

In the
Supreme Court of Ohio

ORIGINAL

NBC-USA HOUSING, INC. -FIVE, :
D/B/A LOVE ZION MANOR, :
 :
Appellant, :
 : Case No. 2009-0919
 :
v. :
 : Appeal from Ohio Board of Tax Appeals
 : Case No. 2006-N-1492
 :
WILLIAM W. WILKINS :
[RICHARD A. LEVIN], :
Ohio Tax Commissioner, *et al.*, :
 :
Appellees. :

**APPENDIX TO
BRIEF OF APPELLEE RICHARD A. LEVIN, OHIO TAX COMMISSIONER**

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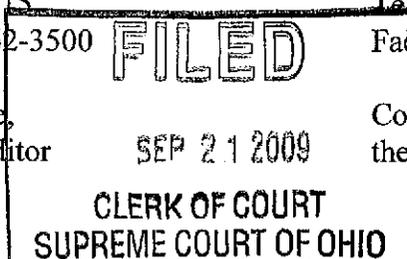
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INDEX

R.C. 5701.13	Appx. 1
R.C. 5709.01	Appx. 4
R.C. 5709.12	Appx. 6
R.C. 5709.121	Appx. 10
R.C. 5713.081	Appx. 12
R.C. 5715.27	Appx. 13
R.C. 5715.271	Appx. 15
R.C. 5717.04	Appx. 16
12 U.S.C. 1701q	Appx. 18
42 U.S.C. 1437a	Appx. 33
42 U.S.C. 1437f	Appx. 41
24 C.F.R 813.107	Appx. 61
24 C.F.R. 880.201-204	Appx. 67
24 C.F.R. 880.308-501	Appx. 75
24 C.F.R. 880.603	Appx. 83
24 C.F.R. 880.611	Appx. 87
24 C.F.R. 885.1-210	Appx. 91
<i>Nat'l Steelworkers Oldtimers Community Urban Development Co. v. Wilkins</i> (Jan. 20, 2009), BTA Case Nos. 2006-H-728 and 729, unreported (appeal pending, 5 th App. No. 2009 CA 00024).....	Appx. 100
<i>Nat'l Steelworkers Oldtimers Community Urban Development Co. v. Wilkins,</i> 5 th App. No. 2009 CA 00024, Docket and Plaintiffs-Appellants' Notice of Dismissal of Appeals	Appx. 116

R.C. 5701.13

(A) As used in this section:

(1) "Nursing home" means a nursing home or a home for the aging, as those terms are defined in *section 3721.01 of the Revised Code*, that is issued a license pursuant to *section 3721.02 of the Revised Code*.

(2) "Residential care facility" means a residential care facility, as defined in *section 3721.01 of the Revised Code*, that is issued a license pursuant to *section 3721.02 of the Revised Code*.

(3) "Adult care facility" means an adult care facility as defined in *section 3722.01 of the Revised Code* that is issued a license pursuant to *section 3722.04 of the Revised Code*.

(B) As used in Title LVII [57] of the Revised Code, and for the purpose of other sections of the Revised Code that refer specifically to Chapter 5701. or *section 5701.13 of the Revised Code*, a "home for the aged" means either of the following:

(1) A place of residence for aged and infirm persons that satisfies divisions (B)(1)(a) to (e) of this section:

(a) It is a nursing home, residential care facility, or adult care facility.

(b) It is owned by a corporation, unincorporated association, or trust of a charitable, religious, or fraternal nature, which is organized and operated not for profit, which is not formed for the pecuniary gain or profit of, and whose net earnings or any part of whose net earnings is not distributable to, its members, trustees, officers, or other private persons, and which is exempt from federal income taxation under section 501 of the "Internal Revenue Code of 1986," *100 Stat. 2085, 26 U.S.C. 1*.

(c) It is open to the public without regard to race, color, or national origin.

(d) It does not pay, directly or indirectly, compensation for services rendered, interest on debts incurred, or purchase price for land, building, equipment, supplies, or other goods or chattels, which compensation, interest, or purchase price is unreasonably high.

(e) It provides services for the life of each resident without regard to the resident's ability to continue payment for the full cost of the services.

(2) A place of residence that satisfies divisions (B)(1)(b), (d), and (e) of this section; that satisfies the definition of "nursing home," "residential care facility," or "adult care facility" under *section 3721.01 or 3722.01 of the Revised Code* regardless of whether it is licensed as such a home or facility; and that is provided at no charge to individuals on account of their service without compensation to a charitable, religious, fraternal, or educational institution, which individuals are aged or infirm and are members of the corporation, association, or trust that owns the place of residence. For the purposes of division (B)(2) of this section, "compensation" does not include furnishing room and board, clothing, health care, or other necessities, or stipends or other de minimis payments to defray the cost thereof.

Exemption from taxation shall be accorded, on proper application, only to those homes or parts of homes which meet the standards and provide the services specified in this section.

Nothing in this section shall be construed as preventing a home from requiring a resident with financial need to apply for any applicable financial assistance or requiring a home to retain a resident who willfully refuses to pay for services for which the resident has contracted even though the resident has sufficient resources to do so.

(C) (1) If a corporation, unincorporated association, or trust described in division (B)(1)(b) of this section is granted a certificate of need pursuant to *section 3702.52 of the Revised Code* to construct, add to, or otherwise modify a nursing home, or is given approval pursuant to *section 3791.04 of the Revised Code* to construct, add to, or otherwise modify a residential care facility or adult care facility and if the corporation, association, or trust submits an affidavit to the tax commissioner stating that, commencing on the date of licensure and continuing thereafter, the home or facility will be operated in accordance with the requirements of divisions (B)(1)(a) to (e) of this section, the corporation, association, or trust shall be considered to be operating a "home for the aged" within the meaning of division (B)(1) of this section, beginning on the first day of January of the year in which such certificate is granted or approval is given.

(2) If a corporation, association, or trust is considered to be operating a "home for the aged" pursuant to division (C)(1) of this section, the corporation, association, or trust shall notify the tax commissioner in writing upon the occurrence of any of the following events:

(a) The corporation, association, or trust no longer intends to complete the construction of, addition to, or modification of the home or facility, to obtain the appropriate license for the home or facility, or to commence operation of the home or facility in accordance with the requirements of divisions (B)(1)(a) to (e) of this section;

(b) The certificate of approval referred to in division (C)(1) of this section expires, is revoked, or is otherwise terminated prior to the completion of the construction of, addition to, or modification of the home or facility;

(c) The license to operate the home or facility is not granted by the director of health within one year following completion of the construction of, addition to, or modification of the home or facility;

(d) The license to operate the home or facility is not granted by the director of health within four years following the date upon which the certificate or approval referred to in division (C)(1) of this section was granted or given;

(e) The home or facility is granted a license to operate as a nursing home, residential care facility, or adult care facility.

(3) Upon the occurrence of any of the events referred to in divisions (C)(2)(a), (b), (c), (d), and (e) of this section, the corporation, association, or trust shall no longer be considered to be operating a "home for the aged" pursuant to division (C)(1) of this section, except that the tax commissioner, for good cause shown and to the extent the commissioner considers appropriate, may extend the time period specified in division (C)(2)(c) or (d) of this section, or both. Nothing in division (C)(3) of this section shall be construed to prevent a nursing home, residential care facility, or adult care facility from qualifying as a "home for the aged" if, upon proper application made pursuant to division (B) of this section, it is found to meet the requirements of divisions (A) and (B) of this section.

HISTORY:

132 v S 207 (Eff 5-31-68); 142 v S 21 (Eff 10-20-87); 143 v H 253 (Eff 11-15-90); 145 v H 152 (Eff 7-1-93); 146 v H 117 (Eff 9-29-95); 149 v H 416. Eff 9-6-2002.

R.C. 5709.01

(A) All real property in this state is subject to taxation, except only such as is expressly exempted therefrom.

(B) Except as provided by division (C) of this section or otherwise expressly exempted from taxation:

(1) All personal property located and used in business in this state, and all domestic animals kept in this state and not used in agriculture are subject to taxation, regardless of the residence of the owners thereof.

(2) All ships, vessels, and boats, and all shares and interests therein, defined in *section 5701.03 of the Revised Code* as personal property and belonging to persons residing in this state, and aircraft belonging to persons residing in this state and not used in business wholly in another state, other than aircraft licensed in accordance with *sections 4561.17 to 4561.21 of the Revised Code*, are subject to taxation.

(C) The following property of the kinds mentioned in division (B) of this section shall be exempt from taxation:

(1) Unmanufactured tobacco to the extent of the value, or amounts, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof.

(2) Spirituous liquor, as defined in division (B)(5) of *section 4301.01 of the Revised Code*, that is stored in warehouses in this state pursuant to an agreement with the division of liquor control.

(3) Except as otherwise provided in *section 5711.27 of the Revised Code*, all other such property if the aggregate taxable value thereof required to be listed by the taxpayer under Chapter 5711. of the Revised Code does not exceed ten thousand dollars.

(a) If the taxable value of such property exceeds ten thousand dollars only such property having an aggregate taxable value of ten thousand dollars shall be exempt.

(b) If such property is located in more than one taxing district as defined in *section 5711.01 of the Revised Code*, the exemption of ten thousand dollars shall be applied as follows:

(i) The taxable value of such property in the district having the greatest amount of such value shall be reduced until the exemption has been fully utilized or the value has been reduced to zero, whichever occurs first;

(ii) If the exemption has not been fully utilized under division (C)(3)(b)(i) of this section, the value in the district having the second greatest value shall be reduced until the exemption has been fully utilized or the value has been reduced to zero, whichever occurs first;

(iii) If the exemption has not been fully utilized under division (C)(3)(b)(ii) of this section, further reductions shall be made, in repeated steps which include property in districts having declining values, until the exemption has been fully utilized.

(D) All property mentioned as taxable in this section shall be entered on the general tax list and duplicate of taxable property.

HISTORY:

RS § 2731; S&S 757; S&C 1438; 56 v 175; 71 v 96, § 78; GC § 5328; 114 v 714; 124 v 852, § 2; Bureau of Code Revision, 10-1-53; 126 v 166 (Eff 9-20-55); 132 v H 480 (Eff 12-2-67); 140 v H 291 (Eff 7-1-83); 140 v H 379 (Eff 4-3-84); 141 v S 130 (Eff 10-17-85); 141 v H 274 (Eff 3-6-86); 146 v S 162. Eff 7-1-97.

R.C. 5709.12

(A) As used in this section, "independent living facilities" means any residential housing facilities and related property that are not a nursing home, residential care facility, or adult care facility as defined in division (A) of *section 5701.13 of the Revised Code*.

(B) Lands, houses, and other buildings belonging to a county, township, or municipal corporation and used exclusively for the accommodation or support of the poor, or leased to the state or any political subdivision for public purposes shall be exempt from taxation. Real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation, including real property belonging to an institution that is a nonprofit corporation that receives a grant under the Thomas Alva Edison grant program authorized by division (C) of *section 122.33 of the Revised Code* at any time during the tax year and being held for leasing or resale to others. If, at any time during a tax year for which such property is exempted from taxation, the corporation ceases to qualify for such a grant, the director of development shall notify the tax commissioner, and the tax commissioner shall cause the property to be restored to the tax list beginning with the following tax year. All property owned and used by a nonprofit organization exclusively for a home for the aged, as defined in *section 5701.13 of the Revised Code*, also shall be exempt from taxation.

(C) (1) If a home for the aged described in division (B)(1) of *section 5701.13 of the Revised Code* is operated in conjunction with or at the same site as independent living facilities, the exemption granted in division (B) of this section shall include kitchen, dining room, clinic, entry ways, maintenance and storage areas, and land necessary for access commonly used by both residents of the home for the aged and residents of the independent living facilities. Other facilities commonly used by both residents of the home for the aged and residents of independent living units shall be exempt from taxation only if the other facilities are used primarily by the residents of the home for the aged. Vacant land currently unused by the home, and independent living facilities and the lands connected with them are not exempt from taxation. Except as provided in division (A)(1) of *section 5709.121 [5709.12.1] of the Revised Code*, property of a home leased for nonresidential purposes is not exempt from taxation.

(2) Independent living facilities are exempt from taxation if they are operated in conjunction with or at the same site as a home for the aged described in division (B)(2) of *section 5701.13 of the Revised Code*; operated by a corporation, association, or trust described in division (B)(1)(b) of that section; operated exclusively for the benefit of members of the corporation, association, or trust who are retired, aged, or infirm; and provided to those members without charge in consideration of their service, without compensation, to a charitable, religious, fraternal, or educational institution. For the purposes of division (C)(2) of this section, "compensation" does not include furnishing room and board, clothing, health care, or other necessities, or stipends or other de minimis payments to defray the cost thereof.

(D) (1) A private corporation established under federal law, *defined in *36 U.S.C. 1101*, Pub. L. No. 102-199, *105 Stat. 1629*, as amended, the objects of which include encouraging the advancement of science generally, or of a particular branch of science, the promotion of scientific research, the improvement of the qualifications and usefulness of scientists, or the increase and diffusion of scientific knowledge is conclusively presumed to be a charitable or educational institution. A private corporation established as a nonprofit corporation under the

laws of a state, that is exempt from federal income taxation under *section 501(c)(3) of the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C.A. 1*, as amended, and has as its principal purpose one or more of the foregoing objects, also is conclusively presumed to be a charitable or educational institution.

The fact that an organization described in this division operates in a manner that results in an excess of revenues over expenses shall not be used to deny the exemption granted by this section, provided such excess is used, or is held for use, for exempt purposes or to establish a reserve against future contingencies; and, provided further, that such excess may not be distributed to individual persons or to entities that would not be entitled to the tax exemptions provided by this chapter. Nor shall the fact that any scientific information diffused by the organization is of particular interest or benefit to any of its individual members be used to deny the exemption granted by this section, provided that such scientific information is available to the public for purchase or otherwise.

(2) Division (D)(2) of this section does not apply to real property exempted from taxation under this section and division (A)(3) of *section 5709.121 [5709.12.1] of the Revised Code* and belonging to a nonprofit corporation described in division (D)(1) of this section that has received a grant under the Thomas Alva Edison grant program authorized by division (C) of *section 122.33 of the Revised Code* during any of the tax years the property was exempted from taxation.

When a private corporation described in division (D)(1) of this section sells all or any portion of a tract, lot, or parcel of real estate that has been exempt from taxation under this section and *section 5709.121 [5709.12.1] of the Revised Code*, the portion sold shall be restored to the tax list for the year following the year of the sale and, except in connection with a sale and transfer of such a tract, lot, or parcel to a county land reutilization corporation organized under Chapter 1724. of the Revised Code, a charge shall be levied against the sold property in an amount equal to the tax savings on such property during the four tax years preceding the year the property is placed on the tax list. The tax savings equals the amount of the additional taxes that would have been levied if such property had not been exempt from taxation.

The charge constitutes a lien of the state upon such property as of the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law. The charge may also be remitted for all or any portion of such property that the tax commissioner determines is entitled to exemption from real property taxation for the year such property is restored to the tax list under any provision of the Revised Code, other than sections 725.02, 1728.10, 3735.67, 5709.40, 5709.41, 5709.62, 5709.63, 5709.71, 5709.73, 5709.78, and 5709.84, upon an application for exemption covering the year such property is restored to the tax list filed under *section 5715.27 of the Revised Code*.

(E) Real property held by an organization organized and operated exclusively for charitable purposes as described under *section 501(c)(3) of the Internal Revenue Code* and exempt from federal taxation under *section 501(a) of the Internal Revenue Code, 26 U.S.C.A. 501(a) and (c)(3)*, as amended, for the purpose of constructing or rehabilitating residences for eventual transfer to qualified low-income families through sale, lease, or land installment contract, shall be exempt from taxation.

The exemption shall commence on the day title to the property is transferred to the organization and shall continue to the end of the tax year in which the organization transfers title to the property to a qualified low-income family. In no case shall the exemption extend beyond

the second succeeding tax year following the year in which the title was transferred to the organization. If the title is transferred to the organization and from the organization to a qualified low-income family in the same tax year, the exemption shall continue to the end of that tax year. The proportionate amount of taxes that are a lien but not yet determined, assessed, and levied for the tax year in which title is transferred to the organization shall be remitted by the county auditor for each day of the year that title is held by the organization.

