by taking other financially feasible and cost-effective actions to increase energy efficiency or to reduce energy consumption; and

“(2) may, in his discretion, adjust the amount of a proposed rental increase where he finds the mortgagor could exercise such control.”

Subsec. (k)(2). Pub. L. 103-233, §103(b)(2), substituted a period for “”, except that—

“(A) such contribution shall not be less than 20 percent of the total estimated cost of the capital improvements involved, unless the Secretary, upon application of the owner, determines that such contribution is financially infeasible and waives or reduces such contribution to the extent necessary;

“(B) the Secretary may not require an amount to be contributed, from the reserve funds established by the owner of such projects for the purpose of making capital improvements, in excess of 50 percent of the amount of such reserve funds on the date of such loan;

“(C) The Secretary shall waive the requirements of this paragraph if such owner is a private nonprofit corporation or an association; and

“(D) the Secretary shall give owners credit for advances made to the project during a 3-year period prior to the application for assistance.”

Subsec. (n). Pub. L. 103-233, §103(b)(3), amended subsec. (n) generally. Prior to amendment, subsec. (n) read as follows:

“(n)(1) The Secretary shall award assistance under this section to eligible projects on the basis of the following selection criteria:

“(A) The extent to which the project presents an imminent threat to the life, health, and safety of project residents.

“(B) The extent to which the project is financially troubled.

“(C) The extent of physical improvements needed by the project as evidenced by the comprehensive needs assessment submitted in accordance with title IV of the Housing and Community Development Act of 1992.

“(D) The extent to which there is evidence that there will be significant opportunities for residents (including a resident council or resident management corporation, as appropriate) to be involved in management of the project (except that this paragraph shall have no application to projects that are owned as cooperatives).

“(E) The extent to which there is evidence that the project owner has provided competent management and complied with all regulatory and administrative instructions (including such instructions with respect to the comprehensive servicing of multifamily projects as the Secretary may issue).

“(F) Such other criteria as the Secretary may specify by regulation or in a Federal Register notice of fund availability.

“(2) Eligible projects that have federally insured mortgages in force are to be selected for award of assistance under this section before any other eligible project.”

Subsecs. (o), (p). Pub. L. 103-233, §103(b)(4) redesignated subsec. (p) as (o) and struck out former subsec. (o) which read as follows: “Projects receiving assistance under this section are not eligible for prepayment incentives under the Emergency Low-Income Housing Preservation Act of 1987 or the Low-Income Housing

Preservation and Resident Homeownership Act of 1990. Projects receiving financial assistance under such Acts are not eligible for assistance under this section.”

1992—Subsec. (d)(5). Pub. L. 102-550, §405(a)(1), struck out “and” at end.

Subsec. (d)(6). Pub. L. 102-550, §406, which directed insertion, before period at end, of “; and except that the Secretary shall review and approve or disapprove each plan not later than the expiration of the 30-day period beginning upon the date of submission of the plan to the Secretary by the owner, but if the Secretary fails to inform the owner of approval or disapproval of the plan within such period the plan shall be considered to have been approved”, was executed by making the insertion before the concluding semicolon to reflect the probable intent of Congress and the intervening amendment by Pub. L. 102-550, §405(a)(2). See below.

Pub. L. 102-550, §405(a)(2), substituted semicolon for period at end.

Subsec. (d)(7) to (10). Pub. L. 102-550, §405(a)(3), added pars. (7) to (10).

Subsec. (j)(5). Pub. L. 102-550, §408(a), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “There are authorized to be appropriated for assistance under the flexible subsidy fund not to exceed \$50,000,000 for fiscal year 1991 and \$52,200,000 for fiscal year 1992.”

Subsec. (k)(2)(D). Pub. L. 102-550, §405(e), added subpar. (D).

Subsec. (k)(4). Pub. L. 102-550, §405(b)(1), struck out par. (4) which read as follows: “In providing, and contracting to provide, assistance for capital improvements under this section, the Secretary shall—

“(A) give priority to projects that are eligible for incentives under section 224(b) of the Emergency Low Income Housing Preservation Act of 1987; and

“(B) with respect to any amounts not required for projects under subparagraph (A), give priority among other projects based on the extent to which—

“(i) the capital improvements for which such assistance is requested are immediately required;

“(ii) the projects serve as the residences of lower income families, and the extent which other suitable housing is unavailable for such families in the areas in which such projects are located;

“(iii) the capital improvements for which such assistance is requested involve the life, safety, or health of the residents of the project or involve major capital improvements in the projects; and

“(iv) the projects demonstrate the greatest financial distress, while continuing to meet the requirements of subsection (d)(1) of this section.”

