

## UNITED STATES CODE

### TITLE 12 > CHAPTER 13 > § 1701q

#### § 1701q. Supportive housing for the elderly

##### **(a) Purpose**

The purpose of this section is to enable elderly persons to live with dignity and independence by expanding the supply of supportive housing that—

- (1)** is designed to accommodate the special needs of elderly persons; and
- (2)** provides a range of services that are tailored to the needs of elderly persons occupying such housing.

##### **(b) General authority**

The Secretary is authorized to provide assistance to private nonprofit organizations and consumer cooperatives to expand the supply of supportive housing for the elderly. Such assistance shall be provided as

- (1)** capital advances in accordance with subsection (c)(1) of this section, and
- (2)** contracts for project rental assistance in accordance with subsection (c)(2) of this section. Such assistance may be used to finance the construction, reconstruction, or moderate or substantial rehabilitation of a structure or a portion of a structure, or the acquisition of a structure, to be used as supportive housing for the elderly in accordance with this section. Assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for the elderly.

##### **(c) Forms of assistance**

###### **(1) Capital advances**

A capital advance provided under this section shall bear no interest and its repayment shall not be required so long as the housing remains available for very low-income elderly persons in accordance with this section. Such advance shall be in an amount calculated in accordance with the development cost limitation established in subsection (h) of this section.

###### **(2) Project rental assistance**

Contracts for project rental assistance shall obligate the Secretary to make monthly payments to cover any part of the costs attributed to units occupied (or, as approved by the Secretary, held for occupancy) by very low-income elderly persons that is not met from project income. The annual contract amount for any project shall not exceed the sum of the initial annual project rentals for all units so occupied and any initial utility allowances for such units, as approved by the Secretary. Any contract amounts not used by a project in any year shall remain available to the project until the expiration of the contract. The Secretary may adjust the annual contract amount if the sum of the project income and the amount of assistance payments available under this paragraph are inadequate to provide for reasonable project costs.

###### **(3) Tenant rent contribution**

A very low-income person shall pay as rent for a dwelling unit assisted under this section the highest of the following amounts, rounded to the nearest dollar:

- (A)** 30 percent of the person's adjusted monthly income,
- (B)** 10 percent of the person's monthly income, or
- (C)** if the person is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the person's actual housing costs, is specifically designated by such agency to meet the person's housing costs, the portion of such payments which is so designated.

##### **(d) Term of commitment**

**(1) Use limitations**

All units in housing assisted under this section shall be made available for occupancy by very low-income elderly persons for not less than 40 years.

**(2) Contract terms**

The initial term of a contract entered into under subsection (c)(2) of this section shall be 240 months. The Secretary shall, to the extent approved in appropriation Acts, extend any expiring contract for a term of not less than 60 months. In order to facilitate the orderly extension of expiring contracts, the Secretary is authorized to make commitments to extend expiring contracts during the year prior to the date of expiration.

**(e) Applications**

Funds made available under this section shall be allocated by the Secretary among approvable applications submitted by private nonprofit organizations. Applications for assistance under this section shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish. Such applications shall contain—

- (1)** a description of the proposed housing;
- (2)** a description of the assistance the applicant seeks under this section;
- (3)** a description of the resources that are expected to be made available in compliance with subsection (h) of this section;
- (4)** a description of
  - (A)** the category or categories of elderly persons the housing is intended to serve;
  - (B)** the supportive services, if any, to be provided to the persons occupying such housing;
  - (C)** the manner in which such services will be provided to such persons, including, in the case of frail elderly persons, evidence of such residential supervision as the Secretary determines is necessary to facilitate the adequate provision of such services; and
  - (D)** the public or private sources of assistance that can reasonably be expected to fund or provide such services;
- (5)** a certification from the public official responsible for submitting a housing strategy for the jurisdiction to be served in accordance with section 12705 of title 42 that the proposed project is consistent with the approved housing strategy; and
- (6)** such other information or certifications that the Secretary determines to be necessary or appropriate to achieve the purposes of this section.

The Secretary shall not reject an application on technical grounds without giving notice of that rejection and the basis therefor to the applicant and affording the applicant an opportunity to respond.

