

native methods which may be utilized for recapturing the cost to the Federal Government of front-end investment in those units which are removed from the section 8 program.

“(c) Repealed. Pub. L. 105-276, title V, § 582(a)(4), Oct. 21, 1998, 112 Stat. 2643.]

“(d) RENTAL ASSISTANCE FRAUD RECOVERIES.—

“(1) AUTHORITY TO RETAIN RECOVERED AMOUNTS.—

The Secretary of Housing and Urban Development shall permit public housing agencies administering the housing assistance payments program under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] to retain, out of amounts obtained by the agencies from tenants that are due as a result of fraud and abuse, an amount (determined in accordance with regulations issued by the Secretary) equal to the greater of—

“(A) 50 percent of the amount actually collected, or

“(B) the actual, reasonable, and necessary expenses related to the collection, including costs of investigation, legal fees, and collection agency fees.

“(2) USE.—Amounts retained by an agency shall be made available for use in support of the affected program or project, in accordance with regulations issued by the Secretary. Where the Secretary is the principal party initiating or sustaining an action to recover amounts from families or owners, the provisions of this section shall not apply.

“(3) RECOVERY.—Amounts may be recovered under this paragraph—

“(A) by an agency through a lawsuit (including settlement of the lawsuit) brought by the agency or through court-ordered restitution pursuant to a criminal proceeding resulting from an agency’s investigation where the agency seeks prosecution of a family or where an agency seeks prosecution of an owner; or

“(B) through administrative repayment agreements with a family or owner entered into as a result of an administrative grievance procedure conducted by an impartial decisionmaker in accordance with section 6(k) of the United States Housing Act of 1937 [42 U.S.C. 1437d(k)].”

[Section 129(b) of Pub. L. 102-550, provided that: “Subsection (a) [amending section 326(d) of Pub. L. 97-35, set out above] shall apply with respect to actions by public housing agencies initiated on or after the date of the enactment of this Act [Oct. 28, 1992].”

#### STUDY BY SECRETARY CONCERNING FEASIBILITY OF MINIMUM RENT PAYMENT REQUIREMENTS

Section 212 of Pub. L. 96-153 directed the Secretary of Housing and Urban Development to conduct a study of the feasibility and financial desirability of requiring minimum rent payments from tenants in low-income housing assisted under this chapter, and to submit a report to the Congress containing the findings and conclusions of such study not later than ten days after the Budget for fiscal year 1981 is transmitted pursuant to section 11 of former Title 31, Money and Finance, and directed the Secretary of Housing and Urban Development to conduct a study to provide detailed comparisons between the rents paid by tenants occupying low-income housing assisted under this chapter and the rents paid by tenants at the same income level who are not in assisted housing and to transmit a report on such study to the Congress not later than Mar. 1, 1980.

#### STUDY OF ALTERNATIVE MEANS OF ENCOURAGING THE DEVELOPMENT OF HOUSING

Section 208 of Pub. L. 95-557 directed that Secretary of Housing and Urban Development conduct a study for purpose of examining alternative means of encouraging development of housing to be assisted under this section for occupancy by large families which reside in areas with a low-vacancy rate in rental housing and report to Congress no later than one year after Oct. 31, 1978, for purpose of providing legislative recommendations with respect to this study.

#### TAXATION OF INTEREST PAID ON OBLIGATIONS SECURED BY INSURED MORTGAGE AND ISSUED BY PUBLIC AGENCY

Section 319(b) of Pub. L. 93-383, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “With respect to any obligation secured by a mortgage which is insured under section 221(d)(3) of the National Housing Act [section 1715(d)(3) of Title 12, Banks and Banking] and issued by a public agency as mortgagor in connection with the financing of a project assisted under section 8 of the United States Housing Act of 1937 [this section], the interest paid on such obligation shall be included in gross income for purposes of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [chapter 1 of Title 26, Internal Revenue Code].”

#### RENTAL OR INCOME CONTRIBUTIONS; USE OF SPECIAL SCHEDULES OF REQUIRED PAYMENTS FOR PARTICIPANTS IN MUTUAL HELP PROJECTS CONTRIBUTING LABOR, ETC.

Section 203 of Pub. L. 93-383 provided that: “The rental or income contribution provisions of the United States Housing Act of 1937 [sections 1437 to 1437j of this title], as amended by section 201 of this Act, shall not preclude the use of special schedules of required payments as approved by the Secretary for participants in mutual help housing projects who contribute labor, land, or materials to the development of such projects.”

### § 1437g. Public housing Capital and Operating Funds

#### (a) Merger into Capital Fund

Except as otherwise provided in the Quality Housing and Work Responsibility Act of 1998, any assistance made available for public housing under section 1437j of this title before October 1, 1999, shall be merged into the Capital Fund established under subsection (d) of this section.

#### (b) Merger into Operating Fund

Except as otherwise provided in the Quality Housing and Work Responsibility Act of 1998, any assistance made available for public housing under this section before October 1, 1999, shall be merged into the Operating Fund established under subsection (e) of this section.

#### (c) Allocation amount

##### (1) In general

For fiscal year 2000 and each fiscal year thereafter, the Secretary shall allocate amounts in the Capital Fund and Operating Funds<sup>1</sup> for assistance for public housing agencies eligible for such assistance. The Secretary shall determine the amount of the allocation for each eligible agency, which shall be, for any fiscal year beginning after the effective date of the formulas described in subsections (d)(2) and (e)(2) of this section—

(A) for assistance from the Capital Fund, the amount determined for the agency under the formula under subsection (d)(2) of this section; and

(B) for assistance from the Operating Fund, the amount determined for the agency under the formula under subsection (e)(2) of this section.

##### (2) Funding

There are authorized to be appropriated for assistance for public housing agencies under this section the following amounts:

<sup>1</sup> So in original. Probably should be “Fund”.

**(A) Capital Fund**

For allocations of assistance from the Capital Fund, \$3,000,000,000 for fiscal year 1999, and such sums as may be necessary for fiscal years 2000, 2001, 2002, and 2003.