Subsec. (l)(2)(D). Pub. L. 102-550, §405(c), inserted at end “The Secretary may require owners receiving assistance for capital improvements under this section to retain the housing as housing affordable for very low-income families or persons, low-income families or persons and moderate-income families or persons for the remaining useful life of the housing. For purposes of this section, the term ‘remaining useful life’ means, with respect to housing assisted under this section, the period during which the physical characteristics of the housing remain in a condition suitable for occupancy, assuming normal maintenance and repairs are made and major systems and capital components are replaced as becomes necessary.”

Subsec. (n). Pub. L. 102-550, §405(b)(2), added subsec. (n).

Subsec. (o). Pub. L. 102-550, §405(d), added subsec. (o).

Subsec. (p). Pub. L. 102-550, §405(f), added subsec. (p).

1990—Subsec. (j)(1). Pub. L. 101-625, §578(c), inserted before period at end “and shall not (except as provided in Public Law 100-4-4 (102 Stat. 1018), as in effect on October 1, 1988) be made available for any other purpose”.

Subsec. (j)(5). Pub. L. 101-625, §578(b), added par. (5).

1989—Subsec. (j)(2). Pub. L. 101-235, §109(c), added cl. (E).

Subsec. (m)(2). Pub. L. 101-235, §203(a)(2)(B)(i), (ii), struck out “not subject to paragraph (1)” after “for a project” and inserted “, or where appropriate to imple-

ment a plan of action under subtitle B of the Emergency Low Income Housing Preservation Act of 1987” after second reference to “residents”.

Subsec. (m)(2)(B). Pub. L. 101-235, § 203(a)(2)(A), substituted “Notwithstanding subsection (l)(2)(B), reduce” for “Reduce”.

Subsec. (m)(2)(E). Pub. L. 101-235, § 203(a)(2)(B)(iii), added subpar. (E).

1988—Pub. L. 100-242, § 185(h), struck out “Operating” before “assistance” in section catchline.

Subsec. (a). Pub. L. 100-242, § 185(a), inserted “to permit capital improvements to be made to maintain certain projects as decent, safe, and sanitary housing,” after “management.”

Pub. L. 100-242, § 186(b)(1), inserted reference to Housing Act of 1959.

Subsec. (c)(1)(A). Pub. L. 100-242, § 186(b)(2), inserted before semicolon at end “, or received a loan under section 202 of the Housing Act of 1959 more than 15 years before the date on which assistance is made available under this section”.

Subsec. (c)(1)(B). Pub. L. 100-242, § 185(b), inserted “section 23 of the United States Housing Act of 1937, as in effect immediately before January 1, 1975,” after “is assisted under”.

Subsec. (d)(1). Pub. L. 100-242, § 185(c)(1), inserted “or physical” after “maintain the financial”.

Subsec. (d)(6). Pub. L. 100-242, § 185(c)(2), inserted at end “; except that the Secretary may excuse an owner from compliance with the plan requirement set forth in this paragraph in any case in which such owner seeks only assistance for capital improvements under this section”.

Subsec. (f)(1). Pub. L. 100-242, § 185(d)(1), inserted parenthetical exception relating to projects assisted only for capital improvements.

Subsec. (f)(4). Pub. L. 100-242, § 185(d)(2), substituted “payments for any year for a project (other than a project receiving assistance only for capital improvements) may not exceed” for “payments for any year may not exceed”.

Subsec. (g). Pub. L. 100-242, § 185(e), inserted “, to the extent applicable” after “provided”.

Subsec. (j). Pub. L. 100-242, § 185(f), in amending subsec. (j) generally, substituted provisions relating to the establishment, contents, and use of a revolving fund to be known as the Flexible Subsidy Fund, for provisions authorizing appropriations under this section for fiscal years 1979 through 1982.