Upon transferring the title to another person, the organization shall file with the county auditor an affidavit affirming that the title was transferred to a qualified low-income family or that the title was not transferred to a qualified low-income family, as the case may be; if the title was transferred to a qualified low-income family, the affidavit shall identify the transferee by name. If the organization transfers title to the property to anyone other than a qualified low-income family, the exemption, if it has not previously expired, shall terminate, and the property shall be restored to the tax list for the year following the year of the transfer and a charge shall be levied against the property in an amount equal to the amount of additional taxes that would have been levied if such property had not been exempt from taxation. The charge constitutes a lien of the state upon such property as of the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law.

The application for exemption shall be filed as otherwise required under *section 5715.27 of the Revised Code*, except that the organization holding the property shall file with its application documentation substantiating its status as an organization organized and operated exclusively for charitable purposes under *section 501(c)(3) of the Internal Revenue Code* and its qualification for exemption from federal taxation under *section 501(a) of the Internal Revenue Code*, and affirming its intention to construct or rehabilitate the property for the eventual transfer to qualified low-income families.

As used in this division, "qualified low-income family" means a family whose income does not exceed two hundred per cent of the official federal poverty guidelines as revised annually in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," *95 Stat. 511, 42 U.S.C.A. 9902*, as amended, for a family size equal to the size of the family whose income is being determined.

(F) Real property held by a county land reutilization corporation organized under Chapter 1724. of the Revised Code shall be exempt from taxation. Notwithstanding *section 5715.27 of the Revised Code*, a county land reutilization corporation is not required to apply to any county or state agency in order to qualify for the exemption.

The exemption shall commence on the day title to the property is transferred to the corporation and shall continue to the end of the tax year in which the instrument transferring title from the corporation to another owner is recorded, if the use to which the other owner puts the property does not qualify for an exemption under this section or any other section of the Revised Code. If the title to the property is transferred to the corporation and from the corporation in the same tax year, the exemption shall continue to the end of that tax year. The proportionate amount of taxes that are a lien but not yet determined, assessed, and levied for the tax year in which title is transferred to the corporation shall be remitted by the county auditor for each day of the year that title is held by the corporation.

Upon transferring the title to another person, the corporation shall file with the county auditor an affidavit affirming that the title was transferred to such other person and shall identify the

transferee by name. If the corporation transfers title to the property to anyone that does not qualify or the use to which the property is put does not qualify the property for an exemption under this section or any other section of the Revised Code, the exemption, if it has not previously expired, shall terminate, and the property shall be restored to the tax list for the year following the year of the transfer. A charge shall be levied against the property in an amount equal to the amount of additional taxes that would have been levied if such property had not been exempt from taxation. The charge constitutes a lien of the state upon such property as of the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law.

In lieu of the application for exemption otherwise required to be filed as required under *section 5715.27 of the Revised Code*, a county land reutilization corporation holding the property shall, upon the request of any county or state agency, submit its articles of incorporation substantiating its status as a county land reutilization corporation.

HISTORY:

RS § 2732; S&S 761; S&C 1440; 61 v 39, § 3; 88 v 95; 91 v 393, 216; 99 v 449; GC § 5353; 103 v 548; 110 v 77; 121 v 241; Bureau of Code Revision, 10-1-53; 132 v S 207 (Eff 5-31-68); 142 v S 21 (Eff 10-20-87); 143 v H 253 (Eff 11-15-90); 144 v H 782 (Eff 4-8-93); 145 v H 281 (Eff 7-2-93); 146 v H 117 (Eff 9-29-95); 148 v H 194 (Eff 11-24-99); 149 v H 405 (Eff 12-13-2001); 149 v H 416. Eff 9-6-2002; 151 v H 66, § 101.01, eff. 6-30-05; 152 v S 353, § 1, eff. 4-7-09.

R.C. 5709.121

(A) Real property and tangible personal property belonging to a charitable or educational institution or to the state or a political subdivision, shall be considered as used exclusively for charitable or public purposes by such institution, the state, or political subdivision, if it meets one of the following requirements:

(1) It is used by such institution, the state, or political subdivision, or by one or more other such institutions, the state, or political subdivisions under a lease, sublease, or other contractual arrangement:

(a) As a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein;

(b) For other charitable, educational, or public purposes.

(2) It is made available under the direction or control of such institution, the state, or political subdivision for use in furtherance of or incidental to its charitable, educational, or public purposes and not with the view to profit.

(3) It is used by an organization described in division (D) of *section 5709.12 of the Revised Code*. If the organization is a corporation that receives a grant under the Thomas Alva Edison grant program authorized by division (C) of *section 122.33 of the Revised Code* at any time during the tax year, "used," for the purposes of this division, includes holding property for lease or resale to others.

(B) (1) Property described in division (A)(1)(a) of this section shall continue to be considered as used exclusively for charitable or public purposes even if the property is conveyed through one conveyance or a series of conveyances to an entity that is not a charitable or educational institution and is not the state or a political subdivision, provided that all of the following conditions apply with respect to that property:

(a) The property has been listed as exempt on the county auditor's tax list and duplicate for the county in which it is located for the ten tax years immediately preceding the year in which the property is conveyed through one conveyance or a series of conveyances;

(b) The owner to which the property is conveyed through one conveyance or a series of conveyances leases the property through one lease or a series of leases to the entity that owned or occupied the property for the ten tax years immediately preceding the year in which the property is conveyed or an affiliate of such prior owner or occupant;

(c) The property includes improvements that are at least fifty years old;

(d) The property is being renovated in connection with a claim for historic preservation tax credits available under federal law;

(e) The property continues to be used for the purposes described in division (A)(1)(a) of this section after its conveyance; and

(f) The property is certified by the United States secretary of the interior as a "certified historic structure" or certified as part of a certified historic structure.

(2) Notwithstanding *section 5715.27 of the Revised Code*, an application for exemption from taxation of property described in division (B)(1) of this section may be filed by either the owner of the property or its occupant.

(C) For purposes of this section, an institution that meets all of the following requirements is conclusively presumed to be a charitable institution:

(1) The institution is a nonprofit corporation or association, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(2) The institution is exempt from federal income taxation under *section 501(a) of the Internal Revenue Code*;

(3) The majority of the institution's board of directors are appointed by the mayor or legislative authority of a municipal corporation or a board of county commissioners, or a combination thereof;

(4) The primary purpose of the institution is to assist in the development and revitalization of downtown urban areas.

HISTORY:

133 v H 817 (Eff 10-24-69); 144 v H 782 (Eff 4-8-93); 149 v H 405. Eff 12-13-2001; 151 v H 66, § 101.01, eff. 6-30-05; 152 v H 562, § 101.01, eff. 9-23-08; 152 v H 458, § 1, eff. 12-30-08.

R.C. 5713.081

(A) No application for real property tax exemption and tax remission shall be filed with, or considered by, the tax commissioner in which tax remission is requested for more than three tax years, and the commissioner shall not remit more than three years' taxes, penalties, and interest.

(B) All taxes, penalties, and interest, that have been delinquent for more than three years, appearing on the general tax list and duplicate of real property which have been levied and assessed against parcels of real property owned by the state, any political subdivision, or any other entity whose ownership of real property would constitute public ownership, shall be collected by the county auditor of the county where the real property is located. Such auditor shall deduct from each distribution made by the auditor, the amount necessary to pay the tax delinquency from any revenues or funds to the credit of the state, any political subdivision, or any other entity whose ownership of real property would constitute public ownership thereof, passing under the auditor's control, or which come into the auditor's possession, and such deductions shall be made on a continuing basis until all delinquent taxes, penalties, and interest noted in this section have been paid.

(C) As used in division (B) of this section, "political subdivision" includes townships, municipalities, counties, school districts, boards of education, all state and municipal universities, park boards, and any other entity whose ownership of real property would constitute public ownership.

HISTORY:

132 v S 351 (Eff 11-24-67); 136 v H 920 (Eff 10-11-76); 140 v H 260 (Eff 9-27-83); 144 v H 399. Eff 11-28-91; 150 v H 95, § 1, eff. 6-26-03.

R.C. 5715.27

(A) Except as provided in *section 3735.67 of the Revised Code*, the owner, a vendee in possession under a purchase agreement or a land contract, the beneficiary of a trust, or a lessee for an initial term of not less than thirty years of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation and that taxes, interest, and penalties be remitted as provided in division (C) of *section 5713.08 of the Revised Code*.

(B) The board of education of any school district may request the tax commissioner to provide it with notification of applications for exemption from taxation for property located within that district. If so requested, the commissioner shall send to the board on a monthly basis reports that contain sufficient information to enable the board to identify each property that is the subject of an exemption application, including, but not limited to, the name of the property owner or applicant, the address of the property, and the auditor's parcel number. The commissioner shall mail the reports by the fifteenth day of the month following the end of the month in which the commissioner receives the applications for exemption.

(C) A board of education that has requested notification under division (B) of this section may, with respect to any application for exemption of property located in the district and included in the commissioner's most recent report provided under that division, file a statement with the commissioner and with the applicant indicating its intent to submit evidence and participate in any hearing on the application. The statements shall be filed prior to the first day of the third month following the end of the month in which that application was docketed by the commissioner. A statement filed in compliance with this division entitles the district to submit evidence and to participate in any hearing on the property and makes the district a party for purposes of *sections 5717.02 to 5717.04 of the Revised Code* in any appeal of the commissioner's decision to the board of tax appeals.

(D) The commissioner shall not hold a hearing on or grant or deny an application for exemption of property in a school district whose board of education has requested notification under division (B) of this section until the end of the period within which the board may submit a statement with respect to that application under division (C) of this section. The commissioner may act upon an application at any time prior to that date upon receipt of a written waiver from each such board of education, or, in the case of exemptions authorized by *section 725.02, 1728.10, 5709.40, 5709.41, 5709.411 [5709.41.1], 5709.62, 5709.63, 5709.632 [5709.63.2], 5709.73, 5709.78, 5709.84, or 5709.88 of the Revised Code*, upon the request of the property owner. Failure of a board of education to receive the report required in division (B) of this section shall not void an action of the commissioner with respect to any application. The commissioner may extend the time for filing a statement under division (C) of this section.

(E) A complaint may also be filed with the commissioner by any person, board, or officer authorized by *section 5715.19 of the Revised Code* to file complaints with the county board of revision against the continued exemption of any property granted exemption by the commissioner under this section.

(F) An application for exemption and a complaint against exemption shall be filed prior to the thirty-first day of December of the tax year for which exemption is requested or for which the liability of the property to taxation in that year is requested. The commissioner shall consider

such application or complaint in accordance with procedures established by the commissioner, determine whether the property is subject to taxation or exempt therefrom, and certify the commissioner's findings to the auditor, who shall correct the tax list and duplicate accordingly. If a tax certificate has been sold under *section 5721.32 or 5721.33 of the Revised Code* with respect to property for which an exemption has been requested, the tax commissioner shall also certify the findings to the county treasurer of the county in which the property is located.

(G) Applications and complaints, and documents of any kind related to applications and complaints, filed with the tax commissioner under this section, are public records within the meaning of *section 149.43 of the Revised Code*.

(H) If the commissioner determines that the use of property or other facts relevant to the taxability of property that is the subject of an application for exemption or a complaint under this section has changed while the application or complaint was pending, the commissioner may make the determination under division (F) of this section separately for each tax year beginning with the year in which the application or complaint was filed or the year for which remission of taxes under division (C) of *section 5713.08 of the Revised Code* was requested, and including each subsequent tax year during which the application or complaint is pending before the commissioner.

HISTORY:

GC § 5616; 106 v 246(265), § 69; Bureau of Code Revision, 10-1-53; 136 v H 920 (Eff 10-11-76); 139 v S 262 (Eff 6-23-82); 140 v H 260 (Eff 9-27-83); 141 v H 321 (Eff 1-1-86); 143 v S 257 (Eff 9-26-90); 143 v S 332 (Eff 1-10-91); 148 v H 493. Eff 10-27-2000; 150 v H 95, § 1, eff. 6-26-03; 152 v H 160, § 1, eff. 6-20-08.

R.C. 5715.271

In any consideration concerning the exemption from taxation of any property, the burden of proof shall be placed on the property owner to show that the property is entitled to exemption. The fact that property has previously been granted an exemption is not evidence that it is entitled to continued exemption.

HISTORY:

141 v H 321. Eff 10-17-85.

R.C. 5717.04

The proceeding to obtain a reversal, vacation, or modification of a decision of the board of tax appeals shall be by appeal to the supreme court or the court of appeals for the county in which the property taxed is situate or in which the taxpayer resides. If the taxpayer is a corporation, then the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the supreme court or to the court of appeals for the county in which the property taxed is situate, or the county of residence of the agent for service of process, tax notices, or demands, or the county in which the corporation has its principal place of business. In all other instances, the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the court of appeals for Franklin county.

Appeals from decisions of the board determining appeals from decisions of county boards of revision may be instituted by any of the persons who were parties to the appeal before the board of tax appeals, by the person in whose name the property involved in the appeal is listed or sought to be listed, if such person was not a party to the appeal before the board of tax appeals, or by the county auditor of the county in which the property involved in the appeal is located.

Appeals from decisions of the board of tax appeals determining appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be instituted by any of the persons who were parties to the appeal or application before the board, by the person in whose name the property is listed or sought to be listed, if the decision appealed from determines the valuation or liability of property for taxation and if any such person was not a party to the appeal or application before the board, by the taxpayer or any other person to whom the decision of the board appealed from was by law required to be certified, by the director of budget and management, if the revenue affected by the decision of the board appealed from would accrue primarily to the state treasury, by the county auditor of the county to the undivided general tax funds of which the revenues affected by the decision of the board appealed from would primarily accrue, or by the tax commissioner.

Appeals from decisions of the board upon all other appeals or applications filed with and determined by the board may be instituted by any of the persons who were parties to such appeal or application before the board, by any persons to whom the decision of the board appealed from was by law required to be certified, or by any other person to whom the board certified the decision appealed from, as authorized by *section 5717.03 of the Revised Code*.

Such appeals shall be taken within thirty days after the date of the entry of the decision of the board on the journal of its proceedings, as provided by such section, by the filing by appellant of a notice of appeal with the court to which the appeal is taken and the board. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten days of the date on which the first notice of appeal was filed or within the time otherwise prescribed in this section, whichever is later. A notice of appeal shall set forth the decision of the board appealed from and the errors therein complained of. Proof of the filing of such notice with the board shall be filed with the court to which the appeal is being taken. The court in which notice of appeal is first filed shall have exclusive jurisdiction of the appeal.

In all such appeals the tax commissioner or all persons to whom the decision of the board appealed from is required by such section to be certified, other than the appellant, shall be made appellees. Unless waived, notice of the appeal shall be served upon all appellees by certified mail. The prosecuting attorney shall represent the county auditor in any such appeal in which the auditor is a party.

The board, upon written demand filed by an appellant, shall within thirty days after the filing of such demand file with the court to which the appeal is being taken a certified transcript of the record of the proceedings of the board pertaining to the decision complained of and the evidence considered by the board in making such decision.

If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification.

The clerk of the court shall certify the judgment of the court to the board, which shall certify such judgment to such public officials or take such other action in connection therewith as is required to give effect to the decision. The "taxpayer" includes any person required to return any property for taxation.

Any party to the appeal shall have the right to appeal from the judgment of the court of appeals on questions of law, as in other cases.

HISTORY:

GC § 5611-2; 107 v 550; 116 v 104(123), § 2; 118 v 344(355); 119 v 34(49); Bureau of Code Revision, 10-1-53; 125 v 250 (Eff 10-2-53); 135 v S 174 (Eff 12-4-73); 137 v H 634 (Eff 8-15-77); 140 v H 260 (Eff 9-27-83); 142 v H 231. Eff 10-5-87.

UNITED STATES CODE

1988 EDITION

CONTAINING THE GENERAL AND PERMANENT LAWS
OF THE UNITED STATES, IN FORCE
ON JANUARY 3, 1989

Prepared and published under authority of Title 2, U.S. Code, Section 285h,
by the Office of the Law Revision Counsel of the House of Representatives



VOLUME FOUR

TITLE 11—BANKRUPTCY

AND

TITLE 12—BANKS AND BANKING

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1989

(Pub. L. 98-181, title IV, § 469, Nov. 30, 1983, 97 Stat. 1237.)