**(B) Operating Fund**

For allocations of assistance from the Operating Fund, \$2,900,000,000 for fiscal year 1999, and such sums as may be necessary for each of fiscal years 2000, 2001, 2002, and 2003.

**(d) Capital Fund****(1) In general**

The Secretary shall establish a Capital Fund for the purpose of making assistance available to public housing agencies to carry out capital and management activities, including—

(A) the development, financing, and modernization of public housing projects, including the redesign, reconstruction, and reconfiguration of public housing sites and buildings (including accessibility improvements) and the development of mixed-finance projects;

(B) vacancy reduction;

(C) addressing deferred maintenance needs and the replacement of obsolete utility systems and dwelling equipment;

(D) planned code compliance;

(E) management improvements, including the establishment and initial operation of computer centers in and around public housing through a Neighborhood Networks initiative, for the purpose of enhancing the self-sufficiency, employability, and economic self-reliance of public housing residents by providing them with onsite computer access and training resources;

(F) demolition and replacement;

(G) resident relocation;

(H) capital expenditures to facilitate programs to improve the empowerment and economic self-sufficiency of public housing residents and to improve resident participation;

(I) capital expenditures to improve the security and safety of residents;

(J) homeownership activities, including programs under section 1437z-4 of this title;

(K) improvement of energy and water-use efficiency by installing fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2-1998 and A112.18.1-2000, or any revision thereto, applicable at the time of installation, and by increasing energy efficiency and water conservation by such other means as the Secretary determines are appropriate; and

(L) integrated utility management and capital planning to maximize energy conservation and efficiency measures.

**(2) Formula**

The Secretary shall develop a formula for determining the amount of assistance provided to public housing agencies from the Capital Fund for a fiscal year, which shall include a mechanism to reward performance. The formula may take into account such factors as—

(A) the number of public housing dwelling units owned, assisted, or operated by the

public housing agency, the characteristics and locations of the projects, and the characteristics of the families served and to be served (including the incomes of the families);

(B) the need of the public housing agency to carry out rehabilitation and modernization activities, replacement housing, and reconstruction, construction, and demolition activities related to public housing dwelling units owned, assisted, or operated by the public housing agency, including backlog and projected future needs of the agency;

(C) the cost of constructing and rehabilitating property in the area;

(D) the need of the public housing agency to carry out activities that provide a safe and secure environment in public housing units owned, assisted, or operated by the public housing agency;

(E) any record by the public housing agency of exemplary performance in the operation of public housing, as indicated by the system of performance indicators established pursuant to section 1437d(j) of this title; and

(F) any other factors that the Secretary determines to be appropriate.

**(3) Conditions on use for development and modernization****(A) Development**

Except as otherwise provided in this chapter, any public housing developed using amounts provided under this subsection, or under section 1437l of this title as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, shall be operated under the terms and conditions applicable to public housing during the 40-year period that begins on the date on which the project (or stage of the project) becomes available for occupancy.

**(B) Modernization**

Except as otherwise provided in this chapter, any public housing or portion thereof that is modernized using amounts provided under this subsection or under section 1437l of this title (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998) shall be maintained and operated under the terms and conditions applicable to public housing during the 20-year period that begins on the latest date on which modernization is completed.

**(C) Applicability of latest expiration date**

Public housing subject to this paragraph or to any other provision of law mandating the operation of the housing as public housing or under the terms and conditions applicable to public housing for a specified length of time, shall be maintained and operated as required until the latest such expiration date.

**(e) Operating Fund****(1) In general**

The Secretary shall establish an Operating Fund for the purpose of making assistance

available to public housing agencies for the operation and management of public housing, including—

(A) procedures and systems to maintain and ensure the efficient management and operation of public housing units (including amounts sufficient to pay for the reasonable costs of review by an independent auditor of the documentation or other information maintained pursuant to section 1437d(j)(6) of this title by a public housing agency or resident management corporation to substantiate the performance of that agency or corporation);

(B) activities to ensure a program of routine preventative maintenance;

(C) anticrime and antidrug activities, including the costs of providing adequate security for public housing residents, including above-baseline police service agreements;

(D) activities related to the provision of services, including service coordinators for elderly persons or persons with disabilities;

(E) activities to provide for management and participation in the management and policymaking of public housing by public housing residents;

(F) the costs of insurance;

(G) the energy costs associated with public housing units, with an emphasis on energy conservation;

(H) the costs of administering a public housing work program under section 1437j of this title, including the costs of any related insurance needs;

(I) the costs of repaying, together with rent contributions, debt incurred to finance the rehabilitation and development of public housing units, which shall be subject to such reasonable requirements as the Secretary may establish;

(J) the costs associated with the operation and management of mixed finance projects, to the extent appropriate; and

(K) the costs of operating computer centers in public housing through a Neighborhood Networks initiative described in subsection (d)(1)(E) of this section, and of activities related to that initiative.

## (2) Formula

### (A) In general

The Secretary shall establish a formula for determining the amount of assistance provided to public housing agencies from the Operating Fund for a fiscal year. The formula may take into account—

(i) standards for the costs of operating and reasonable projections of income, taking into account the characteristics and locations of the public housing projects and characteristics of the families served and to be served (including the incomes of the families), or the costs of providing comparable services as determined in accordance with criteria or a formula representing the operations of a prototype well-managed public housing project;

(ii) the number of public housing dwelling units owned, assisted, or operated by the public housing agency;

(iii) the number of public housing dwelling units owned, assisted, or operated by the public housing agency that are chronically vacant and the amount of assistance appropriate for those units;

(iv) to the extent quantifiable, the extent to which the public housing agency provides programs and activities designed to promote the economic self-sufficiency and management skills of public housing residents;

(v) the need of the public housing agency to carry out anti-crime and anti-drug activities, including providing adequate security for public housing residents;

(vi) the amount of public housing rental income foregone by the public housing agency as a result of escrow savings accounts under section 1437u(d)(2) of this title for families participating in a family self-sufficiency program of the agency under such section 1437u of this title; and

(vii) any other factors that the Secretary determines to be appropriate.