Subsec. (j)(4). Pub. L. 100-628 substituted “shall, to the extent of approvable applications and subject to paragraph (1), use not less than \$30,000,000 or 40 percent (whichever is less) of the amounts available” for “may use not more than \$50,000,000”; and inserted at end “Any amount reserved under this paragraph for assistance for capital improvements that is not used before the last 60 days of a fiscal year shall become available for other assistance under this section.”

Subsecs. (k) to (m). Pub. L. 100-242, § 185(g), added subsecs. (k) to (m).

1984—Subsec. (c). Pub. L. 98-479, § 204(n)(1), substituted “A” for “a” in provisions before subpar. (A).

Subsec. (j). Pub. L. 98-479, § 204(n)(2), substituted “section 236(f)(3)” for “section 236(f)(3)(B)”.

1983—Subsec. (a). Pub. L. 98-181, § 217(a)(1), (b)(1), inserted “without regard to whether such projects are insured under the National Housing Act”, and substituted “, the United States Housing Act of 1937, or” for “or under”.

Subsec. (b). Pub. L. 98-181, § 217(a)(2), inserted “, without regard to whether such projects are insured under the National Housing Act”.

Subsec. (c)(1)(A). Pub. L. 98-181, § 217(a)(3), struck out “; except that, in the case of any such project which is not insured under the National Housing Act such assistance may not be provided before October 1, 1979” after “Act of 1965”.

Subsec. (c)(1)(B), (C). Pub. L. 98-181, § 217(b)(2), added subpar. (B) and redesignated former subpar. (B) as (C).

1981—Subsec. (f)(1)(D). Pub. L. 97-35, § 329C(1), added subpar. (D).

Subsec. (h). Pub. L. 97-35, § 321(f)(2), added subsec. (h). Former subsec. (h) redesignated (j).

Subsec. (i). Pub. L. 97-35, § 329C(2), added subsec. (i).

Subsec. (j). Pub. L. 97-35, § 321(f)(1), (2)(A), redesignated former subsec. (h) as (j) and authorized appropriation for fiscal year 1982.

1980—Subsec. (h). Pub. L. 96-399 authorized appropriations for fiscal year 1981.

1979—Subsec. (d)(1). Pub. L. 96-153, § 211(c), inserted requirement that the owner agree to maintain the low- and moderate-income character of such project for a period at least equal to the remaining term of the project mortgage.

Subsec. (h). Pub. L. 96-153, § 205(a), authorized appropriations for fiscal year 1980.

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 Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-233, title I, § 103(c), Apr. 11, 1994, 108 Stat. 360, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a) and (b) [amending this section and provisions set out below] shall apply with respect to amounts made available for fiscal year 1994 and fiscal years thereafter.

“(2) EXCEPTION.—Section 201(n)(1) of the Housing and Community Development Amendments of 1978 [subsec. (n)(1) of this section] (as added by the amendment made by subsection (b)(3) of this section) shall take effect on the date of enactment of this Act [Apr. 11, 1994].

“(3) NOTICE.—The Secretary shall, by notice published in the Federal Register, establish any requirements necessary to implement the amendments made by subsections (a) and (b). The notice shall invite public comments and, not later than 12 months after the date on which the notice is published, the Secretary shall issue final regulations based on the initial notice, taking into consideration any public comments received.”

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of this title.

ALTERNATIVE USES FOR PREVENTION OF DEFAULT

Pub. L. 103-233, title I, § 103(h), Apr. 11, 1994, 108 Stat. 362, provided that:

“(1) IN GENERAL.—Subject to notice to and comment by existing tenants, to prevent the imminent default of a multifamily housing project subject to a mortgage insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.], the Secretary may authorize the mortgagor to use the project for purposes not contemplated by or permitted under the regulatory agreement, if—

“(A) such other uses are acceptable to the Secretary;

“(B) such other uses would be otherwise insurable under title II of the National Housing Act;

“(C) the outstanding principal balance on the mortgage covering such project is not increased;

“(D) any financial benefit accruing to the mortgagor shall, subject to the discretion of the Secretary, be applied to project reserves or project rehabilitation; and

“(E) such other use serves a public purpose.

“(2) DISPLACEMENT PROTECTION.—The Secretary may take actions under paragraph (1) only if—

“(A) tenant-based rental assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C.