CODIFICATION

Section was enacted as part of the Housing and Urban-Rural Recovery Act of 1983 and also as part of the Domestic Housing and International Recovery and Financial Stability Act, and not as part of the National Housing Act which comprises this chapter.

§ 1701q. Loans for housing and related facilities for elderly or handicapped families

(a) Purpose; authorization; amount; terms and conditions; revolving fund; issuance of obligations; aggregate amount; purchase and sale by Secretary of Treasury; public debt transactions; availability of fund; servicing of mortgage loans; criteria for review of applications; technical and training assistance

(1) The purpose of this section is to assist private nonprofit corporations, limited profit sponsors, consumer cooperatives, or public bodies or agencies to provide housing and related facilities for elderly or handicapped families.

(2) In order to carry out the purpose of this section, the Secretary may make loans to any corporation (as defined in subsection (d)(2) of this section), to any limited profit sponsor approved by the Secretary, to any consumer cooperative, or to any public body or agencies for the provision of rental or cooperative housing and related facilities for elderly or handicapped families, except that (A) no such loan shall be made unless the applicant shows that it is unable to secure the necessary funds from other sources upon terms and conditions equally as favorable as the terms and conditions applicable to loans under this section, (B) no such loan shall be made unless the Secretary finds that the construction will be undertaken in an economical manner and that it will not be of elaborate or extravagant design or materials, and (C) no such loan shall be made to a public body or agency unless it certifies that it is not receiving financial assistance from the United States exclusively pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.].

(3)(A) A loan under this section may be in an amount not exceeding the total development cost (as defined in subsection (d)(3) of this section), as determined by the Secretary, except that in the case of other than a corporation, consumer cooperative or public body or agency the amount of the loan shall not exceed 90 per centum of the development cost; shall be secured in such manner and be repaid within such period, not exceeding fifty years, as may be determined by him; and shall bear interest at a rate which is not more than a rate determined by the Secretary taking into consideration the average yield, during the 3-month period immediately preceding the fiscal year in which the loan is made, on the most recently issued 30-year marketable obligations of the United States, adjusted to the nearest one-eighth of 1 per centum, plus an allowance adequate in the judgment of the Secretary to cover administrative costs and probable losses under the program, except that such interest rate plus such allowance shall not exceed 9.25 per centum per annum.

(B) At the option of the borrower, a loan under this section may be made and may be processed for a conditional or firm commitment either (i) at an interest rate not to exceed a rate and allowance determined by the Secretary in accordance with subparagraph (A) using the 1-month period immediately prior to the month in which the request for a commitment is submitted; or (ii) at an interest rate not to exceed a rate and allowance determined by the Secretary in accordance with subparagraph (A) using the 3-month period immediately preceding the fiscal year in which the request for a commitment is submitted.

(4)(A) There is authorized to be appropriated for the purposes of this section not to exceed \$500,000,000, which amount shall be increased by \$150,000,000 on July 1, 1969. Amounts so appropriated, and the proceeds from notes or other obligations issued under subparagraph (B), shall constitute a revolving fund to be used by the Secretary in carrying out this section.

(B)(1) To carry out the purposes of this section, the Secretary is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount not to exceed \$1,475,000,000, which amount shall be increased to \$2,387,500,000 on October 1, 1977, to \$3,300,000,000 on October 1, 1978, to \$3,827,500,000 on October 1, 1979, to \$4,777,500,000 on October 1, 1980, to \$5,752,500,000 on October 1, 1981, to \$6,400,000,000 on October 1, 1983, to such sum as may be approved in an appropriation Act on October 1, 1984, and to such sums as may¹ be approved in appropriation Acts for fiscal years 1988 and 1989, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury taking into consideration the average yield, during the 3-month period immediately preceding the fiscal year in which the loan is made, on the most recently issued 30-year marketable obligations of the United States. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31; and the purposes for which securities may be issued under such chapter are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. The Secretary may not issue notes or other obligations to the Secretary of the Treasury pursuant to this section in an aggregate amount, exceeding \$800,000,000 except as approved in appropriation Acts.

¹ So in original. Probably should be "may be".

(ii) The receipts and disbursements of the fund shall not be included in the total of the Budget of the United States Government and shall be exempt from any limitation on annual expenditures or net lending.

(C) Amounts in the fund shall be available to the Secretary for the purpose of making loans under this section and for paying interest on obligations issued under subparagraph (B). The aggregate loans made under this section shall not exceed the limits on such lending authority established in appropriation Acts, and not more than \$666,400,000 may be approved in appropriation Acts for such loans with respect to fiscal year 1984. For fiscal years 1988 and 1989, not more than \$621,701,000 and \$630,000,000, respectively, may be approved in appropriation Acts for such loans.

(5) To the maximum extent practicable, the Secretary shall use the services and facilities of the private mortgage industry in servicing mortgage loans made under this section.

(6) In reviewing applications for loans under this section, the Secretary may consider the extent to which such loans—

(A) will assist in stabilizing, conserving, and revitalizing neighborhoods and communities;

(B) will assist in providing housing for elderly and handicapped families in neighborhoods and communities in which they are experiencing significant displacement due to public or private investment; or

(C) will assist in the substantial rehabilitation, in an economical manner, of structures having architectural, historical, or cultural significance.

(7) The Secretary may make available appropriate technical and training 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.

(8) In reviewing applications for loans under this section, the Secretary shall give a priority to any project that will provide housing designed to replace a structure that is owned by a public housing agency, contains not less than 100 dwelling units, is used for housing only elderly families, and is to be demolished. The requirements of this paragraph shall not apply after September 30, 1988.

(b) Functions, powers, and duties of Secretary

In the performance of, and with respect to, the functions, powers, and duties vested in him by this section the Secretary shall (in addition to any authority otherwise vested in him) have the functions, powers, and duties set forth in section 402 (except subsection (c)(2)) of the Housing Act of 1950 [12 U.S.C. 1749a].²

(c) Use of housing for transient or hotel purposes; prevailing wage rates

(1) Housing constructed with a loan made under this section shall not be used for transient or hotel purposes while such loan is outstanding.

(2) As used in paragraph (1), the term "transient or hotel purposes" shall have such mean-

ing as may be prescribed by the Secretary, but rental for any period less than thirty days shall in any event constitute use for such purposes. The provisions of subsections (f) through (j) of section 513 of the National Housing Act (as added by section 132 of the Housing Act of 1954) [12 U.S.C. 1731b(f)-(j)] shall apply in the case of violations of paragraph (1) as though the housing described in such subsection were multifamily housing (as defined in section 513(e)(2) of the National Housing Act) [12 U.S.C. 1731b(e)(2)] with respect to which a mortgage is insured under such Act [12 U.S.C. 1701 et seq.].

(3) The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the construction of housing assisted under this section and designed for dwelling use by 12 or more elderly or handicapped families shall be paid wages at rates not less than those 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 the Act of March 3, 1931, as amended (the Davis-Bacon Act) [40 U.S.C. 276a et seq.]; but the Secretary may waive the application of this paragraph in cases or classes of cases where laborers or mechanics, not otherwise employed at any time in the construction of such housing, voluntarily donate their services without full compensation for the purpose of lowering the costs of construction and the Secretary determines that any amounts saved thereby are fully credited to the corporation, cooperative, or public body or agency undertaking the construction.

(d) Definitions

As used in this section—

(1) The term "housing" means structures suitable for dwelling use by elderly or handicapped families which are (A) new structures, or (B) provided by rehabilitation, alteration, conversion, or improvement of existing structures which are otherwise inadequate for proposed dwelling use by such families.

(2) The term "corporation" 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 project is located, and (ii) which is responsible for the operation of the housing project assisted under this section; and

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

(3) The term "development cost" means costs of construction of housing and of other related facilities, the cost of movables necessary to the basic operation of the project as determined by the Secretary, and of the land on which it is located, including necessary site improvement, which cost shall be determined

² See References in Text note below.

without regard to mortgage limits applicable to housing projects subject to mortgages insured under section 231 of the National Housing Act [12 U.S.C. 1715v]. In the case of housing to meet the needs of handicapped (primarily nonelderly) persons, such term also means the cost of acquiring existing housing and related facilities, the cost of rehabilitation, alteration, conversion, or improvement, including the moderate rehabilitation, thereof, and the cost of the land on which the housing and related facilities are located.

(4) The term "elderly or handicapped families" means families which consist of two or more persons and the head of which (or his spouse) is sixty-two years of age or over or is handicapped, and such term also means a single person who is sixty-two years of age or over or is handicapped. A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered handicapped if such person has a developmental disability as defined in section 6001(7) of title 42. The Secretary shall prescribe such regulations as may be necessary to prevent abuses in determining, under the definitions contained in this paragraph, the eligibility, of families and persons for admission to and occupancy of housing constructed with assistance under this section. Notwithstanding the preceding provisions of this paragraph, the term "elderly or handicapped families" includes two or more elderly or handicapped persons living together, one or more such persons living with another person who is determined (under regulations prescribed by the Secretary) to be essential to their care or well-being, and the surviving member or members of any family described in the first sentence of this paragraph who were living, in a unit assisted under this section, with the deceased member of the family at the time of his or her death.

(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 "construction" means erection of new structures or rehabilitation, alteration, conversion, or improvement of existing structures.

(8) The term "related facilities" means (A) new structures suitable for use by elderly or handicapped families residing in the project or in the area as cafeterias or dining halls, community rooms or buildings, workshops, adult day health facilities, or other outpatient health facilities, or other essential service facilities, and (B) structures suitable for the above uses provided by rehabilitation, alteration, conversion, or improvement of existing structures which are otherwise inadequate for such uses.

(9) The term "housing for handicapped families" means housing and related facilities to be occupied by handicapped families who are primarily nonelderly handicapped families.

(10) The term "nonelderly handicapped families" means elderly or handicapped families, the head of which (and spouse, if any) is less than 62 years of age at the time of initial occupancy of a project assisted under this section.

(e) Exception

Nothing in this section or in regulations promulgated under this section shall prevent a corporation or consumer cooperative from obtaining a loan under this section for the provision of housing and related facilities for elderly or handicapped families, notwithstanding the fact that such corporation or cooperative has theretofore obtained a commitment from the Federal Housing Administration for mortgage insurance under section 231 of the National Housing Act [12 U.S.C. 1715v] with respect to the housing involved, if (1) such corporation or cooperative is otherwise eligible for such loan under this section, (2) such commitment was obtained prior to June 30, 1961, and (3) the Secretary determines that the financing of such housing through a loan under this section rather than through mortgage insurance under such section 231 [12 U.S.C. 1715v] is necessary or desirable in order to avoid hardship for the elderly or handicapped families who are the prospective tenants of such housing.

(f) Assurance by Secretary of applicable State and local plans responding to Federal program requirements for assisted housing and related facilities; submission of supportive services plan

(1) In carrying out the provisions of this section, the Secretary shall seek to assure, pursuant to applicable regulations, that housing and related facilities assisted under this section will be in appropriate support of, and supported by, applicable State and local plans which respond to Federal program requirements by providing an assured range of necessary services for individuals occupying such housing (which services may include, among others, health (including adult day health services), continuing education, welfare, informational, recreational, homemaker, counseling, and referral services, transportation where necessary to facilitate access to social services, and services designed to encourage and assist recipients to use the services and facilities available to them), including plans approved by the Secretary of Health and Human Services pursuant to section 133 of the Mental Retardation Facilities and Community Mental Health Center Construction Act of 1963 or pursuant to title 111 of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq.].

(2) Each applicant for a loan under this section for housing and related facilities shall submit with the application a supportive services plan describing—

(A) the category or categories of families such housing and facilities are intended to serve;

(B) the range of necessary services to be provided to the families occupying such housing;

(C) the manner in which such services will be provided to such families; and

(D) the extent of State and local funds available to assist in the provision of such services.

- (g) Regulations; coordination of applications for loans under this section and section 1437f of title 42; adjustment of assistance

In carrying out the provisions of this section and section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], the Secretary shall issue and implement regulations, as soon as practicable after October 12, 1977, which shall provide that the processing of any application for a loan for a project under this section and the processing of any application for assistance under such section 8 [42 U.S.C. 1437f] with respect to housing units in the same such project shall be coordinated in an economical and efficient manner. At the time of settlement on permanent financing with respect to a project under this section, the Secretary shall make an appropriate adjustment in the amount of any assistance to be provided under a contract for annual contributions pursuant to section 8 of the United States Housing Act of 1937 in order to reflect fully any difference between the interest rate which will actually be charged in connection with such permanent financing and the interest rate which was in effect at the time of the reservation of assistance in connection with the project.

- (h) Loans for development costs for housing for handicapped families; standards for allocating funds and processing applications for loans and assistance payments; annual contracts with housing owners for assistance payments

(1) Of the amounts made available in appropriation Acts for loans under subsection (a)(4)(C) of this section for any fiscal year commencing after September 30, 1987, not less than 15 percent shall be available for loans for the development costs of housing for handicapped families. If the amount required for any such fiscal year for approvable applications for loan³ under this subsection is less than the amount available under this paragraph, the balance shall be made available for loans under other provisions of this section.

(2) The Secretary shall take such actions as may be necessary to ensure that—

(A) funds made available under this subsection will be used to support a variety of methods of meeting the needs primarily of nonelderly handicapped families by providing a variety of housing options, ranging from small group homes to independent living complexes; and

(B) housing for handicapped families assisted under this subsection will provide families occupying units in such housing with an assured range of services specified in subsection (f) of this section, will provide such families with opportunities for optimal independent

living and participation in normal daily activities, and will facilitate access by such families to the community at large and to suitable employment opportunities within such community.

(3)(A) In allocating funds under this subsection, and in processing applications for loans under this section and assistance payments under paragraph (4), the Secretary shall adopt such distinct standards and procedures as the Secretary determines appropriate due to differences between housing for handicapped families and other housing assisted under this section. In adopting such standards, the Secretary shall ensure adequate participation by representatives of the disability community through the provisions available under the Federal Advisory Committee Act.

(B) The Secretary may, on a demonstration basis, determine the feasibility and desirability of reducing processing time and costs for housing for handicapped families by limiting project design to a small number of prototype designs. Any such demonstration shall be limited to the 3-year period following February 5, 1988, may only involve projects whose sponsors consent to participation in such demonstration, and shall be described in a report submitted by the Secretary to the Congress following completion of such demonstration.

(4)(A) The Secretary shall, to the extent approved in appropriation Acts, enter into contracts with owners of housing for handicapped families receiving loans under, or meeting the requirements of, this section 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 lower income families 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 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 term of a contract entered into under this subparagraph shall be 240 months. The annual contract amount may be adjusted by the Secretary if the sum of the project income and the amount of assistance payments available under this subparagraph are inadequate to provide for reasonable project costs. In the case of an intermediate care facility in which there reside families assisted under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], project income under this subparagraph shall include the same amount as if such families were being assisted under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

(B) The Secretary shall approve initial project rentals for any project assisted under this subsection based on the determination of the Secretary of the total actual necessary and reasonable costs of developing and operating the project, excluding the costs of the assured range of services under subsection (f) of this section, taking into consideration the need to contain costs to the extent practicable and con-

³ So in original. Probably should be "loans".

sistent with the purposes of the project and this section.

(C) The Secretary shall require that, during the term of each contract entered into under subparagraph (A), all units in a project assisted under this subsection shall be made available for occupancy by lower income families, as such term is defined in section 3(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(2)]. The rent payment required of a lower income family shall be determined in accordance with section 3(a) of such Act [42 U.S.C. 1437a(a)], except that the gross income of a family occupying an intermediate care facility assisted under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] shall be the same amount as if the family were being assisted under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

(D) The Secretary shall coordinate the processing of an application for a loan for housing for handicapped families under this section and the processing of an application for assistance payments under this paragraph for such housing.

(i) Efficiency units; escrow accounts; per unit cost limitations

(1) Unless otherwise requested by the sponsor, a maximum of 25 per centum of the units in a project financed under this section may be efficiency units, subject to a determination by the Secretary that such units are appropriate for the elderly or handicapped population residing in the vicinity of such project or to be served by such project.