### (B) Incentive to increase certain rental income

The formula shall provide an incentive to encourage public housing agencies to facilitate increases in earned income by families in occupancy. Any such incentive shall provide that the agency shall benefit from increases in such rental income and that such amounts accruing to the agency pursuant to such benefit may be used only for low-income housing or to benefit the residents of the public housing agency.

### (C) Treatment of savings

#### (i) In general

The treatment of utility and waste management costs under the formula shall provide that a public housing agency shall receive the full financial benefit from any reduction in the cost of utilities or waste management resulting from any contract with a third party to undertake energy conservation improvements in one or more of its public housing projects.

#### (ii) Third party contracts

Contracts described in clause (i) may include contracts for equipment conversions to less costly utility sources, projects with resident-paid utilities, and adjustments to frozen base year consumption, including systems repaired to meet applicable building and safety codes and adjustments for occupancy rates increased by rehabilitation.

#### (iii) Term of contract

The total term of a contract described in clause (i) shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating system replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.

#### (iv) Existing contracts

The term of a contract described in clause (i) that, as of December 26, 2007, is

in repayment and has a term of not more than 12 years, may be extended to a term of not more than 20 years to permit additional energy conservation improvements without requiring the reprourement of energy performance contractors.

**(3) Condition on use**

No portion of any public housing project operated using amounts provided under this subsection, or under this section as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, may be disposed of before the expiration of the 10-year period beginning upon the conclusion of the fiscal year for which such amounts were provided, except as otherwise provided in this chapter.

**(f) Negotiated rulemaking procedure**

The formulas under subsections (d)(2) and (e)(2) of this section shall be developed according to procedures for issuance of regulations under the negotiated rulemaking procedure under subchapter III of chapter 5 of title 5.

**(g) Limitations on use of funds**

**(1) Flexibility for Capital Fund amounts**

Of any amounts appropriated for fiscal year 2000 or any fiscal year thereafter that are allocated for fiscal year 2000 or any fiscal year thereafter from the Capital Fund for any public housing agency, the agency may use not more than 20 percent for activities that are eligible under subsection (e) of this section for assistance with amounts from the Operating Fund, but only if the public housing agency plan for the agency provides for such use.

**(2) Full flexibility for small PHAs**

Of any amounts allocated for any fiscal year for any public housing agency that owns or operates less than 250 public housing dwelling units, is not designated pursuant to section 1437d(j)(2) of this title as a troubled public housing agency, and (in the determination of the Secretary) is operating and maintaining its public housing in a safe, clean, and healthy condition, the agency may use any such amounts for any eligible activities under subsections (d)(1) and (e)(1) of this section, regardless of the fund from which the amounts were allocated and provided. This subsection shall take effect on October 21, 1998.

**(3) Limitation on new construction**

**(A) In general**

Except as provided in subparagraphs (B) and (C), a public housing agency may not use any of the amounts allocated for the agency from the Capital Fund or Operating Fund for the purpose of constructing any public housing unit, if such construction would result in a net increase from the number of public housing units owned, assisted, or operated by the public housing agency on October 1, 1999, including any public housing units demolished as part of any revitalization effort.

**(B) Exception regarding use of assistance**

A public housing agency may use amounts allocated for the agency from the Capital

Fund or Operating Fund for the construction and operation of housing units that are available and affordable to low-income families in excess of the limitations on new construction set forth in subparagraph (A), but the formulas established under subsections (d)(2) and (e)(2) of this section shall not provide additional funding for the specific purpose of allowing construction and operation of housing in excess of those limitations (except to the extent provided in subparagraph (C)).

**(C) Exception regarding formulas**

Subject to reasonable limitations set by the Secretary, the formulas established under subsections (d)(2) and (e)(2) of this section may provide additional funding for the operation and modernization costs (but not the initial development costs) of housing in excess of amounts otherwise permitted under this paragraph, and such amounts may be so used, if—

(i) such units are part of a mixed-finance project or otherwise leverage significant additional private or public investment; and

(ii) the estimated cost of the useful life of the project is less than the estimated cost of providing tenant-based assistance under section 1437f(o) of this title for the same period of time.

**(h) Technical assistance**

To the extent amounts are provided in advance in appropriations Acts, the Secretary may make grants or enter into contracts or cooperative agreements in accordance with this subsection for purposes of providing, either directly or indirectly—

(1) technical assistance to public housing agencies, resident councils, resident organizations, and resident management corporations, including assistance relating to monitoring and inspections;

(2) training for public housing agency employees and residents;

(3) data collection and analysis;

(4) training, technical assistance, and education to public housing agencies that are—

(A) at risk of being designated as troubled under section 1437d(j) of this title, to assist such agencies from being so designated; and

(B) designated as troubled under section 1437d(j) of this title, to assist such agencies in achieving the removal of that designation;

(5) contract expertise;

(6) training and technical assistance to assist in the oversight and management of public housing or tenant-based assistance;

(7) clearinghouse services in furtherance of the goals and activities of this subsection; and

(8) assistance in connection with the establishment and operation of computer centers in public housing through a Neighborhood Networks initiative described in subsection (d)(1)(E) of this section.

As used in this subsection, the terms “training” and “technical assistance” shall include training or technical assistance and the cost of nec-

essary travel for participants in such training or technical assistance, by or to officials and employees of the Department and of public housing agencies, and to residents and to other eligible grantees.

**(i) Eligibility of units acquired from proceeds of sales under demolition or disposition plan**

If a public housing agency uses proceeds from the sale of units under a homeownership program in accordance with section 1437z-4 of this title to acquire additional units to be sold to low-income families, the additional units shall be counted as public housing for purposes of determining the amount of the allocation to the agency under this section until sale by the agency, but in no case longer than 5 years.