1437f] is made available to each eligible family residing in the project that is displaced as a result of such actions; and

“(B) the Secretary determines that sufficient habitable, affordable (as such term is defined in section 203(b) of the Housing and Community Development Amendments of 1978 [12 U.S.C. 1701z-11(b)]) rental housing is available in the market area in which the project is located to ensure use of such assistance.

“(3) IMPLEMENTATION.—The Secretary shall, by notice published in the Federal Register, which shall take effect upon publication, establish such requirements as may be necessary to implement the amendments made by this subsection. The notice shall invite public comments and, not later than 12 months after the date on which the notice is published, the Secretary shall issue final regulations based on the initial notice, taking into account any public comments received.”

MULTIFAMILY HOUSING PLANNING AND INVESTMENT STRATEGIES

Pub. L. 102-550, title IV, §§ 401-404, Oct. 28, 1992, 106 Stat. 3773-3775, as amended by Pub. L. 103-233, title I, § 103(a)(1)-(5), Apr. 11, 1994, 108 Stat. 358, 359, provided that:

“SEC. 401. DEFINITIONS.

“For purposes of this title [amending this section, section 1715z-1 of this title and section 12710 of Title 42, The Public Health and Welfare]:

“(1) COVERED MULTIFAMILY HOUSING PROPERTY.—The term ‘covered multifamily housing property’ means any housing—

“(A) that is—

“(i) reserved for occupancy by very low-income elderly persons pursuant to section 202(d)(1) of the Housing Act of 1959 [12 U.S.C. 1701q(d)(1)];

“(ii) assisted under the provisions of section 202 of the Housing Act of 1959 (as such section existed before the effectiveness of the amendment made by section 801(a) of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101-625]);

“(iii) financed by a loan or mortgage insured, assisted, or held by the Secretary or a State or State agency under section 236 of the National Housing Act [12 U.S.C. 1715z-1]; or

“(iv) financed by a loan or mortgage insured or held by the Secretary pursuant to section 221(d)(3) of the National Housing Act [12 U.S.C. 1715(d)(3)]; and

“(B) that is not eligible for assistance under—

“(i) the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4101 et seq.];

“(ii) the provisions of the Emergency Low Income Housing Preservation Act of 1987 [see References in Text note above] (as in effect immediately before the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act [Nov. 28, 1990]); or

“(iii) the HOME Investment Partnerships Act [42 U.S.C. 12721 et seq.].

“(2) COVERED MULTIFAMILY HOUSING PROPERTY FOR THE ELDERLY.—The term ‘covered multifamily housing property for the elderly’ means any multifamily housing project that was designed or designated to serve, or is serving, elderly persons or families and is assisted under a program administered by the Secretary.

“(3) SECRETARY.—The term ‘Secretary’ means the Secretary of Housing and Urban Development.

“SEC. 402. REQUIRED SUBMISSION.

“(a) IN GENERAL.—The owner of each covered multifamily housing property, and the owner of each covered multifamily housing property for the elderly, shall submit to the Secretary of Housing and Urban Development a comprehensive needs assessment of the property under this title. The assessment shall be prepared by an entity that does not have an identity of interest with the owner.

“(b) TIMING.—To ensure that assessments for all covered multifamily housing properties will be submitted on or before the conclusion of fiscal year 1997, the Secretary shall require the owners of such properties, including covered multifamily housing properties for the elderly, to submit the assessments for the properties in accordance with the following schedule:

“(1) For fiscal year 1994, 10 percent of the aggregate number of such properties.

“(2) For each of fiscal years 1995, 1996, and 1997, an additional 30 percent of the aggregate number of such properties.

“SEC. 403. CONTENTS.

“(a) IN GENERAL.—Each comprehensive needs assessment submitted under this title for a covered multifamily housing property or a covered multifamily housing property for the elderly shall contain the following information with respect to the property:

“(1) A description of any financial or other assistance currently needed for the property to ensure that the property is maintained in a livable condition and to ensure the financial viability of the project.

“(2) A description of any financial or other assistance for the property that, at the time of the assessment, is reasonably foreseeable as necessary to ensure that the property is maintained in a livable condition and to ensure the financial viability of the project, during the remaining useful life of the property.