(2) The Secretary may require a sponsor of a housing project financed with a loan under this section to deposit an amount not to exceed \$10,000 in a special escrow account to assure the commitment and long-term management capabilities of such sponsor.

(3) In establishing per unit cost limitations for purposes of this section, the Secretary shall take into account design features necessary to meet the needs of elderly and handicapped residents, and such limitations shall reflect the cost of providing such features. The Secretary shall adjust the per unit cost limitations in effect on January 1, 1983, not less than once annually to reflect changes in the general level of construction costs.

(j) Prepayment of loans; conditions; sale of mortgages

(1) The Secretary may not approve the prepayment of any loan made under this section, or transfer such loan, unless such prepayment or transfer is made as part of a transaction that will ensure that the project involved will continue to operate until the original maturity date of such loan in a manner that will provide rental housing for the elderly and handicapped on terms at least as advantageous to existing and future tenants as the terms required by the original loan agreement entered into under this section and any other loan agreements entered into under other provisions of law.

(2) The Secretary may not sell any mortgage held by the Secretary as security for a loan made under this section.

(k) Selection of projects for loans; special design features and congregate space; site group homes and independent living facilities

(1) In the process of selecting projects for loans under this section, the Secretary shall assure the inclusion of special design features and congregate space if necessary to meet the special needs of elderly and handicapped residents.

(2) The Secretary shall encourage the provision of small and scattered site group homes and independent living facilities for nonelderly handicapped persons and families.

(l) Basis for selection of contractors

The basis for selection of a contractor to be employed in the development or construction of a project assisted under this section shall be determined by the project sponsor or borrower if the development cost of the project is less than \$2,000,000, if the project rentals will be less than 110 per centum of the fair market rent applicable to projects financed under this section, or if the sponsor of the project is a labor organization. The Secretary shall not impose different requirements or standards with respect to construction change orders, increases in loan amount to cover change orders, errors in plans and specifications, and use of contingency funds, because of the method of contractor selection used by the sponsor or borrower.

(m) Independent funding by sponsor for amenities

Nothing in this section authorizes the Secretary to prohibit any sponsor from voluntarily providing funds from other sources for amenities and other features of appropriate design and construction suitable for inclusion in such project if the cost of such amenities is (1) not financed with the loan, and (2) not taken into account in determining the amount of Federal subsidy or of the rent contribution of tenants.

(n) Appeal of cancellation of loan authority

The Secretary shall notify the project sponsor not less than 30 days prior to canceling any loan authority provided under this section. During the 30-day period following the receipt of a notice under paragraph (1),⁴ a sponsor 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.

(Pub. L. 86-372, title II, § 202, Sept. 23, 1959, 73 Stat. 667; Pub. L. 87-70, title II, § 201, June 30, 1961, 75 Stat. 162; Pub. L. 87-723, § 3, Sept. 28, 1962, 76 Stat. 670; Pub. L. 88-158, Oct. 24, 1963, 77 Stat. 278; Pub. L. 88-560, title II, §§ 201, 203(a)(2), Sept. 2, 1964, 78 Stat. 783; Pub. L. 89-117, title I, § 105(a), (b)(1), formerly § 105, Aug. 10, 1965, 79 Stat. 457, renumbered Pub. L. 89-754, title X, § 1001(1), (2), Nov. 3, 1966, 80 Stat. 1284; Pub. L. 90-19, § 16(a), May 25, 1967, 81 Stat. 25; Pub. L. 90-448, title XVII, § 1706, Aug. 1, 1968, 82 Stat. 605; Pub. L. 91-152, title II, § 218, Dec. 24, 1969, 83 Stat. 390; Pub. L. 93-383, title II, § 210(a)-(f), Aug. 22, 1974, 88

⁴ So in original. Probably should be "this subsection."

Stat. 669-671; Pub. L. 94-375, § 11, Aug. 3, 1976, 90 Stat. 1074; Pub. L. 95-128, title II, § 202, Oct. 12, 1977, 91 Stat. 1129; Pub. L. 95-557, title II, § 205, Oct. 31, 1978, 92 Stat. 2090; Pub. L. 96-153, title III, § 306(a)-(d), Dec. 21, 1979, 93 Stat. 1112, 1113; Pub. L. 96-399, title III, § 319, Oct. 8, 1980, 94 Stat. 1646; Pub. L. 97-35, title III, § 336, Aug. 13, 1981, 95 Stat. 414; Pub. L. 98-181, title II, § 223(a)(1), (b)-(e), Nov. 30, 1983, 97 Stat. 1189, 1190; Pub. L. 98-479, title I, § 102(c), title II, §§ 201(e), 203(h), Oct. 17, 1984, 98 Stat. 2222, 2228, 2230; Pub. L. 100-242, title I, §§ 161(a)-(c)(1), (d)-(f), 162(b), (c), 170(g), Feb. 5, 1988, 101 Stat. 1855-1857, 1859, 1867.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (a)(2), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, 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.

Section 402 of the Housing Act of 1950 (12 U.S.C. 1749a), referred to in subsec. (b), was repealed by Pub. L. 99-498, title VII, § 702, Oct. 17, 1986, 100 Stat. 1545. Previously subsec. (c)(2) of section 402 had been repealed and subsec. (c)(3) had been redesignated (c)(2) by Pub. L. 98-479, title II, § 201(d)(1), Oct. 17, 1984, 98 Stat. 2228.

Such Act, referred to in subsec. (c)(2), means act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, known as the National Housing Act, 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 Act of March 3, 1931, as amended (the Davis-Bacon Act), referred to in subsec. (c)(3), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

Section 133 of the Mental Retardation Facilities and Community Mental Health Center Construction Act of 1963, referred to in subsec. (f)(1), related to State plans and was classified to section 6063 of Title 42, The Public Health and Welfare, prior to a general revision of that Act by Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2662. See section 6022 of Title 42.

The Older Americans Act of 1965, referred to in subsec. (f)(1), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended. Title III of the Older Americans Act of 1965 is classified generally to subchapter III (§ 3021 et seq.) of chapter 35 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 42 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (h)(3)(A), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Social Security Act, referred to in subsec. (h)(4)(A), (C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVI and XIX of the Social Security Act are classified generally to subchapters XVI (§ 1381 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Housing Act of 1959, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1988—Subsec. (a)(3). Pub. L. 100-242, § 161(c)(1), designated existing provisions as subpar. (A), substituted “taking into consideration the average yield, during the 3-month period immediately preceding the fiscal year in which the loan is made, on the most recently issued 30-year marketable obligations of the United States” for “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 the date on which the loan is made”, and added subpar. (B).

Subsec. (a)(4)(B)(i). Pub. L. 100-242, § 161(a), inserted provisions relating to such sums as may be approved for fiscal years 1988 and 1989, and substituted “October 1, 1983, to such sum” for “October 1, 1983, and to such sum”.

Pub. L. 100-242, § 161(d), substituted “Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury taking into consideration the average yield, during the 3-month period immediately preceding the fiscal year in which the loan is made, on the most recently issued 30-year marketable obligations of the United States.” for “Such notes or other obligations shall bear interest at 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 the date on which the loan is made.”

Subsec. (a)(4)(C). Pub. L. 100-242, § 161(b), inserted provisions relating to loan authority for fiscal years 1988 and 1989.

Subsec. (a)(8). Pub. L. 100-242, § 161(f), added par. (8).

Subsec. (c)(3). Pub. L. 100-242, § 162(b)(3), inserted reference to construction designed for dwelling use by 12 or more elderly or handicapped families.

Subsec. (d)(4). Pub. L. 100-242, § 170(g)(1), substituted reference to a handicapped person if such person has a developmental disability as defined in section 6001(7) of title 42, for reference to a handicapped person if such person is a developmentally disabled individual as defined in section 102(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1950.

Subsec. (d)(9), (10). Pub. L. 100-242, § 162(b)(2), added pars. (9), (10).

Subsec. (f). Pub. L. 100-242, § 162(c), designated existing provisions as par. (I) and added par. (2).

Pub. L. 100-242, § 170(g)(2), substituted “section 133” for “section 134”.

Subsec. (h). Pub. L. 100-242, § 162(b)(1), amended subsec. (h) generally, changing structure of subsection from one consisting of introductory provisions and two numbered paragraphs to one consisting of four numbered paragraphs.

Subsec. (I). Pub. L. 100-242, § 170(g)(3), substituted “different” for “difference”.

Subsec. (n). Pub. L. 100-242, § 161(e), added subsec. (n).

1984—Subsec. (a)(4)(B)(i). Pub. L. 98-479, § 203(h), substituted “chapter 31 of title 31” for “the Second Liberty Bond Act” and “such chapter” for “that Act”.

Pub. L. 98-479, § 102(c)(1), substituted “October 1, 1984” for “October 1, 1985”.

Subsec. (f). Pub. L. 98-479, § 201(e), substituted “Health and Human Services” for “Health, Education, and Welfare”.

Subsec. (h)(1). Pub. L. 98-479, § 102(c)(2)(A), inserted “and” at end.

Subsec. (h)(2). Pub. L. 98-479, § 102(c)(2)(B), substituted a period for “; and” at end.

Subsec. (I). Pub. L. 98-479, § 102(c)(3), inserted “The Secretary shall not impose difference requirements or standards with respect to construction change orders,

increases in loan amount to cover change orders, errors in plans and specifications, and use of contingency funds, because of the method of contractor selection used by the sponsor or borrower."

1983—Subsec. (a)(3). Pub. L. 98-181, § 223(a)(1), inserted ", except that such interest rate plus such allowance shall not exceed 9.25 per centum per annum".

Subsec. (a)(4)(B)(i). Pub. L. 98-181, § 223(b), struck out "and" after "1980" and inserted ", to \$6,400,000,000 on October 1, 1983, and to such sum as may be approved in an appropriation Act on October 1, 1985."

Subsec. (a)(4)(C). Pub. L. 98-181, § 223(c), substituted "\$666,400,000" and "1984" for "\$850,848,000" and "1982", respectively.

Subsec. (h). Pub. L. 98-181, § 223(d)(1), (2), in provisions preceding par. (1), substituted "1983" for "1978", and inserted ", and persons described in subparagraphs (B) and (C) of subsection (d)(4) of this section who have been released from residential health treatment facilities".

Subsec. (h)(1). Pub. L. 98-181, § 223(d)(3), (5), substituted "persons described in the first sentence of this subsection" for "handicapped persons", and struck out "and" at end.

Subsec. (h)(2). Pub. L. 98-181, § 223(d)(4), (6), substituted "persons described in the first sentence of this subsection who are" for "handicapped persons", and substituted "such community; and" for "such community".

Subsecs. (i) to (m). Pub. L. 98-181, § 223(e), added subsecs. (i) to (m).

1981—Subsec. (a)(4)(C). Pub. L. 97-35 inserted provisions relating to fiscal year 1982.

1980—Subsec. (d)(3). Pub. L. 96-399 inserted last sentence relating to housing to meet the needs of handicapped (primarily nonelderly) persons.

1979—Subsec. (a)(4)(B)(i). Pub. L. 96-153, § 306(a), provided for increase of notes or other obligations to \$3,827,500,000 on October 1, 1979, to \$4,777,500,000 on October 1, 1980, and to \$5,752,500,000 on October 1, 1981.

Subsec. (a)(6), (7). Pub. L. 96-153, § 306(b), added pars. (6) and (7).

Subsec. (d)(8)(A). Pub. L. 96-153, § 306(c)(1), substituted "adult day health facilities, or other" for "or infirmaries or other inpatient or".

Subsec. (f). Pub. L. 96-153, § 306(c)(2), inserted reference to adult day health services.

Subsec. (g). Pub. L. 96-153, § 306(d), inserted provisions that at the time of settlement on permanent financing, the Secretary make appropriate adjustment in the amount of assistance to be provided under a contract for annual contributions pursuant to section 8 of the United States Housing Act of 1937 reflecting the difference between interest rate which will actually be charged in connection with such permanent financing and the interest rate which was in effect at the time of the reservation of assistance in connection with the project.

1978—Subsec. (a)(4)(C). Pub. L. 95-557, § 205(b), struck out "in any fiscal year" after "The aggregate loans made under this section", and "for such year" after "lending authority established".

Subsec. (d)(2). Pub. L. 95-557, § 205(d), designated provisions beginning "no part of" as par. (A), substituted "member, founder, contributor, or individual" for "private shareholder, contributor, or individual, if such institution or foundation is approved by the Secretary as to financial responsibility", and added pars. (B) and (C).

Subsec. (d)(3). Pub. L. 95-557, § 205(c), inserted "the cost of movables necessary to the basic operation of the project as determined by the Secretary," after "related facilities".

Subsec. (h). Pub. L. 95-557, § 205(a), added subsec. (h).

1977—Subsec. (d)(3). Pub. L. 95-128, § 202(a), provided for determination of "development cost" without regard to mortgage limits applicable to housing

projects subject to mortgages insured under section 1715v of this title.

Subsec. (g). Pub. L. 95-128, § 202(b), added subsec. (g).

1976—Subsec. (a)(3). Pub. L. 94-375, § 11(c)(1), substituted "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 the date on which the loan is made" for "current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans".

Subsec. (a)(4)(B)(i). Pub. L. 94-375, § 11(a), (c)(2), substituted "\$1,475,000,000, which amount shall be increased to \$2,387,500,000 on October 1, 1977, and to \$3,300,000,000 on October 1, 1978" for "\$800,000,000" and "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 the date on which the loan is made" for "the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations", and inserted provision restricting the amount of notes or obligations issued to the Secretary of the Treasury to not more than \$800,000,000.

Subsec. (d)(4). Pub. L. 94-375, § 11(b), included in definition of "elderly or handicapped families" two or more elderly or handicapped persons living together, one such person and another providing care for the first, or a surviving member of the family who was living in the unit at the time another member died.

1974—Subsec. (a)(3). Pub. L. 93-383, § 210(a), substituted provisions authorizing the Secretary of the Treasury to determine the interest rate, for provisions authorizing the Secretary of Housing and Urban Development to determine the interest rate.

Subsec. (a)(4). Pub. L. 93-383, § 210(d), redesignated existing provision as subsec. (a)(4)(A), inserted ", and the proceeds from notes or other obligations issued under subparagraph (B)," after "Amounts so appropriated", and added subsec. (a)(4)(B), (C).

Subsec. (a)(5). Pub. L. 93-383, § 210(e), added par. (5).

Subsec. (d)(4). Pub. L. 93-383, § 210(b), substituted "an impairment" for "a physical impairment" and inserted provisions relating to developmentally disabled individuals.

Subsec. (d)(8). Pub. L. 93-383, § 210(f), inserted "residing in the project or in the area" after "families".

Subsec. (f). Pub. L. 93-383, § 210(c), added subsec. (f).
1969—Subsec. (a)(4). Pub. L. 91-152 increased by \$150,000,000 on July 1, 1969 the amount authorized to be appropriated for the purposes of this section.

1968—Subsec. (a)(1). Pub. L. 90-448, § 1706(1), authorized assistance to limited profit sponsors.

Subsec. (a)(2). Pub. L. 90-448, § 1706(2), authorized loans to any limited profit sponsor approved by the Secretary.

Subsec. (a)(3). Pub. L. 90-448, § 1706(3), limited the amount of the loan to not more than 90 per centum of the development cost in the case of other than a corporation, consumer cooperative, or public body or agency.

1967—Pub. L. 90-19, § 16(a)(1), substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a)(2) to (4), (b), (c)(2), (3), (d)(2), (4), and (e) of this section.

Subsec. (c)(2). Pub. L. 90-19, § 16(a)(2), struck out at end ", except that for purposes of this subsection the Administrator shall perform the functions vested in the Commissioner by such section 513".

Subsec. (d)(6). Pub. L. 90-19, § 16(a)(3), substituted definition of "Secretary" meaning the Secretary of Housing and Urban Development for "Administrator" meaning the Housing and Home Finance Administrator.

1965—Subsec. (a)(3). Pub. L. 89-117, § 105(b)(1), substituted "the lower of (A) 3 per centum per annum, or" for "the higher of (A) 3% per centum per annum, or".

Subsec. (a)(4). Pub. L. 89-117, § 105(a), increased amount authorized to be appropriated from \$350,000,000 to \$500,000,000.