**(j) Penalty for slow expenditure of capital funds**

**(1) Obligation of amounts**

Except as provided in paragraph (4) and subject to paragraph (2), a public housing agency shall obligate any assistance received under this section not later than 24 months after, as applicable—

(A) the date on which the funds become available to the agency for obligation in the case of modernization; or

(B) the date on which the agency accumulates adequate funds to undertake modernization, substantial rehabilitation, or new construction of units.

**(2) Extension of time period for obligation**

The Secretary—

(A) may, extend the time period under paragraph (1) for a public housing agency, for such period as the Secretary determines to be necessary, if the Secretary determines that the failure of the agency to obligate assistance in a timely manner is attributable to—

- (i) litigation;
- (ii) obtaining approvals of the Federal Government or a State or local government;
- (iii) complying with environmental assessment and abatement requirements;
- (iv) relocating residents;
- (v) an event beyond the control of the public housing agency; or
- (vi) any other reason established by the Secretary by notice published in the Federal Register;

(B) shall disregard the requirements of paragraph (1) with respect to any unobligated amounts made available to a public housing agency, to the extent that the total of such amounts does not exceed 10 percent of the original amount made available to the public housing agency; and

(C) may, with the prior approval of the Secretary, extend the time period under paragraph (1), for an additional period not to exceed 12 months, based on—

- (i) the size of the public housing agency;
- (ii) the complexity of capital program of the public housing agency;
- (iii) any limitation on the ability of the public housing agency to obligate the amounts allocated for the agency from the

Capital Fund in a timely manner as a result of State or local law; or

(iv) such other factors as the Secretary determines to be relevant.

**(3) Effect of failure to comply**

**(A) Prohibition of new assistance**

A public housing agency shall not be awarded assistance under this section for any month during any fiscal year in which the public housing agency has funds unobligated in violation of paragraph (1) or (2).

**(B) Withholding of assistance**

During any fiscal year described in subparagraph (A), the Secretary shall withhold all assistance that would otherwise be provided to the public housing agency. If the public housing agency cures its failure to comply during the year, it shall be provided with the share attributable to the months remaining in the year.

**(C) Redistribution**

The total amount of any funds not provided public housing agencies by operation of this paragraph shall be allocated for agencies determined under section 1437d(j) of this title to be high-performing.

**(4) Exception to obligation requirements**

**(A) In general**

Subject to subparagraph (B), if the Secretary has consented, before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, to an obligation period for any agency longer than provided under paragraph (1), a public housing agency that obligates its funds before the expiration of that period shall not be considered to be in violation of paragraph (1).

**(B) Prior fiscal years**

Notwithstanding subparagraph (A), any funds appropriated to a public housing agency for fiscal year 1997 or prior fiscal years shall be fully obligated by the public housing agency not later than September 30, 1999.

**(5) Expenditure of amounts**

**(A) In general**

A public housing agency shall spend any assistance received under this section not later than 4 years (plus the period of any extension approved by the Secretary under paragraph (2)) after the date on which funds become available to the agency for obligation.

**(B) Enforcement**

The Secretary shall enforce the requirement of subparagraph (A) through default remedies up to and including withdrawal of the funding.

**(6) Right of recapture**

Any obligation entered into by a public housing agency shall be subject to the right of the Secretary to recapture the obligated amounts for violation by the public housing agency of the requirements of this subsection.

**(k) Treatment of nonrental income**

A public housing agency that receives income from nonrental sources (as determined by the

Secretary) may retain and use such amounts without any decrease in the amounts received under this section from the Capital or Operating Fund. Any such nonrental amounts retained shall be used only for low-income housing or to benefit the residents assisted by the public housing agency.

**(l) Provision of only capital or operating assistance**

**(1) Authority**

In appropriate circumstances, as determined by the Secretary, a public housing agency may commit capital assistance only, or operating assistance only, for public housing units, which assistance shall be subject to all of the requirements applicable to public housing except as otherwise provided in this subsection.

**(2) Exemptions**

In the case of any public housing unit assisted pursuant to the authority under paragraph (1), the Secretary may, by regulation, reduce the period under subsection (d)(3) or (e)(3) of this section, as applicable, during which such units must be operated under requirements applicable to public housing. In cases in which there is commitment of operating assistance but no commitment of capital assistance, the Secretary may make section 8 [42 U.S.C. 1437f] requirements applicable, as appropriate, by regulation.

**(m) Treatment of public housing**

**(1) Repealed. Pub. L. 108-7, div. K, title II, § 212(a), Feb. 20, 2003, 117 Stat. 503**

**(2) Reduction of asthma incidence**

Notwithstanding any other provision of this section, the New York City Housing Authority may, in its sole discretion, from amounts provided from the Operating and Capital Funds, or from amounts provided for public housing before amounts are made available from such Funds, use not more than exceeding<sup>2</sup> \$500,000 per year for the purpose of initiating, expanding or continuing a program for the reduction of the incidence of asthma among residents. The Secretary shall consult with the Administrator of the Environmental Protection Agency and the Secretary of Health and Human Services to identify and consider sources of funding for the reduction of the incidence of asthma among recipients of assistance under this subchapter.

**(3) Services for elderly residents**

Notwithstanding any other provision of this section, the New York City Housing Authority may, in its sole discretion, from amounts provided from the Operating and Capital Funds, or from amounts provided for public housing before the amounts are made available from such Funds, use not more than \$600,000 per year for the purpose of developing a comprehensive plan to address the need for services for elderly residents. Such plan may be developed by a partnership created by such Housing Authority and may include the creation of a model project for assisted living at one or

more developments. The model project may provide for contracting with private parties for the delivery of services.

**(4) Effective date**

This subsection shall apply to fiscal year 1999 and each fiscal year thereafter.