“(3) A description of any resources available for meeting the current and future needs of the property described under paragraphs (1) and (2) and the likelihood of obtaining such resources.

“(4) A description of any assistance needed for the property under programs administered by the Secretary.

“(b) PROJECTS FOR THE ELDERLY.—Each comprehensive needs assessment for a covered multifamily housing property for the elderly shall include, in addition to the information required under subsection (a), the following information with respect to the property:

“(1) A description of the supportive service needs of such residents and any supportive services provided to elderly residents of the property.

“(2) A description of any modernization needs and activities for the property.

“(3) A description of any personnel needs for the property.

“SEC. 404. SUBMISSION AND REVIEW.

“(a) FORM.—The Secretary shall establish the form and manner of submission of the comprehensive needs assessments under this title.

“(b) RESIDENT REVIEW.—The Secretary shall require each owner of a covered multifamily housing property and each owner of a covered multifamily housing property for the elderly to make available to the residents of the property the comprehensive needs assessment that is to be submitted to the Secretary. The Secretary shall require each owner to provide for such residents to submit comments and opinions regarding the assessment to the owner before the submission of the assessment.

“(c) STATE HOUSING FINANCE AGENCY REVIEW.—To the extent that a covered multifamily housing property or a covered multifamily housing property for the elderly is financed or assisted by a State housing finance agency (as such term is defined in section 802 of the Housing and Community Development Act of 1974 [42 U.S.C. 1440j]), the Secretary shall require the owner of the property to submit the comprehensive needs assessment for the property to the State housing finance agency upon submitting the assessment to the Secretary.

“(d) REVIEW.—

“(1) IN GENERAL.—The Secretary shall review each comprehensive needs assessment for completeness and adequacy before the expiration of the 90-day period beginning on the receipt of the assessment and shall notify the owner of the property for which the

assessment was submitted of the findings of such review.

“(2) INCOMPLETE OR INADEQUATE ASSESSMENTS.—If the Secretary determines that the assessment is substantially incomplete or inadequate, the Secretary shall—

“(A) notify the owner of the portion or portions of the assessment requiring completion or other revision; and

“(B) require the owner to submit an amended assessment to the Secretary not later than 30 days after such notification.

“(e) COST OF PREPARATION OF STRATEGY.—The Secretary shall consider any costs relating to preparing a comprehensive needs assessment under this title for a covered multifamily housing property that do not exceed \$5,000 for the property as an eligible project expense for the property. The Secretary shall provide that an owner may not increase the rental charge for any unit in a covered multifamily housing property to provide for the cost of preparing a comprehensive needs assessment.

“(f) PUBLICATION OF METHOD FOR RECEIVING CAPITAL NEEDS ASSESSMENT.—The Secretary shall cause to be published in the Federal Register the method by which the Secretary determines which capital needs assessments will be received each year in accordance with section 402(b) and subsection (d) of this section.

“(g) ANNUAL REVIEW AND REPORT OF FUNDING AND TARGETING FOR COVERED MULTIFAMILY PROPERTIES FOR THE ELDERLY.—

“(1) REVIEW.—The Secretary shall annually conduct a comprehensive review of—

“(A) the funding levels required to fully address the needs of covered multifamily housing properties for the elderly identified in the comprehensive needs assessments under section 403(b), specifically identifying any expenses necessary to make substantial repairs and add features (such as congregate dining facilities and commercial kitchens) resulting from development of a property in compliance with cost-containment requirements established by the Secretary;

“(B) the adequacy of the geographic targeting of resources provided under programs of the Department with respect to covered multifamily housing properties for the elderly, based on information acquired pursuant to section 403(b); and

“(C) local housing markets throughout the United States, with respect to the need, availability, and cost of housing for elderly persons and families, which shall include review of any information and plans relating to housing for elderly persons and families included in comprehensive housing affordability strategies submitted by jurisdictions pursuant to section 105 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12705].

“(2) REPORT.—The Secretary of Housing and Urban Development shall submit a report to the Congress annually describing the results of the annual comprehensive needs assessments under section 402 for covered multifamily housing properties for the elderly and the annual review conducted under paragraph (1) of this subsection, which shall contain a description of the methods used by project owners and by the Secretary to acquire the information described in section 402(b) and any findings and recommendations of the Secretary pursuant to the review.”