1964—Subsec. (a)(1), (2). Pub. L. 88-560, § 203(a)(2)(A), substituted "elderly or handicapped families" for "elderly families and elderly persons".

Subsec. (a)(4). Pub. L. 88-560, § 201, increased amount authorized to be appropriated from \$275,000,000 to \$350,000,000.

Subsec. (d)(1). Pub. L. 88-560, § 203(a)(2)(B), included in definition of "housing" structures suitable for dwelling use by handicapped families, designated existing provisions as subpar. (A), and added subpar. (B).

Subsec. (d)(4). Pub. L. 88-560, § 203(a)(2)(C), substituted definitions of "elderly or handicapped families" and when "a person shall be considered handicapped" for former provisions defining "elderly families" as "families the head of which (or his spouse) is sixty-two years of age or over" and "elderly persons" as "persons who are sixty-two years of age or over".

Subsec. (d)(7). Pub. L. 88-560, § 203(a)(2)(D), redefined "construction" to include rehabilitation, alteration, conversion, or improvement of existing structures.

Subsec. (d)(6). Pub. L. 88-560, § 203 (a)(2)(E), redefined "existing facilities" by designating existing provisions as cl. (A), inserting in cl. (A) "by elderly or handicapped families" and "workshops", and adding cl. (B).

Subsec. (e). Pub. L. 88-560, § 203(a)(2)(A), substituted "elderly or handicapped families" for "elderly families and elderly persons" in two places.

1963—Subsec. (a)(4). Pub. L. 88-158 increased amount authorized to be appropriated from \$225,000,000 to \$275,000,000.

1962—Subsec. (a)(4). Pub. L. 87-723, § 3(a), increased amount authorized to be appropriated from \$125,000,000 to \$225,000,000.

Subsec. (d)(1). Pub. L. 87-723, § 3(b)(1), redesignated subsec. (d)(1)(A) as entire subsec. (d)(1) and struck out subsec. (d)(1)(B) which included in definition of "housing" dwelling facilities provided by rehabilitation, alteration, conversion, or improvement of existing structures which were otherwise inadequate for proposed dwellings used by elderly families and persons.

Subsec. (d)(7). Pub. L. 87-723, § 3(b)(2), struck out ", or rehabilitation, alteration, conversion, or improvement of existing structures" after "new structures".

Subsec. (d)(8). Pub. L. 87-723, § 3(b)(3), redesignated subsec. (d)(8)(A) as entire subsec. (d)(8) and struck out subsec. (d)(8)(B) which included in definition of "related facilities" structures suitable for essential service facilities provided by rehabilitation, alteration, conversion, or improvement of existing structures which were otherwise inadequate for essential service facilities.

1961—Subsec. (a)(1). Pub. L. 87-70, § 201(a)(1), authorized assistance for consumer cooperatives and public bodies and agencies.

Subsec. (a)(2). Pub. L. 87-70, § 201(a)(2), authorized loans to consumer cooperatives and to public bodies or agencies, and prohibited loans to public bodies or agencies unless they certify that they are not receiving financial assistance exclusively pursuant to the United States Housing Act of 1937.

Subsec. (a)(3). Pub. L. 87-70, § 201(a)(3), (b), substituted "loan under this section" for "loan to a corporation under this section", and "may be in an amount not exceeding the total development cost" for "may be in an amount not exceeding 98 per centum of the total development cost".

Subsec. (a)(4). Pub. L. 87-70, § 201(c), increased amount authorized to be appropriated from \$50,000,000 to \$125,000,000, and struck out provisions which limited the amount outstanding at any one time for related facilities to not more than \$5,000,000.

Subsec. (c)(3). Pub. L. 87-70, § 201(a)(4), substituted "credited to the corporation, cooperative, or public body or agency undertaking" for "credited to the corporation undertaking".

Subsec. (e). Pub. L. 87-70, § 201(d), added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 162(f) of Pub. L. 100-242 provided that:

"(1) Except as otherwise provided in this section, the provisions of, and amendments made by, this section [amending this section and enacting and repealing provisions set out as notes below] shall not apply with respect to projects with loans or loan reservations made under section 202 of the Housing Act of 1959 [this section] before the implementation date under subsection (e) [section 162(e) of Pub. L. 100-242 set out below].

"(2) Notwithstanding paragraph (1), the Secretary shall apply the provisions of, and amendments made by, this section to any project if needed to facilitate the development of such project in a timely manner."

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Section 223(a)(2) of Pub. L. 98-181, as amended by Pub. L. 99-120, § 5(b), Oct. 8, 1985, 99 Stat. 504; Pub. L. 99-156, § 5(b), Nov. 15, 1985, 99 Stat. 817; Pub. L. 99-219, § 5(b), Dec. 26, 1985, 99 Stat. 1732; Pub. L. 99-267, § 5(b), Mar. 27, 1986, 100 Stat. 75; Pub. L. 99-272, title III, § 3011(b), Apr. 7, 1986, 100 Stat. 106; Pub. L. 99-289, § 1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99-345, § 1, June 24, 1986, 100 Stat. 873; Pub. L. 99-430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100-122, § 1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100-154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100-170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100-179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100-200, Dec. 21, 1987, 101 Stat. 1327, which provided that the amendment made by paragraph (1), amending subsec. (a)(3) of this section, shall apply only with respect to loan agreements entered into after September 30, 1982, and not later than March 15, 1988, was repealed by Pub. L. 100-242, title I, § 161(c)(2), Feb. 8, 1988, 101 Stat. 1856.

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.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 105(b)(2) of Pub. L. 89-117, as added by Pub. L. 89-754, title X, § 1001(3), Nov. 3, 1966, 80 Stat. 1284, provided that: "The interest rate provided by the amendment made in paragraph (1) [to subsec. (a)(3) of this section] shall be applicable (A) with respect to any loan made on or after August 10, 1965, and (B) with respect to any loan made prior to such date if construction of the housing or related facilities to be assisted by such loan was not commenced prior to such date, and not completed prior to the filing of an application for the benefits of such interest rate."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 3(b) of Pub. L. 87-723 provided in part that the amendments of subsec. (d)(1), (7), (8) of this section by Pub. L. 87-723 shall be effective with respect to applications for loans made under this section after Sept. 28, 1962.

FINDINGS AND PURPOSE OF 1988 AMENDMENT

Section 162(a) of Pub. L. 100-242 provided that:

"(1) The Congress finds that—

"(A) housing for nonelderly handicapped families is assisted under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q] and section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f];

"(B) the housing programs under such sections are designed and implemented primarily to assist rental housing for elderly and nonelderly families and are often inappropriate for dealing with the specialized needs of the physically impaired, the developmentally disabled, and the chronically mentally ill;

"(C) the development of housing for nonelderly handicapped families under such programs is often more expensive than necessary, thereby reducing the number of such families that can be assisted with available funds;

"(D) the program under section 202 of the Housing Act of 1959 can continue to provide direct loans to finance group residences and independent apartments for nonelderly handicapped families, but can be made more efficient and less costly by the adoption of standards and procedures applicable only to housing for such families;

"(E) the cost containment policies currently being implemented in the development of small group homes (i) do not adequately reflect the necessity for building designs to meet the needs of the designated residents; and (ii) do not recognize necessary State and local standards for the operation of such homes;

"(F) the use of the program under section 8 of the United States Housing Act of 1937 to assist rentals for housing for nonelderly handicapped families is time consuming and unnecessarily costly and, in some areas of the Nation, prevents the development of such housing;

"(G) the use of the program under section 8 of the United States Housing Act of 1937 to assist rentals for housing for nonelderly handicapped families should be replaced by a more appropriate subsidy mechanism;

"(H) both elderly and handicapped housing projects assisted under section 202 of the Housing Act of 1959 will benefit from an increased emphasis on supportive services and a greater use of State and local funds; and

"(I) an improved program for nonelderly handicapped families will assist in providing shelter and supportive services for mentally ill persons who might otherwise be homeless.

"(2) The purpose of this section is to improve the direct loan program under section 202 of the Housing Act of 1959 to ensure that such program meets the special housing and related needs of nonelderly handicapped families."

TERMINATION OF SECTION 8 ASSISTANCE

Section 162(d) of Pub. L. 100-242 provided that: "On and after the first date that amounts approved in an appropriation Act for any fiscal year become available for contracts under section 202(h)(4)(A) of the Housing Act of 1959 [12 U.S.C. 1701q(h)(4)(A)], as amended by subsection (b) of this section, no project for handicapped (primarily nonelderly) families approved for such fiscal year pursuant to section 202 of such Act shall be provided assistance payments under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], except pursuant to a reservation for a contract to make such assistance payments that was made before the first date that amounts for contracts under such section 202(h)(4)(A) became available."

IMPLEMENTATION OF 1988 AMENDMENT

Section 162(e) of Pub. L. 100-242 provided that: "Not later than the expiration of the 120-day period following the date of the enactment of this Act [Feb. 5, 1988], the Secretary of Housing and Urban Development shall, to the extent amounts are approved in an appropriation Act for use under section 202(h)(4)(A) of the Housing Act of 1959 [12 U.S.C. 1701q(h)(4)(A)] for fiscal year 1988, publish in the Federal Register a notice of fund availability to implement the provisions of, and amendments made by, this section [amending this section and enacting and repealing provisions set out above]. The Secretary shall issue such rules as

may be necessary to carry out such provisions and amendments for fiscal year 1989 and thereafter."

HOUSING FOR THE ELDERLY OR HANDICAPPED FUND

Pub. L. 100-404, title I, § 101, Aug. 19, 1988, 102 Stat. 1016, provided: "That, notwithstanding section 202(a)(3) of the Housing Act of 1959 [12 U.S.C. 1701q(a)(3)], loans made in fiscal year 1989 shall bear an interest rate which does not exceed 9.25 per centum, including the allowance adequate in the judgment of the Secretary to cover administrative costs and probable losses under the program."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 100-202, § 101(f) [title I, § 101], Dec. 22, 1987, 101 Stat. 1329-187, 1329-190.

Pub. L. 99-500, § 101(g) [H.R. 5313, title I, § 101], Oct. 18, 1986, 100 Stat. 1783-242, and Pub. L. 99-591, § 101(g), Oct. 30, 1986, 100 Stat. 3341-243.

Pub. L. 99-160, title I, § 101, Nov. 25, 1985, 99 Stat. 911.

Pub. L. 98-371, title I, § 101, July 18, 1984, 98 Stat. 1216.

Pub. L. 98-45, title I, § 101, as added Pub. L. 98-181, title I, Nov. 30, 1983, 97 Stat. 1153.

REPORTS RESPECTING ELDERLY AND HANDICAPPED HOUSING PROGRAMS IN RURAL AREAS, ETC.

Section 306(s), (f) of Pub. L. 96-153 provided that not later than six months after Dec. 21, 1979, the Secretary of Housing and Urban Development shall report to Congress on the housing needs of the elderly and handicapped in rural areas and recommend to Congress on means to reduce the costs of the program carried out under section 1701q of this title.

FEASIBILITY AND MARKETABILITY OF PROJECTS; ASSISTANCE FOR PROJECTS SERVICING LOW- AND MODERATE-INCOME FAMILIES

Section 210(g) of Pub. L. 93-383 provided that:

"(1) In determining the feasibility and marketability of a project under section 203 of the Housing Act of 1959 [this section], the Secretary shall consider the availability of monthly assistance payments pursuant to section 8 of the United States Housing Act of 1937 [section 1437f of Title 42] with respect to such a project.

"(2) The Secretary shall insure that with the original approval of a project authorized pursuant to section 202 of the Housing Act of 1959, and thereafter at each annual revision of the assistance contract under section 8 of the United States Housing Act of 1937 with respect to units in such project, the project will serve both low- and moderate-income families in a mix which he determines to be appropriate for the area and for viable operation of the project; except that the Secretary shall not permit maintenance of vacancies to await tenants of one income level where tenants of another income level are available."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1701r-1, 1701s, 1701z-11, 1701z-13, 1715f, 1715v, 1715z-1, 1715z-1a, 1715z-1b, 1715z-15, 1715z-19 of this title; title 42 sections 1436b, 1437c, 1437f, 1438, 1439, 3013, 8002, 8008, 8009, 8231, 11382.

§ 1701r. Congressional findings respecting housing for senior citizens

The Congress finds that there is a large and growing need for suitable housing for older people both in urban and rural areas. Our older citizens face special problems in meeting their housing needs because of the prevalence of modest and limited incomes among the elderly, their difficulty in obtaining liberal long-term

UNITED STATES CODE

1988 EDITION

SUPPLEMENT I

CONTAINING THE GENERAL AND PERMANENT LAWS OF
THE UNITED STATES, ENACTED DURING THE
101ST CONGRESS, FIRST SESSION

Prepared and published under authority of Title 2, U.S. Code, Section 285b,
by the Office of the Law Revision Counsel of the House of Representatives



JANUARY 3, 1989, TO JANUARY 22, 1990

VOLUME ONE

TITLE 1—GENERAL PROVISIONS

TO

TITLE 36—PATRIOTIC SOCIETIES AND OBSERVANCES

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1990

Sec.

- (f) Action to collect penalty.
- (g) Settlement by Secretary.
- (h) "Knowingly" defined.
- (i) Regulations.
- (j) Deposit of penalties in insurance funds.

1735f-16. Annual audited financial statements.

SUBCHAPTER IX-A—MORTGAGE INSURANCE FOR LAND DEVELOPMENT AND NEW COMMUNITIES

1749aa to 1749ll. Repealed.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1441a, 1454, 1464, 1701r-1, 1701z-7, 1701z-11, 1709a, 1715z-1a, 1715z-1c, 1715z-4a, 1735f-7a, 1735g, 1786, 2710, 3802 of this title; title 7 section 1933; title 11 section 362; title 15 section 77ddd; title 38 section 1804; title 40 section 474; title 40 App. section 213; title 42 sections 1382a, 1490a, 2322, 3012; title 48 section 1425.

§ 1701c. Secretary of Housing and Urban Development

In carrying out his functions, powers, and duties—

[See main edition for text of (a) and (b)]

(c) Additional powers and duties of Secretary and Federal Home Loan Bank Board

The Secretary of Housing and Urban Development and the Director of the Office of Thrift Supervision, respectively, may, in addition to and not in derogation of any powers and authorities conferred elsewhere in this Act.

(1) with the consent of the agency or organization concerned, accept and utilize equipment, facilities, or the services of employees of any Federal, State, or local public agency or instrumentality, educational institution, or nonprofit agency or organization and, in connection with the utilization of such services, may make payments for transportation while away from their homes or regular places of business and per diem in lieu of subsistence en route and at place of such service, in accordance with the provisions of section 5703 of title 5;

[See main edition for text of (2)]

(3) make expenditures for all necessary expenses, including preparation, mounting, shipping, and installation of exhibits; purchase and exchange of technical apparatus; and such other expenses as may, from time to time, be found necessary in carrying out their respective functions, powers, and duties: *Provided*, That funds made available for administrative expenses in carrying out the functions, powers, and duties imposed upon the Secretary of Housing and Urban Development and the Federal Home Loan Bank Board,¹ respectively, by or pursuant to law

¹ So in original. Probably should refer to the Director of the Office of Thrift Supervision.

may at their option be consolidated into a single administrative expense fund accounts of such officer or agency for expenditure by them, respectively, in accordance with the provisions hereof.

[See main edition for text of (d)]

(As amended Aug. 9, 1989, Pub. L. 101-73, title III, § 306, 103 Stat. 352.)

AMENDMENTS

1989—Subsec. (c), Pub. L. 101-73, § 306(a), which directed the substitution of "Director of the Office of Thrift Supervision" for "Federal Home Loan Bank Board (which term as used in this section shall also include and refer to the Federal Savings and Loan Insurance Corporation, the Home Owners Loan Corporation, and the Chairman of the Federal Home Loan Bank Board)", was executed as directed, except that "Home Owners'" rather than "Home Owners" appeared in the original in the language struck out.

Subsec. (c)(1), Pub. L. 101-73, § 306(b), substituted "of any Federal, State, or local" for "of any State or local".

TRANSFER OF FUNCTIONS

The Federal Home Loan Bank Board was abolished and its functions transferred, see sections 401 to 406 of Pub. L. 101-73, set out as a note under section 1437 of this title.