(Sept. 1, 1937, ch. 896, title I, § 9, as added Pub. L. 93-383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 666; amended Pub. L. 94-375, § 2(c), Aug. 3, 1976, 90 Stat. 1068; Pub. L. 95-24, title I, § 101(b), Apr. 30, 1977, 91 Stat. 55; Pub. L. 95-128, title II, § 201(f), Oct. 12, 1977, 91 Stat. 1129; Pub. L. 95-557, title II, § 206(g), Oct. 31, 1978, 92 Stat. 2093; Pub. L. 96-153, title II, §§ 201(c), 207, 211(a), Dec. 21, 1979, 93 Stat. 1106, 1109, 1110; Pub. L. 96-399, title II, § 201(b), (d), Oct. 8, 1980, 94 Stat. 1625; Pub. L. 97-35, title III, §§ 321(d), 322(c), Aug. 13, 1981, 95 Stat. 399, 402; Pub. L. 98-181, title II, § 212, Nov. 30, 1983, 97 Stat. 1184; Pub. L. 99-272, title III, § 3003, Apr. 7, 1986, 100 Stat. 102; Pub. L. 100-242, title I, §§ 112(b)(4), 118, Feb. 5, 1988, 101 Stat. 1824, 1828; renumbered title I, Pub. L. 100-358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 101-625, title V, §§ 507, 572(2), title VIII, § 802(p), Nov. 28, 1990, 104 Stat. 4186, 4236, 4317; Pub. L. 102-550, title I, § 114, title VI, § 673, Oct. 28, 1992, 106 Stat. 3691, 3827; Pub. L. 103-233, title III, § 304, Apr. 11, 1994, 108 Stat. 370; Pub. L. 104-134, title I, § 101(e) [title II, § 218], Apr. 26, 1996, 110 Stat. 1321-257, 1321-290; renumbered title I, Pub. L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104-330, title V, § 501(b)(5), Oct. 26, 1996, 110 Stat. 4042; Pub. L. 105-276, title II, § 210, title V, § 519(a), Oct. 21, 1998, 112 Stat. 2485, 2551; Pub. L. 106-377, § 1(a)(1) [title II, § 214(a)], Oct. 27, 2000, 114 Stat. 1441, 1441A-27; Pub. L. 108-7, div. K, title II, § 212(a), Feb. 20, 2003, 117 Stat. 503; Pub. L. 109-58, title I, § 151, Aug. 8, 2005, 119 Stat. 648; Pub. L. 110-161, div. K, title II, § 229, Dec. 26, 2007, 121 Stat. 2438; Pub. L. 110-289, div. B, title VIII, § 2804, July 30, 2008, 122 Stat. 2866.)

REFERENCES IN TEXT

The Quality Housing and Work Responsibility Act of 1998, referred to in subsecs. (a) and (b), is title V of Pub. L. 105-276, Oct. 21, 1998, 112 Stat. 2518. Section 503(a) of the Act is set out as an Effective Date of 1998 Amendment note under section 1437 of this title. Section 519(e) of the Act is set out as a note below. For complete classification of this Act to the Code, see Short Title of 1998 Amendment note set out under section 1437 of this title and Tables.

Section 1437f of this title, referred to in subsecs. (a) and (d)(3)(A), (B), was repealed by Pub. L. 105-276, title V, § 522(a), Oct. 21, 1998, 112 Stat. 2564.

PRIOR PROVISIONS

A prior section 9 of act Sept. 1, 1937, ch. 896, 50 Stat. 891, as amended, authorized loans for low-rent housing and slum clearance projects and was classified to section 1409 of this title, prior to the general revision of this chapter by Pub. L. 93-383. Similar provisions are contained in section 1437b of this title.

AMENDMENTS

2008—Subsecs. (k) to (n). Pub. L. 110-289 redesignated subsecs. (l) to (n) as (k) to (m), respectively, and struck out former subsec. (k), which related to emergency reserve and use of amounts.

2007—Subsec. (e)(2)(C)(iv). Pub. L. 110-161 added cl. (iv).

2005—Subsec. (d)(1)(K), (L). Pub. L. 109-58, § 151(1), added subpars. (K) and (L).

<sup>2</sup>So in original.

Subsec. (e)(2)(C). Pub. L. 109-58, §151(2), designated existing provisions as cl. (i), inserted heading, and added cls. (ii) and (iii).

2003—Subsec. (n)(1). Pub. L. 108-7 struck out par. (1) which related to treatment of certain covered locally developed public housing units as eligible public housing units.

2000—Subsec. (d)(1)(E). Pub. L. 106-377, §1(a)(1) [title II, §214(a)(1)], inserted before semicolon “, including the establishment and initial operation of computer centers in and around public housing through a Neighborhood Networks initiative, for the purpose of enhancing the self-sufficiency, employability, and economic self-reliance of public housing residents by providing them with onsite computer access and training resources”.

Subsec. (e)(1)(K). Pub. L. 106-377, §1(a)(1) [title II, §214(a)(2)], added subpar. (K).

Subsec. (h)(8). Pub. L. 106-377, §1(a)(1) [title II, §214(a)(3)], added par. (8).

1998—Pub. L. 105-276, §519(a), amended section generally, substituting present provisions for provisions which had: in subsec. (a), authorized annual contributions for operation of low-income housing, and provided for determination of the amounts and use of those contributions, contract authorization, standards for payments, necessity of contribution contracts, performance funding system, and audits; in subsec. (b), set forth limitation on amount of aggregate rentals paid by families residing in dwelling units receiving annual contributions; in subsec. (c), authorized appropriations for fiscal years 1993 and 1994; in subsec. (d), required distribution of remaining appropriated funds to projects incurring excessive costs; and in subsec. (e), set forth time of payment of assistance to public housing agency.

Subsec. (a)(3)(A). Pub. L. 105-276, §210, inserted after third sentence “Notwithstanding the preceding sentences, the Secretary may revise the performance funding system in a manner that takes into account equity among public housing agencies and that includes appropriate incentives for sound management.” and, in last sentence, inserted “, or any substantial change under the preceding sentence,” after “vacant public housing units”.