**(f) Selection criteria**

The Secretary shall establish selection criteria for assistance under this section, which shall include—

- (1)** the ability of the applicant to develop and operate the proposed housing;
- (2)** the need for supportive housing for the elderly in the area to be served, taking into consideration the availability of public housing for the elderly and vacancy rates in such facilities;
- (3)** the extent to which the proposed size and unit mix of the housing will enable the applicant to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion;
- (4)** the extent to which the proposed design of the housing will meet the special physical needs of elderly persons;
- (5)** the extent to which the applicant has demonstrated that the supportive services identified in subsection (e)(4) of this section will be provided on a consistent, long-term basis;

(6) the extent to which the proposed design of the housing will accommodate the provision of supportive services that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of elderly persons the housing is intended to serve; and

(7) such other factors as the Secretary determines to be appropriate to ensure that funds made available under this section are used effectively.

**(g) Provisions of services**

**(1) In general**

In carrying out the provisions of this section, the Secretary shall ensure that housing assisted under this section provides a range of services tailored to the needs of the category or categories of elderly persons (including frail elderly persons) occupying such housing. Such services may include

(A) meal service adequate to meet nutritional need;

(B) housekeeping aid;

(C) personal assistance;

(D) transportation services;

(E) health-related services;

(F) providing education and outreach regarding telemarketing fraud, in accordance with the standards issued under section 671(f) of the Housing and Community Development Act of 1992 (42 U.S.C. 13631 (f)); and

(G) such other services as the Secretary deems essential for maintaining independent living. The Secretary may permit the provision of services to elderly persons who are not residents if the participation of such persons will not adversely affect the cost-effectiveness or operation of the program or add significantly to the need for assistance under this Act.

**(2) Local coordination of services**

The Secretary shall ensure that owners have the managerial capacity to—

(A) assess on an ongoing basis the service needs of residents;

(B) coordinate the provision of supportive services and tailor such services to the individual needs of residents; and

(C) seek on a continuous basis new sources of assistance to ensure the long-term provision of supportive services.

Any cost associated with this subsection shall be an eligible cost under subsection (c)(2) of this section.

**(3) Service coordinators**

Any cost associated with employing or otherwise retaining a service coordinator in housing assisted under this section shall be considered an eligible cost under subsection (c)(2) of this section. If a project is receiving congregate housing services assistance under section 8011 of title 42, the amount of costs provided under subsection (c)(2) of this section for the project service coordinator may not exceed the additional amount necessary to cover the costs of providing for the coordination of services for residents of the project who are not eligible residents under such section 8011 of title 42. To the extent that amounts are available pursuant to subsection (c)(2) of this section for the costs of carrying out this paragraph within a project, an owner of housing assisted under this section shall provide a service coordinator for the housing to coordinate the provision of services under this subsection within the housing.

**(h) Development cost limitations**

**(1) In general**

The Secretary shall periodically establish development cost limitations by market area for various types and sizes of supportive housing for the elderly by publishing a notice of the cost limitations in the Federal Register. The cost limitations shall reflect—

- (A) the cost of construction, reconstruction, or rehabilitation of supportive housing for the elderly that meets applicable State and local housing and building codes;
- (B) the cost of movables necessary to the basic operation of the housing, as determined by the Secretary;
- (C) the cost of special design features necessary to make the housing accessible to elderly persons;
- (D) the cost of special design features necessary to make individual dwelling units meet the physical needs of elderly project residents;
- (E) the cost of congregate space necessary to accommodate the provision of supportive services to elderly project residents;
- (F) if the housing is newly constructed, the cost of meeting the energy efficiency standards promulgated by the Secretary in accordance with section 12709 of title 42; and
- (G) the cost of land, including necessary site improvement.

In establishing development cost limitations for a given market area under this subsection, the Secretary shall use data that reflect currently prevailing costs of construction, reconstruction, or rehabilitation, and land acquisition in the area. For purposes of this paragraph, the term “congregate space” shall include space for cafeterias or dining halls, community rooms or buildings, workshops, adult day health facilities, or other outpatient health facilities, or other essential service facilities. Neither this section nor any other provision of law may be construed as prohibiting or preventing the location and operation, in a project assisted under this section, of commercial facilities for the benefit of residents of the project and the community in which the project is located, except that assistance made available under this section may not be used to subsidize any such commercial facility.