§ 1701j-3. Preemption of due-on-sale prohibitions

TRANSFER OF FUNCTIONS

The Federal Home Loan Bank Board was abolished and its functions transferred, see sections 401 to 406 of Pub. L. 101-73, set out as a note under section 1437 of this title.

§ 1701p-1. Periodic report on residential mortgage delinquencies and foreclosures

TRANSFER OF FUNCTIONS

The Federal Home Loan Bank Board was abolished and its functions transferred, see sections 401 to 406 of Pub. L. 101-73, set out as a note under section 1437 of this title.

§ 1701q. Loans for housing and related facilities for elderly or handicapped families

HOUSING FOR THE ELDERLY OR HANDICAPPED FUND

Pub. L. 101-144, title II, Nov. 9, 1989, 103 Stat. 847, provided: "That, notwithstanding section 202(a)(3) of the Housing Act of 1959 [12 U.S.C. 1701q(a)(3)], loans made in fiscal year 1990 shall bear an interest rate which does not exceed 9.25 per centum, including the allowance adequate in the judgment of the Secretary to cover administrative costs and probable losses under the program."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1441a, 1701q-1, 1701r-1, 1701s, 1761z-11, 1701z-13, 1715f, 1715v, 1715z-1, 1715z-1a, 1715z-1b, 1715z-15, 1715z-19 of this title; title 42 sections 1382a, 1436b, 1437c, 1437f, 1438, 1439, 3013, 3535, 8002, 8008, 8009, 8231, 11382.

§ 1701q-1. Civil money penalties against mortgagors under section 1701q of this title

(a) In general

The penalties set forth in this section shall be in addition to any other available civil remedy or criminal penalty, and may be imposed

whether or not the Secretary imposes other administrative sanctions. The Secretary may not impose penalties under this section for violations a material cause of which are the failure of the Department, an agent of the Department, or a public housing agency to comply with existing agreements.

(b) **Penalty for violation of agreement as condition of transfer of physical assets, flexible subsidy loan, capital improvement loan, modification of mortgage terms, or workout agreement**

(1) **In general**

Whenever a mortgagor of property that includes 5 or more living units and that has a mortgage held pursuant to section 1701q of this title, who has agreed in writing, as a condition of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a workout agreement, to use nonproject income to make cash contributions for payments due under the note and mortgage, for payments to the reserve for replacements, to restore the project to good physical condition, or to pay other project liabilities, knowingly and materially fails to comply with any of these commitments, the Secretary may impose a civil money penalty on the mortgagor in accordance with the provisions of this section.

(2) **Amount**

The amount of the penalty, as determined by the Secretary, for a violation of this subsection may not exceed the amount of the loss the Secretary would incur at a foreclosure sale, or sale after foreclosure, with respect to the property involved.

(c) **Violations of regulatory agreement**

(1) **In general**

The Secretary may also impose a civil money penalty on a mortgagor or property that includes 5 or more living units and that has a mortgage held pursuant to section 1701q of this title for any knowing and material violation of the regulatory agreement executed by the mortgagor, as follows:

(A) Conveyance, transfer, or encumbrance of any of the mortgaged property, or permitting the conveyance, transfer, or encumbrance of such property, without the prior written approval of the Secretary.

(B) Assignment, transfer, disposition, or encumbrance of any personal property of the project, including rents, or paying out any funds, except for reasonable operating expenses and necessary repairs, without the prior written approval of the Secretary.

(C) Conveyance, assignment, or transfer of any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property, without the prior written approval of the Secretary.

(D) Remodeling, adding to, reconstructing, or demolishing any part of the mortgaged property or subtracting from any real or personal property of the project, without the prior written approval of the Secretary.

(E) Requiring, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent, plus a security deposit in an amount not in excess of 1 month's rent, to guarantee the performance of the covenants of the lease.

(F) Not holding any funds collected as security deposits separate and apart from all other funds of the project in a trust account, the amount of which at all times equals or exceeds the aggregate of all outstanding obligations under the account.

(G) Payment for services, supplies, or materials which exceeds \$500 and substantially exceeds the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.

(H) Failure to maintain at any time the mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other related papers (including failure to keep copies of all written contracts or other instruments which affect the mortgaged property) in reasonable condition for proper audit and for examination and inspection at any reasonable time by the Secretary or any duly authorized agents of the Secretary.

(I) Failure to maintain the books and accounts of the operations of the mortgaged property and of the project in accordance with requirements prescribed by the Secretary.

(J) Failure to furnish the Secretary, by the expiration of the 60-day period beginning on the 1st day after the completion of each fiscal year, with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared in accordance with requirements prescribed by the Secretary, and prepared and certified to by an independent public accountant or a certified public accountant and certified to by an officer of the mortgagor, unless the Secretary has approved an extension of the 60-day period in writing. The Secretary shall approve an extension where the mortgagor demonstrates that failure to comply with this subparagraph is due to events beyond the control of the mortgagor.

(K) At the request of the Secretary, the agents of the Secretary, the employees of the Secretary, or the attorneys of the Secretary, failure to furnish monthly occupancy reports or failure to provide specific answers to questions upon which information is sought relative to income, assets, liabilities, contracts, the operation and condition of the property, or the status of the mortgage.

(L) Failure to make promptly all payments due under the note and mortgage, including tax and insurance escrow payments, and payments to the reserve for replacements when there is adequate project income available to make such payments.

(M) Amending the articles of incorporation or bylaws, other than as permitted under the terms of the articles of incorporation as approved by the Secretary, without the prior written approval of the Secretary.

(2) Amount of penalty

A penalty imposed for a violation under this subsection, as determined by the Secretary, may not exceed \$25,000 for a violation of any of the subparagraphs of paragraph (1).

(d) Agency procedures

(1) Establishment

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

(A) shall provide for the Secretary or other department official (such as the Assistant Secretary for Housing) to make the determination to impose a penalty;

(B) shall provide for the imposition of a penalty only after the mortgagor has been given an opportunity for a hearing on the record; and

(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Final orders

If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

(3) Factors in determining amount of penalty

In determining the amount of a penalty under subsection (b) or (c) of this section, consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before December 15, 1989), ability to pay the penalty, injury to the tenants, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

(4) Reviewability of imposition of penalty

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

(e) Judicial review of agency determination

(1) In general

After exhausting all administrative remedies established by the Secretary under subsection (d)(1) of this section, a mortgagor against whom the Secretary has imposed a civil money penalty under subsection (b) or (c) of this section may obtain a review of the

penalty and such ancillary issues as may be addressed in the notice of determination to impose a penalty under subsection (d)(1)(A) of this section in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

(2) Objections not raised in hearing

The court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (d)(1) of this section unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

(3) Scope of review

The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5.

(4) Order to pay penalty

Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

(f) Action to collect penalty

If a mortgagor fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (b) or (c) of this section, after the determination or order is no longer subject to review as provided by subsections (d)(1) and (e) of this section, the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the mortgagor and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

(g) Settlement by Secretary

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

(h) "Knowingly" defined

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

(i) Regulations

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

(j) Deposit of penalties in insurance funds

Notwithstanding any other provision of law, all civil money penalties collected under this section shall be deposited in the fund established under section 1715z-1a(j) of this title.

(Pub. L. 86-372, title II, § 202a, as added Pub. L. 101-235, title I, § 109(a), Dec. 15, 1989, 103 Stat. 2007.)

CODIFICATION

Section was enacted as part of the Housing Act of 1959, and not as part of the National Housing Act which comprises this chapter.

EFFECTIVE DATE

Section 109(b) of Pub. L. 101-235 provided that: "The amendment made by subsection (a) [enacting this section] shall apply only with respect to violations referred to in the amendment that occur on or after the effective date of this section [Dec. 15, 1989]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1715z-1a of this title.

§ 1701r-1. Pet ownership in assisted rental housing for the elderly or handicapped**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in title 42 section 1437aa.

§ 1701s. Rent supplement payments for qualified lower income families**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1701z-11, 1716f, 1715z, 1716z-1a, 1716z-6, 1716z-15 of this title; title 31 section 1306; title 42 sections 1382a, 1436a, 1436b, 1439.

§ 1701x. Assistance with respect to housing for low- and moderate-income families

[See main edition for text of (a) and (b)]

(c) Grants for homeownership counseling organizations

[See main edition for text of (1) to (8)]

(9) Termination

The provisions of this subsection shall not be effective after September 30, 1990.

(As amended Pub. L. 101-137, § 8, Nov. 3, 1989, 103 Stat. 826.)

AMENDMENTS

1989—Subsec. (c)(9). Pub. L. 101-137 substituted "September 30, 1990" for "September 30, 1989".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 sections 3635, 9816.

§ 1701z-11. Management and disposal of multifamily housing projects

[See main edition for text of (e) to (j)]

(k) Annual report describing status of projects

The Secretary shall annually submit to the Congress on June 1 of each year a report describing the status of multifamily housing projects that are subject to subsection (a) of this section, which report shall include—

(1) the name, address, and size of each project;

(2) the nature and date of assignment;

(3) the status of the mortgage;

(4) the physical condition of the project;

(5) the proportion of units in a project that are vacant;

(6) the date on which the Secretary became mortgagee in possession or the date of imposition of any receivership;

(7) the date and conditions of any foreclosure sale;

(8) the date of acquisition by the Secretary; and

(9) the date and conditions of any property disposition sale.

The report shall describe the activities carried out under subsection (e) of this section during the preceding year, and shall contain a description and assessment of the rules, guidelines and practices governing the Department's assumption of management responsibilities in multifamily housing projects subject to subsection (a) of this section that are owned by the Secretary (or for which the Secretary is mortgagee in possession) as well as the steps that the Secretary has taken or plans to take to expedite the assumption of management responsibilities of the Department and improve the management performance of the Department, including the expedited repair and turnover of vacant units.

(As amended Pub. L. 101-235, title II, § 204(a), Dec. 15, 1989, 103 Stat. 2039.)

AMENDMENTS

1989—Subsec. (k). Pub. L. 101-235 amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: "The Secretary shall annually submit to the Congress a report describing the activities carried out under subsection (e) of this section during the preceding year."

SUBCHAPTER I—HOUSING RENOVATION AND MODERNIZATION**SUBCHAPTER REFERRED TO IN OTHER SECTIONS**

This subchapter is referred to in sections 1451, 1709-1a, 1717, 1731a, 1735f-6, 1735f-14, 1743, 2803, 2810 of this title; title 38 section 1828.

§ 1702. Administrative provisions

The powers conferred by this chapter shall be exercised by the Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary"). In order to carry out the provisions of this subchapter and subchapters II, III, V, VI, VII, VIII, IX-B, and X of this chapter, the Secretary may establish such agencies, accept and utilize such voluntary and uncompensated services, utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, and appoint such other officers and employees as he may find necessary, and may prescribe their authorities, duties, responsibilities, and tenure and fix their compensation. The Secretary may delegate any of the functions and powers conferred upon him under this subchapter and subchapters II, III, V, VI, VII,

UNITED STATES CODE

1988 EDITION

CONTAINING THE GENERAL AND PERMANENT LAWS
OF THE UNITED STATES, IN FORCE
ON JANUARY 3, 1989

Prepared and published under authority of Title 2, U.S. Code, Section 285h,
by the Office of the Law Revision Counsel of the House of Representatives



VOLUME SIXTEEN

TITLE 42—THE PUBLIC HEALTH AND WELFARE

§§ 1400-5300

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1989

and Metropolitan Development Act of 1966 [see Short Title note set out under section 3301 of this title], and Housing and Urban Development Acts of 1965, 1968, 1969, and 1970 not to be withheld or made subject to conditions by reason of tax-exempt status of obligations issued or to be issued for financing of assistance, except as otherwise provided by law, see section 817 of Pub. L. 93-383, set out as a note under section 5301 of this title.

§ 1437a. Rental payments

(a) Families included; amount

(1) Dwelling units assisted under this chapter shall be rented only to families who are lower income families at the time of their initial occupancy of such units. Reviews of family income shall be made at least annually. Except as provided in paragraph (2), a family shall pay as rent for a dwelling unit assisted under this chapter (other than a family assisted under section 1437f(o) of this title) the highest of the following amounts, rounded to the nearest dollar:

(A) 30 per centum of the family's monthly adjusted income;

(B) 10 per centum of the family's monthly income; or

(C) if the family is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated.

(2)(A) Any public housing agency may provide that each family residing in a public housing project owned and operated by such agency (or in lower income housing assisted under section 1437f of this title that contains more than 2,000 dwelling units) shall pay as monthly rent for not more than a 3-year period an amount determined by such agency to be appropriate that does not exceed a maximum amount that—

(i) is established by such agency and approved by the Secretary;

(ii) is not more than the amount payable as rent by such family under paragraph (1); and

(iii) is not less than the average monthly amount of debt service and operating expenses attributable to dwelling units of similar size in public housing projects owned and operated by such agency.

(B) The 3-year limitation established in subparagraph (A) shall not apply to any family residing in a public housing project administered by an Indian public housing agency.

(b) Definition of terms under this chapter

When used in this chapter:

(1) The term "lower income housing" means decent, safe, and sanitary dwellings assisted under this chapter. The term "public housing" means lower income housing, and all necessary appurtenances thereto, assisted under this chapter other than under section 1437f of this title. When used in reference to public housing, the term "lower income housing project" or "project" means (A) housing developed, acquired, or assisted by a public housing agency under this chapter, and (B) the improvement of any such housing.

(2) The term "lower income families" means those families whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes. The term "very low-income families" means lower income families whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes. Such ceilings shall be established in consultation with the Secretary of Agriculture for any rural area, as defined in section 1490 of this title, taking into account the subsidy characteristics and types of programs to which such ceilings apply.

(3) The term "families" includes families consisting of a single person in the case of (A) a person who is at least sixty-two years of age, is under a disability as defined in section 423 of this title, has a developmental disability as defined in section 6001(7)¹ of this title, or is handicapped, (B) a displaced person, (C) the remaining member of a tenant family, and (D) other single persons in circumstances described in regulations of the Secretary. In no event shall more than 15 per centum of the units under the jurisdiction of any public housing agency be occupied by single persons under clause (D). In determining priority for admission to housing under this chapter, the Secretary shall give preference to those single persons who are elderly, handicapped, or displaced before those eligible under clause (D). The term "elderly families" means families whose heads (or their spouses), or whose sole members, are persons described in clause (A). A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which is expected to be of long-continued and indefinite duration, substantially impedes such person's ability to live independently, and is of such a nature that such ability could be improved by more suitable housing conditions. The term "displaced person" means a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws. Notwithstanding the preceding provisions of this subsection, the term "elderly families" includes two or more elderly, disabled, or handicapped individuals living together, or one or more such individuals living with one or more persons determined under regulations of the Secretary to be essen-

¹ See References in Text note below.

tial to their care or well being. The Secretary may increase the limitation described in the second sentence of this paragraph to not more than 30 per centum if, following consultation with the public housing agency involved, the Secretary determines that the dwelling units involved are neither being occupied, nor are likely to be occupied within the next 12 months, by families or persons described in clauses (A), (B), and (C), due to the condition or location of such dwelling units, and that such dwelling units may be occupied if made available to single persons described in clause (D). In determining priority for admission to public housing projects designed for elderly families, the public housing agency shall give preference to such families. When the public housing agency determines (in accordance with regulations of the Secretary) that there are insufficient numbers of elderly families to fill all the units in such a project, the agency may give preference to families in which the head of household (or spouse) is at least 50 years of age but below the age of 62 before those in which the head of household and spouse, if any, are below the age of 50.

(4) The term "income" means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary, in consultation with the Secretary of Agriculture.

(5) The term "adjusted income" means the income which remains after excluding--

(A) \$480 for each member of the family residing in the household (other than the head of the household or his spouse) who is under 18 years of age or who is 18 years of age or older and is disabled or handicapped or a full-time student;

(B) \$400 for any elderly family;

(C) the amount by which the aggregate of the following expenses of the family exceeds 3 percent of annual family income: (i) medical expenses for any elderly family; and (ii) reasonable attendant care and auxiliary apparatus expenses for each handicapped member of any family, to the extent necessary to enable any member of such family (including such handicapped member) to be employed; and

(D)(i) child care expenses to the extent necessary to enable another member of the family to be employed or to further his or her education; or (ii) excessive travel expenses, not to exceed \$25 per family per week, for employment or education related travel, except that this clause shall apply only to families assisted by Indian housing authorities.