1996—Subsec. (a)(1)(A). Pub. L. 104-330, in second sentence, inserted “and” after comma at end of cl. (i), struck out “, and” after “reserve funds” in cl. (ii), and struck out cl. (iii) which read as follows: “with respect to housing projects developed under the Indian and Alaskan Native housing program assisted under this chapter, to provide funds (in addition to any other operating costs contributions approved by the Secretary under this section) as determined by the Secretary to be required to cover the administrative costs to an Indian housing authority during the development period of a project approved pursuant to section 1437c of this title and until such time as the project is occupied”.

Subsec. (a)(3)(B)(i). Pub. L. 104-134 struck out “for a period not to exceed 6 years” after “with the public housing agency”.

1994—Subsec. (a)(4). Pub. L. 103-233 added par. (4).

1992—Subsec. (a)(1)(B). Pub. L. 102-550, §673, designated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, substituted “this clause” for “this subparagraph”, inserted reference to section 8011 of this title and a period after “section 8013 of this title”, and added cl. (ii).

Subsec. (a)(3)(A). Pub. L. 102-550, §114(b), inserted at end “Notwithstanding sections 583(a) and 585(a) of title 5 (as added by section 3(a) of the Negotiated Rulemaking Act of 1990), any proposed regulation providing for amendment, alteration, adjustment, or other change to the performance funding system relating to vacant public housing units shall be issued pursuant to a negotiated rulemaking procedure under subchapter IV of chapter 5 of such title (as added by section 3(a) of the Negotiated Rulemaking Act of 1990), and the Secretary shall establish a negotiated rulemaking committee for development of any such proposed regulations.”

Subsec. (a)(3)(B)(i). Pub. L. 102-550, §114(c), inserted before semicolon at end “, and in subsequent years, if the energy savings are cost-effective, the Secretary may continue the sharing arrangement with the public housing agency for a period not to exceed 6 years”.

Subsec. (c). Pub. L. 102-550, §114(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “There are authorized to be appropriated for purposes of providing annual contributions under this section \$2,000,000,000 for fiscal year 1991 and \$2,086,000,000 in fiscal year 1992.”

1990—Subsec. (a)(1). Pub. L. 101-625, §572(2), substituted “low-income housing” for “lower income housing” wherever appearing.

Pub. L. 101-625, §507(b)(1), designated existing provisions as subpar. (A), redesignated former cls. (A) to (C) as cls. (i) to (iii), respectively, and added subpar. (B).

Subsec. (a)(2). Pub. L. 101-625, §572(2), substituted “low-income housing” for “lower income housing” wherever appearing.

Subsec. (a)(3)(A). Pub. L. 101-625, §507(b)(2), inserted after first comma “(except for payments under paragraph (1)(B))”.

Subsec. (a)(3)(B)(v). Pub. L. 101-625, §802(p), added cl. (v).

Subsec. (c). Pub. L. 101-625, §507(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “There are authorized to be appropriated for purposes of providing annual contributions under this section \$1,500,000,000 for fiscal year 1988 and \$1,530,000,000 for fiscal year 1989.”

Subsec. (d). Pub. L. 101-625, §572(2), substituted “low-income housing” for “lower income housing”.

1988—Subsec. (a)(1). Pub. L. 100-242, §118(a)(1), struck out last sentence directing Secretary to establish standards for costs of operation and reasonable projections of income, for purposes of making payments under this section.

Pub. L. 100-242, §118(d), inserted at end “If the Secretary determines that a public housing agency has failed to take the actions required to submit an acceptable audit on a timely basis in accordance with chapter 75 of title 31, the Secretary may arrange for, and pay the costs of, the audit. In such circumstances, the Secretary may withhold, from assistance otherwise payable to the agency under this section, amounts sufficient to pay for the reasonable costs of conducting an acceptable audit, including, when appropriate, the reasonable costs of accounting services necessary to place the agency’s books and records in auditable condition.”

Subsec. (a)(2). Pub. L. 100-242, §112(b)(4), substituted “one developed pursuant to a contributions contract authorized by section 1437c” for “being assisted by an annual contributions contract authorized by section 1437c(c)” and “any such” for “any such annual”.

Subsec. (a)(3). Pub. L. 100-242, §118(a)(2), added par. (3).

Subsec. (c). Pub. L. 100-242, §118(b), amended subsec. (c) generally, substituting provisions authorizing appropriations under this section for fiscal years 1988 and 1989 for provisions authorizing appropriations for the period beginning on or after July 1, 1975, through the period beginning on or after Oct. 1, 1985.

Subsec. (e). Pub. L. 100-242, §118(c), added subsec. (e). 1986—Subsec. (c). Pub. L. 99-272 struck out “and by” after “1983,” and inserted “, and not to exceed \$1,279,000,000 on or after October 1, 1985” after “1984”.

1983—Subsec. (c). Pub. L. 98-181 substituted “October 1, 1980, and” for “October 1, 1980,” and authorized appropriations of not to exceed \$1,500,000,000 on or after Oct. 1, 1983, and of such sums as may be necessary on or after Oct. 1, 1984.

1981—Subsec. (a). Pub. L. 97-35, §322(c), substituted reference to lower income for reference to low-income wherever appearing.

Subsec. (c). Pub. L. 97-35, §321(d), inserted provisions respecting authorization on or after Oct. 1, 1981.

Subsec. (d). Pub. L. 97-35, §322(c), substituted reference to lower income for reference to low-income.

1980—Subsec. (a)(1)(C). Pub. L. 96-399, §201(d), added cl. (C).

Subsec. (c). Pub. L. 96-399, §201(b), authorized appropriation of not to exceed \$826,000,000 on or after Oct. 1, 1980.

1979—Subsec. (a). Pub. L. 96-153, §211(a), designated existing provisions as par. (1) and cls. (1) and (2) thereof as (A) and (B), inserted provisions that such contract shall provide that no disposition of low-income housing project, with respect to which the contract is entered into, shall occur during and for ten years after the period when contributions were made pursuant to such contract unless approved by the Secretary, and added par. (2).