**(2) Acquisition**

In the case of existing housing and related facilities to be acquired, the cost limitations shall include—

- (A) the cost of acquiring such housing,
- (B) the cost of rehabilitation, alteration, conversion, or improvement, including the moderate rehabilitation thereof, and
- (C) the cost of the land on which the housing and related facilities are located.

**(3) Annual adjustments**

The Secretary shall adjust the cost limitation not less than once annually to reflect changes in the general level of construction, reconstruction, or rehabilitation costs.

**(4) Incentives for savings**

**(A) Special housing account**

The Secretary shall use the development cost limitations established under paragraph (1) or (2) to calculate the amount of financing to be made available to individual owners. Owners which incur actual development costs that are less than the amount of financing shall be entitled to retain 50 percent of the savings in a special housing account. Such percentage shall be increased to 75 percent for owners which add energy efficiency features which—

- (i) exceed the energy efficiency standards promulgated by the Secretary in accordance with section 12709 of title 42;
- (ii) substantially reduce the life-cycle cost of the housing;
- (iii) reduce gross rent requirements; and
- (iv) enhance tenant comfort and convenience.

**(B) Uses**

The special housing account established under subparagraph (A) may be used

- (i) to supplement services provided to residents of the housing or funds set aside for replacement reserves, or

(ii) for such other purposes as determined by the Secretary.

**(5) Design flexibility**

The Secretary shall, to the extent practicable, give owners the flexibility to design housing appropriate to their location and proposed resident population within broadly defined parameters.

**(6) Use of funds from other sources**

An owner shall be permitted voluntarily to provide funds from sources other than this section for amenities and other features of appropriate design and construction suitable for supportive housing for the elderly if the cost of such amenities is

(A) not financed with the advance, and

(B) is not taken into account in determining the amount of Federal assistance or of the rent contribution of tenants. Notwithstanding any other provision of law, assistance amounts provided under this section may be treated as amounts not derived from a Federal grant.

**(i) Tenant selection**

**(1) In general**

An owner shall adopt written tenant selection procedures that are satisfactory to the Secretary as

(A) consistent with the purpose of improving housing opportunities for very low-income elderly persons; and

(B) reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. Such tenant selection procedures shall comply with subtitle C of title VI of the Housing and Community Development Act of 1992 [42 U.S.C. 13601 et seq.] and any regulations issued under such subtitle. Owners shall promptly notify in writing any rejected applicant of the grounds for any rejection.

**(2) Information regarding housing under this section**

The Secretary shall provide to an appropriate agency in each area (which may be the applicable Area Agency on the Aging) information regarding the availability of housing assisted under this section.

**(j) Miscellaneous provisions**

**(1) Technical assistance**

The Secretary shall make available appropriate technical assistance to assure that applicants having limited resources, particularly minority applicants, are able to participate more fully in the program carried out under this section.

**(2) Civil rights compliance**

Each owner shall certify, to the satisfaction of the Secretary, that assistance made available under this section will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Fair Housing Act [42 U.S.C. 3601 et seq.], and other Federal, State, and local laws prohibiting discrimination and promoting equal opportunity.

**(3) Owner deposit**

**(A) In general**

The Secretary shall require an owner to deposit an amount not to exceed \$25,000 in a special escrow account to assure the owner's commitment to the housing.

**(B) Reduction of requirement**

The Secretary may reduce or waive the owner deposit specified under paragraph (1) for individual applicants if the Secretary finds that such waiver or reduction is necessary to achieve the purposes of this section and the applicant demonstrates to the satisfaction of the Secretary that it has the capacity to manage and maintain the housing in accordance with this section. The Secretary shall reduce or waive the requirement of the owner deposit

under paragraph (1) in the case of a nonprofit applicant that is not affiliated with a national sponsor, as determined by the Secretary.

**(4) Notice of appeal**

The Secretary shall notify an owner not less than 30 days prior to canceling any reservation of assistance provided under this section. During the 30-day period following the receipt of a notice under the preceding sentence, an owner may appeal the proposed cancellation of loan authority. Such appeal, including review by the Secretary, shall be completed not later than 45 days after the appeal is filed.

**(5) Labor**

**(A) In general**

The Secretary shall take such action as may be necessary to ensure that all laborers and mechanics employed by contractors and subcontractors in the construction of housing with 12 or more units assisted under this section shall be paid wages at rates not less than the rates prevailing in the locality involved for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of title 40.