(6) The term "public housing agency" means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of lower income housing. The term includes any Indian housing authority.

(7) The term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, the Trust Territory of the Pacific Islands, and Indian tribes.

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

(9) The term "Indian" means any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.

(10) The term "Indian area" means the area within which an Indian housing authority is authorized to provide lower income housing.

(11) The term "Indian housing authority" means any entity that--

(A) is authorized to engage in or assist in the development or operation of lower income housing for Indians; and

(B) is established--

(i) by exercise of the power of self-government of an Indian tribe independent of State law; or

(ii) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

(12) The term "Indian tribe" means any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

(c) Definition of terms used in reference to public housing

When used in reference to public housing:

(1) The term "development" means any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment, in connection with a lower income housing project. The term "development cost" comprises the costs incurred by a public housing agency in such undertakings and their necessary financing (including the payment of carrying charges), and in otherwise carrying out the development of such project. Construction activity in connection with a lower income housing project may be confined to the reconstruction, remodeling, or repair of existing buildings.

(2) The term "operation" means any or all undertakings appropriate for management, operation, services, maintenance, security (including the cost of security personnel), or financing in connection with a lower income housing project. The term also means the financing of tenant programs and services for families residing in lower income housing projects, particularly where there is maximum feasible participation of the tenants in the development and operation of such tenant programs and services. As used in this paragraph, the term "tenant programs and services" includes the development and maintenance of tenant organizations which participate in the management of lower income housing projects; the training of tenants to manage and operate such projects and the utilization of their services in project management and operation; counseling on household management, housekeeping, budgeting, money management, child care, and similar matters; advice as to resources for job training and placement, education, welfare, health, and other community services; services which are directly related to meeting tenant needs and providing a wholesome living environment; and referral to appropriate agencies in the community when necessary for the provision of such

services. To the maximum extent available and appropriate, existing public and private agencies in the community shall be used for the provision of such services.

(3) The term "acquisition cost" means the amount prudently required to be expended by a public housing agency in acquiring property for a lower income housing project.

(Sept. 1, 1937, ch. 896, title I, § 3, as added Aug. 22, 1974, Pub. L. 93-383, title II, § 201(a), 88 Stat. 654, and amended Aug. 3, 1976, Pub. L. 94-375, § 2(f), 90 Stat. 1088; Oct. 31, 1978, Pub. L. 95-557, title II, § 208(c), 92 Stat. 2091; Dec. 21, 1979, Pub. L. 96-153, title II, § 202(a), 93 Stat. 1106; Aug. 13, 1981, Pub. L. 97-35, title III, § 322(a), 95 Stat. 400; Nov. 30, 1983, Pub. L. 98-181, title II, §§ 202, 206(a)-(c), 97 Stat. 1178, 1179; Oct. 17, 1984, Pub. L. 98-479, title I, § 102(b)(1)-(3), 98 Stat. 2221; Feb. 5, 1988, Pub. L. 100-242, title I, §§ 102(a), 111, 170(c), 101 Stat. 1821, 1823, 1867; redesignated title I and amended June 29, 1988, Pub. L. 100-358, §§ 4, 5, 102 Stat. 680, 681.)

REFERENCES IN TEXT

Section 6001(7) of this title, referred to in subsec. (b)(3)(A), was redesignated section 6001(5) of this title by Pub. L. 100-146, title I, § 102(4), Oct. 29, 1987, 101 Stat. 841.

PRIOR PROVISIONS

A prior section 3 of act Sept. 1, 1937, ch. 896, 50 Stat. 889, as amended, which established the United States Housing Authority, was classified to section 1493 of this title prior to the revision of act Sept. 1, 1937, by Pub. L. 93-383.

Prior similar provisions were contained in section 2 of act Sept. 1, 1937, ch. 896, 50 Stat. 888, which was classified to section 1402 of this title prior to the revision of such act by Pub. L. 93-383.

AMENDMENTS

1988—Subsec. (a), Pub. L. 100-242, § 102(a), designated existing provisions as par. (1), substituted "Except as provided in paragraph (2), a" for "A", redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and added par. (2).

Subsec. (b)(3), Pub. L. 100-242, § 170(c), in cl. (A), substituted "sixty-two years of age," for "sixty-two years of age or", and " has a developmental disability as defined in section 8001(7) of this title" for "or in section 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970".

Pub. L. 100-242, § 111, inserted provisions relating to determination of priority admission to public housing projects designed for elderly families.

Subsec. (b)(5)(D), Pub. L. 100-358, § 4(a), designated existing provisions as cl. (I) and added cl. (II).

Subsec. (b)(6), Pub. L. 100-358, § 4(b), inserted at end "The term includes any Indian housing authority."

Subsec. (b)(7), Pub. L. 100-358, § 4(c), struck out " bands, groups, and Nations, including Alaska Indians, Aleuts, and Eskimos, of the United States" after "and Indian tribes".

Subsec. (b)(9) to (12), Pub. L. 100-358, § 4(d)-(g), added pars. (9) to (12).

1984—Subsec. (b)(2), Pub. L. 98-479, § 102(b)(1), inserted provision at end that such ceilings shall be established in consultation with the Secretary of Agriculture for any rural area, as defined in section 1490 of this title, taking into account the subsidy characteristics and types of programs to which such ceilings apply.

Subsec. (b)(4), Pub. L. 98-479, § 102(b)(2), inserted " in consultation with the Secretary of Agriculture" at end.

Subsec. (b)(5)(C), Pub. L. 98-479, § 102(b)(3), designated existing provision as cl. (I), added cl. (II), and inserted "the amount by which the aggregate of the following expenses of the family" in provisions preceding cl. (I).

1983—Subsec. (a), Pub. L. 98-181, § 206(a), in provisions preceding par. (1), inserted provision requiring annual review of family income, and inserted "(other than a family assisted under section 1437f(c) of this title)".

Subsec. (b)(2), Pub. L. 98-181, § 206(b), qualified the term "very low-income families" in authorizing the Secretary to establish, where necessary, variations in income ceilings higher or lower than 50 per centum of the median for the area.

Subsec. (b)(3), Pub. L. 98-181, § 202, inserted provision at end of par. (3) authorizing increase from 15 to 30 per centum in the single person occupancy limitation for nonoccupancy of the involved dwelling units.

Subsec. (b)(5), Pub. L. 98-181, § 206(c), amended par. (5) generally, substituting provisions designating cls. (A) to (D) for prior exclusion from "adjusted income" of such amounts or types of income as the Secretary might prescribe, taking into account the number of minor children and other appropriate factors.

1981—Pub. L. 97-35 added subsecs. (a) and (c) and designated provisions constituting former section as subsec. (b), and in subsec. (b) as so designated, substituted provisions defining "lower income housing", "lower income families", "families", "income", "adjusted income", "public housing agency", "State", and "Secretary" for provisions defining "low-income housing", "low-income families", "development", "operation", "acquisition cost", "public housing agency", "State", "Secretary", and "low-income housing project".

1979—Par. (1), Pub. L. 96-153 substituted provisions that the rental for a dwelling shall not exceed certain portion of the resident family's income to be established by the Secretary, and that in the case of a very low income family 25 per centum and in other cases 30 per centum of family income for provisions that such rental shall not exceed one-fourth of the family's income as defined by the Secretary.

1978—Par. (2)(D), Pub. L. 95-557 substituted "15 per cent" for "10 per cent".

1978—Par. (2), Pub. L. 94-375 struck out "and" before cl. (C), added cl. (D), and two provisions relating to the percentage of units to be occupied by single persons and the priority to be given to single persons who are elderly, handicapped, or displaced, following cl. (D).

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 1979 AMENDMENT

Section 202(c) of Pub. L. 96-153, which provided that amendment by section 202(a) of Pub. L. 98-153 (amending sections 1437a and 1437f of this title) shall become effective on Jan. 1, 1980, except that the amount of the tenant contribution required of families whose occupancy of housing units assisted under this chapter commenced prior to that date shall be determined in accordance with the provisions of this chapter in effect on Dec. 31, 1979, so long as such occupancy was continuous thereafter, was repealed by Pub. L. 97-35, title III, § 322(h)(1), Aug. 13, 1981, 95 Stat. 404.

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 par. (1) 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.

The Department of Housing and Urban Development adopted an interim rule, 24 CFR 860.409, Sept. 26, 1975, 40 F.R. 44326, which provided: "The effective date of section 3(1) of the United States Housing Act of 1937, as amended [par. (1) of this section], shall be the date that these regulations [sections 860.401 to 860.409 of Title 24, CFR] are published in the Federal Register (September 26, 1975)."

MEDIAN AREA INCOME

Section 567 of Pub. L. 100-242 provided that: "For purposes of calculating the median income for any area that is not within a metropolitan statistical area (as established by the Office of Management and Budget) for programs under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.), the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), the National Housing Act [12 U.S.C. 1701 et seq.], or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], the Secretary of Housing and Urban Development or the Secretary of Agriculture (as appropriate) shall use whichever of the following is higher:

- "(1) the median income of the county in which the area is located; or
- "(2) the median income of the entire nonmetropolitan area of the State."

DETERMINATION OF RENT PAYABLE BY TENANTS OCCUPYING ASSISTED HOUSING; DELAYED APPLICATION OR STAGED IMPLEMENTATION OF AMENDED PROVISIONS

Section 206(d) of Pub. L. 98-181 provided that:

"(1) The following provisions of this paragraph apply to determinations of the rent to be paid by or the contribution required of a tenant occupying housing assisted under the authorities amended by this section [amending this section] or subsections (a) through (h) of section 322 of the Housing and Community Development Amendments of 1981 [amending sections 1437 to 1437d, 1437f, 1437g, 1437i, 1437j, and 1437l of this title and sections 1701s and 1715-1 of Title 12, Banks and Banking, and repealing provisions set out as notes under this section and section 1701s of Title 12] (hereinafter referred to as 'assisted housing') on or before the effective date of regulations implementing this section:

"(A) Notwithstanding any other provision of this section or subsections (a) through (h) of section 322 of the Housing and Community Development Amendments of 1981, the Secretary of Housing and Urban Development (hereinafter referred to as the 'Secretary') may provide for delayed applicability, or for staged implementation, of the procedures for determining rents or contributions, as appropriate, required by such provisions if the Secretary determines that immediate application of such procedures would be impracticable, would violate the terms of existing leases, or would result in extraordinary hardship for any class of tenants.

"(B) The Secretary shall provide that the rent or contribution, as appropriate, required to be paid by a tenant shall not increase as a result of the amendments made by this section and subsections (a) through (h) of section 322 of the Housing and Community Development Amendments of 1981, and as a result of any other provision of Federal law or regulation, by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to such amendments, law, or regulation.

"(2) Tenants of assisted housing other than those referred to in paragraph (1) shall be subject to immediate rent payment or contribution determinations in accordance with applicable law and without regard to the provisions of paragraph (1), but the Secretary shall provide that the rent or contribution payable by any such tenant who is occupying assisted housing on the effective date of any provision of Federal law or regulation shall not increase, as a result of any such provision of Federal law or regulation, by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to such law or regulation.

"(3) In the case of tenants receiving rental assistance under section 521(a)(1) of the Housing Act of 1949 [section 1490a(a)(1) of this title] on the effective date of this section [Nov. 30, 1983] whose assistance is converted to assistance under section 8 of the United States Housing Act of 1937 [section 1437f of this title] on or after such date, the Secretary shall provide that the rent or contribution payable by any such tenant shall not increase, as a result of such conversion, by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to such conversion or to any provision of Federal law or regulation.

"(4)(A) Notwithstanding any other provision of law, in the case of the conversion of any assistance under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], section 236(f)(2) of the National Housing Act [12 U.S.C. 1715z-1(f)(2)], or section 23 of the United States Housing Act of 1937 [section 1421b of this title] (as in effect before the date of the enactment of the Housing and Community Development Act of 1974 [Aug. 22, 1974]) to assistance under section 8 of the United States Housing Act of 1937, any increase in rent payments or contributions resulting from such conversion, and from the amendments made by this section of any tenant benefiting from such assistance who is sixty-two years of age or older may not exceed 10 per centum per annum.

"(B) In the case of any such conversion of assistance occurring on or after October 1, 1981, and before the date of the enactment of this section [Nov. 30, 1983], the rental payments due after such date of enactment by any tenant benefiting from such assistance who was sixty-two years of age or older on the date of such conversion shall be computed as if the tenant's rental payment or contribution had, on the date of conversion, been the lesser of the actual rental payment or contribution required, or 25 per centum of the tenant's income.

"(5) The limitations on increases in rent contained in paragraphs (1)(B), (2), (3), and (4) shall remain in effect and may not be changed or superseded except by another provision of law which amends this subsection.

"(6) As used in this subsection, the term 'contribution' means an amount representing 30 per centum of a tenant's monthly adjusted income, 10 per centum of the tenant's monthly income, or the designated amount of welfare assistance, whichever amount is used to determine the monthly assistance payment for the tenant under section 3(a) of the United States Housing Act of 1937 [subsec. (a) of this section].

"(7) The provisions of subsections (a) through (h) of section 322 of the Housing and Community Development Amendments of 1981 shall be implemented and fully applicable to all affected tenants no later than five years following the date of enactment of such amendments [Aug. 13, 1981], except that the Secretary may extend the time for implementation if the Secretary determines that full implementation would result in extraordinary hardship for any class of tenants."

Prior provisions for determining rent payable by tenants occupying assisted housing under and author-

lizing delayed application or staged implementation of provisions amended by section 322 of Pub. L. 97-35 were contained in Pub. L. 97-35, title III, § 322(1), Aug. 13, 1981, 95 Stat. 404, which was repealed by Pub. L. 98-181, title II, § 206(e), Nov. 30, 1983, 97 Stat. 1181.

ESTABLISHMENT OF INCREASED MONTHLY RENTAL CHARGE FOR FAMILY OCCUPYING LOW-INCOME HOUSING UNIT; ADJUSTMENT FACTORS

Section 202 of Pub. L. 93-383 provided that: "To the extent that section 3(1) of the United States Housing Act of 1937, as amended by section 201(a) of this Act [par. (1) of this section], would require the establishment of an increased monthly rental charge for any family which occupies a low-income housing unit as of the effective date of such section 3(1) (other than by reason of the provisions relating to welfare assistance payments) [see Effective Date note set out above], the required adjustment shall be made, in accordance with regulations of the Secretary, as follows: (A) the first adjustment shall not exceed \$5 and shall become effective as of the month following the month of the first review of the family's income pursuant to section 6(c)(2) of such Act [section 1437d(c)(2) of this title] which occurs at least six months after the effective date of such section 3(1), and (B) subsequent adjustments, each of which shall not exceed \$5, shall be made at six-month intervals over whatever period is necessary to effect the full required increase in the family's rental charge."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 503, 1437f, 1437l, 1437o, 1437r, 1437s, 1471, 3544, 5305, 11384 of this title; title 12 sections 1701q, 1701z-11, 1706e, 1715z-1a, 1715z-1c, 1715z-9, 1715z-15.

§ 1437b. Loans and commitments to make loans for lower income housing projects

- (a) Authority of Secretary; interest rates; repayment date; use as security for obligations of public housing agency

The Secretary may make loans or commitments to make loans to public housing agencies to help finance or refinance the development, acquisition, or operation of lower income housing projects by such agencies. Any contract for such loans and any amendment to a contract for such loans shall provide that such loans shall bear interest at a rate specified by the Secretary which shall not be less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, plus one-eighth of 1 per centum. Such loans shall be secured in such manner and shall be repaid within such period not exceeding forty years, or not exceeding forty years from the date of the bonds evidencing the loan, as the Secretary may determine. The Secretary may require loans or commitments to make loans under this section to be pledged as security for obligations issued by a public housing agency in connection with a lower income housing project.