Subsec. (c). Pub. L. 96-153, §201(c), authorized appropriation for annual contributions of \$741,500,000 on or after Oct. 1, 1979.

Subsec. (d). Pub. L. 96-153, §207, added subsec. (d).

1978—Subsec. (c). Pub. L. 95-557 inserted “and not to exceed \$729,000,000 on or after October 1, 1978”.

1977—Subsec. (c). Pub. L. 95-128 authorized appropriation for annual contributions of \$685,000,000 on or after Oct. 1, 1977.

Pub. L. 95-24 substituted “and not to exceed \$595,600,000 on or after October 1, 1976” for “and not to exceed \$576,000,000 on or after October 1, 1976”.

1976—Subsec. (c). Pub. L. 94-375 substituted provision authorizing appropriations for annual contributions not to exceed \$535,000,000 on or after July 1, 1975, not to exceed \$80,000,000 on or after July 1, 1976, and not to exceed \$576,000,000 on or after October 1, 1976 for provision which authorized annual contributions for contracts entered into on or after July 1, 1974 of not more than \$500,000,000 per annum, which amount was to be increased by \$60,000,000 on July 1, 1975.

#### EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-7, div. K, title II, §212(c), Feb. 20, 2003, 117 Stat. 504, provided that: “The amendment made by subsection (a) [amending this section] shall be deemed to have taken effect on October 1, 1998.”

#### EFFECTIVE DATE OF 1998 AMENDMENT

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

Pub. L. 105-276, title V, §519(e)-(g), Oct. 21, 1998, 112 Stat. 2561, 2562, provided that:

“(e) TRANSITIONAL PROVISION OF ASSISTANCE.—

“(1) IN GENERAL.—Subject to paragraph (2), before the implementation of formulas pursuant to sections 9(d)(2) and 9(e)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437g(d)(2), (e)(2)] (as amended by subsection (a) of this section), the Secretary shall provide that each public housing agency shall receive funding under sections 9 and 14 of the United States Housing Act of 1937 [42 U.S.C. 1437g, 1437l], as those sections existed immediately before the enactment of this Act [Oct. 21, 1998] (except that such sections shall be subject to any amendments to such sections that may be contained in title II of this Act [see Tables for classification]).

“(2) QUALIFICATIONS.—Before the implementation of formulas pursuant to sections 9(d)(2) and 9(e)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437g(d)(2), (e)(2)] (as amended by subsection (a) of this section)—

“(A) if a public housing agency establishes a rental amount that is based on a ceiling rent established pursuant to subsection (d)(1) of this section [42 U.S.C. 1437a note], the Secretary shall take into account any reduction of the per unit dwelling rental income of the public housing agency resulting from the use of that rental amount in calculating the contributions for the public housing agency for the operation of the public housing under section 9 of the United States Housing Act of 1937 [42 U.S.C. 1437g];

“(B) if a public housing agency establishes a rental amount that is based on an adjustment to income under section 3(b)(5)(G) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(5)(G)] (as in effect immediately before the enactment of this Act [Oct. 21, 1998]), the Secretary shall not take into account any reduction of or any increase in the per unit dwelling rental income of the public housing agency resulting from the use of that rental amount in calculating the contributions for the public housing agency for the operation of the public housing under section 9 of the United States Housing Act of 1937 [42 U.S.C. 1437g]; and

“(C) if a public housing agency establishes a rental amount other than as provided under subparagraph (A) or (B) that is less than the greatest of the amounts determined under subparagraphs (A), (B), and (C) of section 3(a)(1) of the United States Housing Act of 1937 [42 U.S.C. 1437a(a)(1)(A), (B), (C)], the Secretary shall not take into account any reduction of the per unit dwelling rental income of the public housing agency resulting from the use of that rental amount in calculating the contributions for the public housing agency for the operation of the public housing under section 9 of the United States Housing Act of 1937 [42 U.S.C. 1437g].

“(f) EFFECTIVE DATE OF OPERATING FORMULA.—Notwithstanding the effective date under section 503(a) [42 U.S.C. 1437 note], the Secretary may extend the effective date of the formula under section 9(e)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437g(e)(2)] (as amended by subsection (a) of this section) for up to 6 months if such additional time is necessary to implement such formula.

“(g) EFFECTIVE DATE.—Subsections (d) [42 U.S.C. 1437a note], (e), and (f) shall take effect upon the date of the enactment of this Act [Oct. 21, 1998].”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by subtitles B through F of title VI [§§ 621-685] of Pub. L. 102-550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 802(p) of Pub. L. 101-625 deemed enacted Nov. 5, 1990, see title II of Pub. L. 101-507, set out as a note under section 1701q of Title 12, Banks and Banking.

#### 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 Title 12, Banks and Banking.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-557 effective Oct. 1, 1978, see section 206(h) of Pub. L. 95-557, set out as a note under section 1437c of this title.

#### EFFECTIVE DATE

Section effective on such date or dates as the Secretary of Housing and Urban Development shall prescribe, but not later than eighteen months after Aug. 22, 1974, except that all of the provisions of subsec. (c) shall become effective on the same date, see section 201(b) of Pub. L. 93-383, set out as a note under section 1437 of this title.

#### REGULATIONS

Pub. L. 108-199, div. G, title II, §222, Jan. 23, 2004, 118 Stat. 398, provided that: “The Secretary of Housing and

Urban Development shall conduct negotiated rule-making with representatives from interested parties for purposes of any changes to the formula governing the Public Housing Operating Fund. A final rule shall be issued no later than July 1, 2004.”

Pub. L. 108-7, div. K, title II, Feb. 20, 2003, 117 Stat. 487, provided in part: “That the Secretary shall issue final regulations to carry out section 9(j) of the United States Housing Act of 1937 (42 U.S.C. 1437g(j)), not later than August 1, 2003”.