**(B) Exemption**

Subparagraph (A) shall not apply to any individual who—

- (i) performs services for which the individual volunteered;
- (ii)
  - (I) does not receive compensation for such services; or
  - (II) is paid expenses, reasonable benefits, or a nominal fee for such services; and
- (iii) is not otherwise employed at any time in the construction work.

**(6) Access to residual receipts**

The Secretary shall authorize the owner of a project assisted under this section to use any residual receipts held for the project in excess of \$500 per unit (or in excess of such other amount prescribed by the Secretary based on the needs of the project) for activities to retrofit and renovate the project described under section 8011 (d)(3) of title 42, to provide a service coordinator for the project as described in section 8011 (d)(4) of title 42, or to provide supportive services (as such term is defined in section 8011 (k) of title 42) to residents of the project. Any owner that uses residual receipts under this paragraph shall submit to the Secretary a report, not less than annually, describing the uses of the residual receipts. In determining the amount of project rental assistance to be provided to a project under subsection (c)(2) of this section, the Secretary may take into consideration the residual receipts held for the project only if, and to the extent that, excess residual receipts are not used under this paragraph.

**(7) Compliance with Housing and Community Development Act of 1992**

Each owner shall operate housing assisted under this section in compliance with subtitle C of title VI of the Housing and Community Development Act of 1992 [42 U.S.C. 13601 et seq.] and any regulations issued under such subtitle.

**(8) Use of project reserves**

Amounts for project reserves for a project assisted under this section may be used for costs, subject to reasonable limitations as the Secretary determines appropriate, for reducing the number of dwelling units in the project. Such use shall be subject to the approval of the Secretary to ensure that the use is designed to retrofit units that are currently obsolete or unmarketable.

**(k) Definitions**

**(1)** The term “elderly person” means a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy.



**(2)** The term “frail elderly” means an elderly person who is unable to perform at least 3 activities of daily living adopted by the Secretary for purposes of this program. Owners may establish additional eligibility requirements (acceptable to the Secretary) based on the standards in local supportive services programs.

**(3)** The term “owner” means a private nonprofit organization that receives assistance under this section to develop and operate supportive housing for the elderly.

**(4)** The term “private nonprofit organization” means any incorporated private institution or foundation—

**(A)** no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

**(B)** which has a governing board

**(i)** the membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such housing is located, and

**(ii)** which is responsible for the operation of the housing assisted under this section; and

**(C)** which is approved by the Secretary as to financial responsibility.

Such term includes a for-profit limited partnership the sole general partner of which is an organization meeting the requirements under subparagraphs (A), (B), and (C), or a corporation wholly owned and controlled by an organization meeting the requirements under subparagraphs (A), (B), and (C).

**(5)** The term “State” includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

**(6)** The term “Secretary” means the Secretary of Housing and Urban Development.

**(7)** The term “supportive housing for the elderly” means housing that is designed

**(A)** to meet the special physical needs of elderly persons and

**(B)** to accommodate the provision of supportive services that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of elderly persons that the housing is intended to serve.

**(8)** The term “very low-income” has the same meaning as given the term “very low-income families” under section 1437a (b)(2) of title 42.

#### **(l) Allocation of funds**

##### **(1) Capital advances**

Of any amounts made available for assistance under this section, such sums as may be necessary shall be available for funding capital advances in accordance with subsection (c)(1) of this section. Such amounts, the repayments from such advances, and the proceeds from notes or obligations issued under this section prior to November 28, 1990, shall constitute a revolving fund to be used by the Secretary in carrying out this section.

##### **(2) Project rental assistance**

Of any amounts made available for assistance under this section, such sums as may be necessary shall be available for funding project rental assistance in accordance with subsection (c)(2) of this section.

##### **(3) Nonmetropolitan allocation**

Not less than 15 percent of the funds made available for assistance under this section shall be allocated by the Secretary on a national basis for nonmetropolitan areas.

#### **(m) Authorization of appropriations**

There is authorized to be appropriated for providing assistance under this section \$710,000,000 for fiscal year 2000.

##### **(m) 1 Authorization of appropriations**

There are authorized to be appropriated for providing assistance under this section such sums as may be necessary for each of fiscal years 2001, 2002, and 2003.