[For termination, effective May 15, 2000, of reporting provisions in section 404(g)(2) of Pub. L. 102-550, set out above, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 104 of House Document No. 103-7.]

FUNDING OF MULTIFAMILY HOUSING PROJECTS; OPERATING, CAPITAL IMPROVEMENT AND LOAN MANAGEMENT ASSISTANCE; AMOUNTS

Pub. L. 102-550, title IV, § 409, as added by Pub. L. 103-233, title I, § 103(a)(6), Apr. 11, 1994, 108 Stat. 359, provided that:

“(a) ALLOCATION OF ASSISTANCE.—Based upon needs identified in comprehensive needs assessments, and subject to otherwise applicable program requirements, including selection criteria, the Secretary may allocate the following assistance to owners of covered multifamily housing projects and may provide such assistance on a noncompetitive basis:

“(1) Operating assistance and capital improvement assistance for troubled multifamily housing projects pursuant to section 201 of the Housing and Community Development Amendments of 1978 [Pub. L. 95-557, enacting this section, amending section 1715z-1 of this title, and enacting provisions set out as a note under section 1715z-1 of this title], except for assistance set aside under section 201(n)(1) [subsec. (n)(1) of this section].

“(2) Loan management assistance available pursuant to section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f].

“(b) OPERATING ASSISTANCE AND CAPITAL IMPROVEMENT ASSISTANCE.—In providing assistance under subsection (a) the Secretary shall use the selection criteria set forth in section 201(n) of the Housing and Community Development Amendments of 1978.

“(c) AMOUNT OF ASSISTANCE.—The Secretary may fund all or only a portion of the needs identified in the capital needs assessment of an owner selected to receive assistance under this section.”

CAPITAL ASSESSMENT STUDY

Pub. L. 101-235, title II, § 204(c), Dec. 15, 1989, 103 Stat. 2040, as amended by Pub. L. 101-625, title V, § 583, Nov. 28, 1990, 104 Stat. 4249, directed Secretary of Housing and Urban Development to conduct a study to determine physical renovation needs of Nation's federally-assisted multifamily housing inventory that is distressed, to estimate cost of correcting deficiencies and subsequently maintaining that inventory in adequate physical condition, and to establish criteria to determine what housing qualifies as distressed, with such criteria to include factors such as serious deficiencies in original design, deferred maintenance, physical deterioration or obsolescence of major systems and other serious deficiencies in physical plant of a project, such study to examine and assess adequacy of existing tools that are available to the Secretary for modernization efforts including mortgage insurance for rehabilitation loans, operating assistance and capital improvement loans under the Flexible Subsidy Program, with a detailed examination and assessment of Flexible Subsidy Program required, and rental assistance, and not later than Mar. 1, 1992, to submit to Congress a detailed report setting forth findings as a result of the study.

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Pub. L. 101-235, title V, Dec. 15, 1989, 103 Stat. 2048, as amended by Pub. L. 102-550, title I, § 127(a), Oct. 28, 1992, 106 Stat. 3710, established a National Commission on Severely Distressed Public Housing to identify those public housing projects in the Nation that are in a severe state of distress, to assess most promising strategies to improve condition of severely distressed public housing projects that have been implemented by public housing authorities, other Government agencies at Federal, State and local level, public housing tenants, and private sector, and to develop national action plan to eliminate by year 2000 unfit living conditions in public housing projects determined by Commission to be most severely distressed, provided for membership, functions, and powers of the Commission, directed that, not later than 12 months after Commission is established, Commission submit a final report to Secretary and to Congress containing information, evaluations, and recommendations, authorized appropriations for Commission of not to exceed \$2,000,000 for fiscal year

1990 and \$1,000,000 for fiscal year 1991, and terminated Commission at the end of Sept. 30, 1992.

MULTIFAMILY HOUSING CAPITAL IMPROVEMENTS ASSISTANCE; REGULATIONS FOR IMPLEMENTATION OF PROGRAM

Pub. L. 100-628, title X, §1011(b), Nov. 7, 1988, 102 Stat. 3268, provided that: "To implement the amendments made by section 185 of the Housing and Community Development Act of 1987 [Pub. L. 100-242, amending this section], the Secretary of Housing and Urban Development shall issue regulations that become effective not later than February 5, 1989."