#### CAPITAL FUNDS FOR CENTRAL OFFICE COSTS

Pub. L. 111-117, div. A, title II, §224, Dec. 16, 2009, 123 Stat. 3102, provided that: “With respect to the use of amounts provided in this Act [div. A of Pub. L. 111-117, see Tables for classification] and in future Acts for the operation, capital improvement and management of public housing as authorized by sections 9(d) and 9(e) of the United States Housing Act of 1937 (42 U.S.C. 1437g(d) and (e)), the Secretary shall not impose any requirement or guideline relating to asset management that restricts or limits in any way the use of capital funds for central office costs pursuant to section 9(g)(1) or 9(g)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437g(g)(1), (2)): *Provided*, That a public housing agency may not use capital funds authorized under section 9(d) for activities that are eligible under section 9(e) for assistance with amounts from the operating fund in excess of the amounts permitted under section 9(g)(1) or 9(g)(2).”

Similar provisions were contained in the following appropriation acts:

Pub. L. 111-8, div. I, title II, §226, Mar. 11, 2009, 123 Stat. 977.

Pub. L. 110-161, div. K, title II, §226, Dec. 26, 2007, 121 Stat. 2437.

#### PAYMENTS FOR COSTS OF OPERATION AND MANAGEMENT OF PUBLIC HOUSING PROHIBITED

Pub. L. 108-447, div. I, title II, Dec. 8, 2004, 118 Stat. 3298, provided in part: “That for fiscal year 2006 and all fiscal years thereafter, the Secretary shall provide assistance under this heading [PUBLIC HOUSING OPERATING FUND] to public housing agencies on a calendar year basis: *Provided further*, That, in fiscal year 2005 and all fiscal years hereafter, no amounts under this heading in any appropriations Act may be used for payments to public housing agencies for the costs of operation and management of public housing for any year prior to the current year of such Act”.

Similar provisions were contained in the following appropriation acts:

Pub. L. 111-117, div. A, title II, Dec. 16, 2009, 123 Stat. 3080.

Pub. L. 111-8, div. I, title II, Mar. 11, 2009, 123 Stat. 956.

Pub. L. 110-161, div. K, title II, Dec. 26, 2007, 121 Stat. 2417.

Pub. L. 109-115, div. A, title III, Nov. 30, 2005, 119 Stat. 2444.

Pub. L. 108-199, div. G, title II, Jan. 23, 2004, 118 Stat. 375.

Pub. L. 108-7, div. K, title II, Feb. 20, 2003, 117 Stat. 488.

#### FUNDING OF COVERED LOCALLY DEVELOPED PUBLIC HOUSING UNITS PROHIBITED

Pub. L. 108-7, div. K, title II, §207, Feb. 20, 2003, 117 Stat. 502, provided that: “Notwithstanding any other provision of law, no funds in this Act or in any other Act in any fiscal year, including all future and prior fiscal years, may be used hereafter by the Secretary of Housing and Urban Development to provide any assistance or other funds for housing units defined in section 9(n) [now 9(m)] of the United States Housing Act of 1937 [42 U.S.C. 1437g(m)] (as in effect immediately before the enactment of this Act [Feb. 20, 2003]) as ‘covered locally developed public housing units’. The States of New York and Massachusetts shall reimburse any funds al-

ready made available under any appropriations Act for these units to the Secretary of Housing and Urban Development for reallocation to public housing agencies: *Provided*, That, if either State fails to make such reimbursement within 12 months, the Secretary shall recapture such funds through reductions from the amounts allocated to each State under section 106 of the Housing and Community Development Act of 1974 [42 U.S.C. 5306].”

#### APPLICABILITY OF PENALTIES FOR SLOW EXPENDITURE OF CAPITAL FUNDS

Pub. L. 107-73, title II, Nov. 26, 2001, 115 Stat. 660, provided in part: “That, hereafter, notwithstanding any other provision of law or any failure of the Secretary of Housing and Urban Development to issue regulations to carry out section 9(j) of the United States Housing Act of 1937 (42 U.S.C. 1437g(j)), such section is deemed to have taken effect on October 1, 1998, and, except as otherwise provided in this heading [“PUBLIC HOUSING CAPITAL FUND (INCLUDING TRANSFER OF FUNDS)”], shall apply to all assistance made available under this same heading on or after such date”.

#### COOLING DEGREE DAY ADJUSTMENT UNDER PERFORMANCE FUNDING SYSTEM

Section 508 of Pub. L. 101-625 provided that: “In determining the Performance Funding System utility subsidy for public housing agencies pursuant to section 9 of the United States Housing Act of 1937 [42 U.S.C. 1437g], the Secretary of Housing and Urban Development shall include a cooling degree day adjustment factor. The method by which a cooling degree day adjustment factor is included shall be identical to the method by which the heating degree day adjustment factor is included.”

#### ENERGY EFFICIENCY DEMONSTRATION

Section 523 of Pub. L. 101-625, which directed Secretary of Housing and Urban Development to carry out demonstration program to encourage use of private energy service companies and demonstrate opportunities for energy cost reduction through energy services contracts, and to report findings and recommendations to Congress as soon as practicable after expiration of 1-year period beginning on Nov. 28, 1990, was repealed by Pub. L. 105-276, title V, §582(a)(11), Oct. 21, 1998, 112 Stat. 2644.

### § 1437h. Implementation of provisions by Secretary

#### (a) Preparation and submission of annual budget program; maintenance of accounts; audit by Government Accountability Office

In the performance of, and with respect to, the functions, powers, and duties vested in him by this chapter, the Secretary, notwithstanding the provisions of any other law, shall—

(1) prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31; and

(2) maintain an integral set of accounts which may be audited by the Government Accountability Office as provided by chapter 91 of title 31.

#### (b) Availability of receipts and assets

All receipts and assets of the Secretary under this chapter shall be available for the purposes of this chapter until expended.

#### (c) Federal Reserve banks to act as depositories, custodians and fiscal agents; reimbursement for services

The Federal Reserve banks are authorized and directed to act as depositories, custodians, and