§ 1715z-1b. Tenant participation in multifamily housing projects

(a) Purpose; definitions

The purpose of this section is to recognize the importance and benefits of cooperation and participation of tenants in creating a suitable living environment in multifamily housing projects and in contributing to the successful operation of such projects, including their good physical condition, proper maintenance, security, energy efficiency, and control of operating costs. For the purpose of this section, the term "multifamily housing project" means a project which is eligible for assistance as described in section 1715z-1a(c) of this title or section 1701q of this title, or a project which receives project-based assistance under section 1437f of title 42 or enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4101 et seq.], the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997.

(b) Rights of tenants

The Secretary shall assure that—

(1) where the Secretary's written approval is required with respect to an owner's request for rent increase, conversion of residential rental units to any other use (including commercial use or use as a unit in any condominium or cooperative project), partial release of security, or major physical alterations or where the Secretary proposes to sell a mortgage secured by a multifamily housing project, tenants have adequate notice of, reasonable access to relevant information about, and an opportunity to comment on such actions (and in the case of a project owned by the Secretary, any proposed disposition of the project) and that such comments are taken into consideration by the Secretary;

(2) project owners do not interfere with the efforts of tenants to obtain rent subsidies or other public assistance;

(3) leases approved by the Secretary provide that tenants may not be evicted without good cause or without adequate notice of the reasons therefor and do not contain unreasonable terms and conditions; and

(4) project owners do not impede the reasonable efforts of resident tenant organizations to represent their members or the reasonable efforts of tenants to organize.

(c) Regulations

The Secretary shall promulgate regulations to carry out the provisions of this section not later than 90 days after October 31, 1978.

(Pub. L. 95-557, title II, §202, Oct. 31, 1978, 92 Stat. 2088; Pub. L. 97-35, title III, §329F, Aug. 13, 1981, 95 Stat. 410; Pub. L. 100-242, title I, §183(a), (b), Feb. 5, 1988, 101 Stat. 1872; Pub. L. 105-276, title V, §599(a), Oct. 21, 1998, 112 Stat. 2660.)

REFERENCES IN TEXT

The Low-Income Housing Preservation and Resident Homeownership Act of 1990, referred to in subsec. (a), is title II of Pub. L. 100-242, Feb. 5, 1988, 101 Stat. 1877, as amended, which is classified principally to chapter 42 (§4101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (a), is title II of Pub. L. 100-242, Feb. 5, 1988, 101 Stat. 1877, which, as amended by Pub. L. 101-625, is known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990. Subtitles A and B of title II, which were formerly set out as a note under section 1715f of this title and which amended section 1715z-6 of this title, were amended generally by Pub. L. 101-625 and are classified to subchapter I (§4101 et seq.) of chapter 42 of this title. Subtitles C and D of title II amended section 1715z-15 of this title and sections 1437f, 1472, 1485, and 1487 of Title 42, The Public Health and Welfare. Another subtitle C of title II of Pub. L. 100-242, as added by Pub. L. 102-550, is classified generally to subchapter II (§4141 et seq.) of chapter 42 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The Multifamily Assisted Housing Reform and Affordability Act of 1997, referred to in subsec. (a), is title V of Pub. L. 105-65, Oct. 27, 1997, 111 Stat. 1384. For complete classification of this Act to the Code, see Short Title of 1997 Amendment note set out under section 1701 of this title and Tables.

CODIFICATION

This section was enacted as part of the Housing and Community Development Amendments of 1978, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-276 inserted before period at end " , or a project which receives project-based assistance under section 1437f of title 42 or enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997".

1988—Subsec. (a). Pub. L. 100-242, §183(a), inserted reference to section 1701q of this title.

Subsec. (b)(1). Pub. L. 100-242, §183(b), substituted "or where the Secretary proposes to sell a mortgage secured by a multifamily housing project" for "and the Secretary deems it appropriate".

1981—Subsec. (b)(1). Pub. L. 97-35 substituted provisions relating to request by the owner for rent increases, etc., for provisions relating to action by the owner.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-276, title V, §599(b), Oct. 21, 1998, 112 Stat. 2660, provided that: "The amendment made by this section [amending this section] is made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998]."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of this title.