- (b) Issuance of obligations by Secretary; limitation on amounts; forms and denominations; terms and conditions; purchase, establishment of maturities and rates of interest, and sale by Secretary of the Treasury

The Secretary may issue and have outstanding at any one time notes and other obligations

for purchase by the Secretary of the Treasury in an amount which will not, unless authorized by the President, exceed \$1,500,000,000. For the purpose of determining obligations incurred to make loans pursuant to this chapter against any limitation otherwise applicable with respect to such loans, the Secretary shall estimate the maximum amount to be loaned at any one time pursuant to loan agreements then outstanding with public housing agencies. Such notes or other obligations shall be in such forms and denominations and shall be subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. The notes or other obligations issued under this subsection shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any notes or other obligations of the Secretary issued hereunder and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include any purchases of such obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

- (c) Public and Indian housing financing reforms

(1) At such times as the Secretary may determine, and in accordance with such accounting and other procedures as the Secretary may prescribe, each loan made by the Secretary under subsection (a) of this section that has any principal amount outstanding or any interest amount outstanding or accrued shall be forgiven; and the terms and conditions of any contract, or any amendment to a contract, for such loan with respect to any promise to repay such principal and interest shall be canceled. Such cancellation shall not affect any other terms and conditions of such contract, which shall remain in effect as if the cancellation had not occurred. This paragraph shall not apply to any loan the repayment of which was not to be made using annual contributions, or to any loan all or part of the proceeds of which are due a public housing agency from contractors or others.

(2)(A) On April 7, 1986, each note or other obligation issued by the Secretary to the Secretary of the Treasury pursuant to subsection (b) of this section, together with any promise to repay the principal and unpaid interest that has accrued on each note or obligation, shall be forgiven; and any other term or condition specified by each such obligation shall be canceled.

(B) On September 30, 1986, and on any subsequent September 30, each such note or other obligation issued by the Secretary to the Secretary of the Treasury pursuant to subsection (b) of this section during the fiscal year ending on

UNITED STATES CODE

1988 EDITION

SUPPLEMENT I

CONTAINING THE GENERAL AND PERMANENT LAWS OF
THE UNITED STATES, ENACTED DURING THE
101ST CONGRESS, FIRST SESSION

Prepared and published under authority of Title 2, U.S. Code, Section 285b,
by the Office of the Law Revision Counsel of the House of Representatives



JANUARY 3, 1989, TO JANUARY 22, 1990

VOLUME TWO

TITLE 37—PAY AND ALLOWANCES OF THE
UNIFORMED SERVICES

TO

TITLE 50—WAR AND NATIONAL DEFENSE
TABLES, POPULAR NAMES, AND INDEX

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1990

(c) Appropriations

The amount specified for purposes of subsections (a) and (b) of this section shall be—

[See main edition for text of (1) and (2)]

(3) \$2,700,000,000 for the fiscal years 1984, 1985, 1986, 1987, and 1989;

(4) \$2,750,000,000 for the fiscal year 1988; and

(5) \$2,800,000,000 for each fiscal year after fiscal year 1989.

(As amended Dec. 19, 1989, Pub. L. 101-239, title VIII, § 8016, 103 Stat. 2470.)

AMENDMENTS

1989—Subsec. (c)(3). Pub. L. 101-239, § 8016(1), substituted "1987, and 1989;" for "and 1987, and for each succeeding fiscal year other than the fiscal year 1988; and".

Subsec. (c)(5). Pub. L. 101-239, § 8016(2), (3), added par. (5).

CHAPTER 8—LOW-INCOME HOUSING**CHAPTER REFERRED TO IN OTHER SECTIONS**

This chapter is referred to in sections 1382a, 1404a, 1434, 1436a, 1436b, 1437j-1, 1439, 1471, 1485, 1490a, 1502, 1503, 1504, 1586, 1590, 1594c, 1766, 3013, 5153, 5515, 8003 of this title; title 12 sections 24, 1441a, 1701q, 1701r-1, 1715z-1a, 1701z-3, 1701z-11, 1715f; title 20 sections 244, 633, 635, 645; title 25 section 640d-14.

SUBCHAPTER I—GENERAL PROGRAM OF ASSISTED HOUSING**SUBCHAPTER REFERRED TO IN OTHER SECTIONS**

This subchapter is referred to in sections 1437aa, 1437bb, 3535 of this title.

§ 1437a. Rental payments**(a) Families included; amount**

[See main edition for text of (1)]

(2)(A) Any public housing agency may provide that each family residing in a public housing project owned and operated by such agency (or in lower income housing assisted under section 1437f of this title that contains more than 2,000 dwelling units) shall pay as monthly rent for not more than a 5-year period an amount determined by such agency to be appropriate that does not exceed a maximum amount that—

[See main edition for text of (i) to (iii)]

(B) The 5-year limitation established in subparagraph (A) shall not apply to any family residing in a public housing project administered by an Indian public housing agency. The terms of all ceiling rents established prior to December 15, 1989, shall be extended for the 5-year period beginning on December 15, 1989.

[See main edition for text of (b) and (c)]

(As amended Dec. 15, 1989, Pub. L. 101-235, title III, § 302, 103 Stat. 2043.)

AMENDMENTS

1989—Subsec. (a)(2)(A). Pub. L. 101-235, § 302(1), substituted "5-year period" for "3-year period".

Subsec. (a)(2)(B). Pub. L. 101-235, § 302(2), substituted "5-year limitation" for "3-year limitation" and in-

serted at end "The terms of all ceiling rents established prior to December 15, 1989, shall be extended for the 5-year period beginning on December 15, 1989."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 503, 1437f, 1437i, 1437o, 1437r, 1437s, 1471, 3544, 5305, 11384 of this title; title 12 sections 1441a, 1701q, 1701z-11, 1706e, 1715z-1a, 1715z-1c, 1715z-9, 1715z-15.

§ 1437d. Contract provisions and requirements; loans and annual contributions

[See main edition for text of (a)]

(b) Public housing for Indians and Alaska Natives

(1) Each contract for loans (other than preliminary loans) or contributions for the development, acquisition, or operation of public housing and public housing for Indians and Alaska Natives in accordance with the Indian Housing Act of 1988 [42 U.S.C. 1437aa et seq.] shall provide that the total development cost of the project on which the computation of any annual contributions under this chapter may be based may not exceed the amount determined under paragraph (2) (for the appropriate structure type) unless the Secretary provides otherwise, and in any case may not exceed 110 per centum of such amount unless the Secretary for good cause determines otherwise.

(2) For purposes of paragraph (1), the Secretary shall determine the total development cost by multiplying the construction cost guideline for the project (which shall be determined by averaging the current construction costs, as listed by not less than 2 nationally recognized residential construction cost indices, for publicly bid construction of a good and sound quality) by—

(A) in the case of elevator type structures, 1.6; and

(B) in the case of nonelevator type structures, 1.75.

[See main edition for text of (c) to (m)]

(As amended Nov. 9, 1989, Pub. L. 101-144, title II, 103 Stat. 846.)

REFERENCES IN TEXT

The Indian Housing Act of 1988, referred to in subsec. (b)(1), is Pub. L. 100-358, June 29, 1988, 102 Stat. 676, which is classified principally to subchapter II (§ 1437aa et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1437aa of this title and Tables.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101-144 added subsec. (b).

§ 1437f. Lower-income housing assistance

[See main edition for text of (a) and (b)]

(c) Contents and purposes of contracts for assistance payments; amount and scope of monthly assistance payments

[See main edition for text of (1)]

(2) [See main edition for text of (A) and (B)]

(C) Adjustments in the maximum rents under subparagraphs (A) and (B) shall not result in

UNITED STATES CODE

1988 EDITION

CONTAINING THE GENERAL AND PERMANENT LAWS
OF THE UNITED STATES, IN FORCE
ON JANUARY 3, 1989

Prepared and published under authority of Title 2, U.S. Code, Section 285h,
by the Office of the Law Revision Counsel of the House of Representatives



VOLUME SIXTEEN

TITLE 42—THE PUBLIC HEALTH AND WELFARE
§§ 1400-5300

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1989

dining facility in connection with congregate housing (other than the cost of providing food and service) shall be considered one of the costs of operation of the project.

(Sept. 1, 1937, ch. 896, title I, § 7, as added Aug. 22, 1974, Pub. L. 93-383, title II, § 201(a), 88 Stat. 662, and amended Oct. 31, 1978, Pub. L. 95-557, title IV, § 412, 92 Stat. 2110; Feb. 5, 1988, Pub. L. 100-242, title I, § 112(b)(3), 101 Stat. 1824; redesignated title I, June 29, 1988, Pub. L. 100-358, § 5, 102 Stat. 681.)

REFERENCES IN TEXT

Section 202 of the Housing and Urban Development Act of 1970, referred to in text, is section 202 of Pub. L. 91-609, title II, Dec. 31, 1970, 84 Stat. 1776, which amended section 1410(e) of this title, and has been omitted in the general revision of this chapter by section 201(a) of Pub. L. 93-383.

The Housing and Community Development Amendments of 1978, referred to in text, means Pub. L. 95-557, Oct. 31, 1978, 92 Stat. 2080, as amended. Title IV of the Housing and Community Development Amendments of 1978, known as the Congregate Housing Services Act of 1978, is classified principally to chapter 89 (§ 8001 et seq.) of this title. For complete classification of the Housing and Community Development Amendments of 1978 and the Congregate Housing Services Act of 1978 to the Code, see Short Title of 1978 Amendment and Short Title notes set out under sections 5301 and 8001, respectively, of this title and Tables.

PRIOR PROVISIONS

A prior section 7 of act Sept. 1, 1937, ch. 896, 50 Stat. 891, as amended, which required publication of information and submission of annual report by the Authority, was classified to section 1407 of this title prior to the revision of act Sept. 1, 1937, by Pub. L. 93-383.

AMENDMENTS

1988—Pub. L. 100-242 struck out "annual" before "contributions" in proviso.

1978—Pub. L. 95-557 substituted "(1) low-rent housing which, as of January 1, 1979, was built or under construction, with which there is connected a central dining facility where wholesome and economical meals can be served to such occupants; or (2) low-rent housing constructed after, but not under construction prior to, January 1, 1979, connected with which there is a central dining facility to provide wholesome and economical meals for such occupants. Such occupants of congregate housing may also be provided with other supportive services appropriate to their needs under title IV of the Housing and Community Development Amendments of 1978" for "low-income housing (A) in which some or all of the dwelling units do not have kitchen facilities, and (B) connected with which there is a central dining facility to provide wholesome and economical meals for elderly and displaced families under terms and conditions prescribed by the public housing agency to permit a generally self-supporting operation".

§ 1437f. Lower-income housing assistance

(a) Authorization for assistance payments

For the purpose of aiding lower-income families in obtaining a decent place to live and of promoting economically mixed housing, assistance payments may be made with respect to existing housing in accordance with the provisions of this section.

(h) Authorization for contracts for assistance payments for existing dwellings

(1) The Secretary is authorized to enter into annual contributions contracts with public

housing agencies pursuant to which such agencies may enter into contracts to make assistance payments to owners of existing dwelling units in accordance with this section. The Secretary shall enter into a separate annual contributions contract with each public housing agency to obligate the authority approved each year, beginning with the authority approved in appropriations Acts for fiscal year 1988 (other than amendment authority to increase assistance payments being made using authority approved prior to the appropriations Acts for fiscal year 1988), and such annual contributions contract (other than for annual contributions under subsection (c) of this section) shall bind the Secretary to make such authority, and any amendments increasing such authority, available to the public housing agency for a specified period. In areas where no public housing agency has been organized or where the Secretary determines that a public housing agency is unable to implement the provisions of this section, the Secretary is authorized to enter into such contracts and to perform the other functions assigned to a public housing agency by this section.

(2) Repealed. Pub. L. 98-181, title II, § 209(a)(2), Nov. 30, 1983, 97 Stat. 1183.

(c) Contents and purposes of contracts for assistance payments; amount and scope of monthly assistance payments

(1) An assistance contract entered into pursuant to this section shall establish the maximum monthly rent (including utilities and all maintenance and management charges) which the owner is entitled to receive for each dwelling unit with respect to which such assistance payments are to be made. The maximum monthly rent shall not exceed by more than 10 per centum the fair market rental established by the Secretary periodically but not less than annually for existing or newly constructed rental dwelling units of various sizes and types in the market area suitable for occupancy by persons assisted under this section, except that the maximum monthly rent may exceed the fair market rental by more than 10 but not more than 20 per centum where the Secretary determines that special circumstances warrant such higher maximum rent or that such higher rent is necessary to the implementation of a local housing assistance plan as defined in section 1439(a)(5) of this title. In the case of newly constructed and substantially rehabilitated units, the exception in the preceding sentence shall not apply to more than 20 per centum of the total amount of authority to enter into annual contributions contracts for such units which is allocated to an area and obligated with respect to any fiscal year beginning on or after October 1, 1980. Proposed fair market rentals for an area shall be published in the Federal Register with reasonable time for public comment, and shall become effective upon the date of publication in final form in the Federal Register. Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the

rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in the market area suitable for occupancy by persons assisted under this section. Notwithstanding any other provision of this section, after October 12, 1977, the Secretary shall prohibit high-rise elevator projects for families with children unless there is no practical alternative. The Secretary shall establish separate fair market rentals under this paragraph for Westchester County in the State of New York. If units assisted under this section are exempt from local rent control while they are so assisted or otherwise, the maximum monthly rent for such units shall be reasonable in comparison with other units in the market area that are exempt from local rent control.

(2)(A) The assistance contract shall provide for adjustment annually or more frequently in the maximum monthly rents for units covered by the contract to reflect changes in the fair market rentals established in the housing area for similar types and sizes of dwelling units or, if the Secretary determines, on the basis of a reasonable formula.

(B) The contract shall further provide for the Secretary to make additional adjustments in the maximum monthly rent for units under contract to the extent he determines such adjustments are necessary to reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs which are not adequately compensated for by the adjustment in the maximum monthly rent authorized by subparagraph (A).

(C) Adjustments in the maximum rents under subparagraphs (A) and (B) shall not result in material differences between the rents charged for assisted units and unassisted units of similar quality and age in the same market area, as determined by the Secretary. If the Secretary or appropriate State agency does not complete and submit to the project owner a comparability study not later than 60 days before the anniversary date of the assistance contract under this section, the automatic annual adjustment factor shall be applied. The Secretary may not reduce the contract rents in effect on or after April 15, 1987, for newly constructed, substantially rehabilitated, or moderately rehabilitated projects assisted under this section (including projects assisted under this section as in effect prior to November 30, 1983), unless the project has been refinanced in a manner that reduces the periodic payments of the owner. Any maximum monthly rent that has been reduced by the Secretary after April 14, 1987, and prior to November 7, 1988, shall be restored to the maximum monthly rent in effect on April 15, 1987. For any project which has had its maximum monthly rents reduced after April 14, 1987, the Secretary shall make assistance payments (from amounts reserved for the original contract) to the owner of such project in an amount equal to the difference between the maximum monthly rents in effect on April 15, 1987, and the reduced maximum monthly rents,

multiplied by the number of months that the reduced maximum monthly rents were in effect.

(3) The amount of the monthly assistance payment with respect to any dwelling unit shall be the difference between the maximum monthly rent which the contract provides that the owner is to receive for the unit and the rent the family is required to pay under section 1437a(a) of this title. Reviews of family income shall be made no less frequently than annually.

(4) The assistance contract shall provide that assistance payments may be made only with respect to a dwelling unit under lease for occupancy by a family determined to be a lower income family at the time it initially occupied such dwelling unit, except that such payments may be made with respect to unoccupied units for a period not exceeding sixty days (A) in the event that a family vacates a dwelling unit before the expiration date of the lease for occupancy or (B) where a good faith effort is being made to fill an unoccupied unit, and, subject to the provisions of the following sentence, such payments may be made, in the case of a newly constructed or substantially rehabilitated project, after such sixty-day period in an amount equal to the debt service attributable to such an unoccupied dwelling unit for a period not to exceed one year, if a good faith effort is being made to fill the unit and the unit provides decent, safe, and sanitary housing. No such payment may be made after such sixty-day period if the Secretary determines that the dwelling unit is in a project which provides the owner with revenues exceeding the costs incurred by such owner with respect to such project.

(5) Assistance payments may be made with respect to up to 100 per centum of the dwelling units in any structure upon the application of the owner or prospective owner. Within the category of projects containing more than fifty units and designed for use primarily by non-elderly and nonhandicapped persons which are not subject to mortgages purchased under section 1720^a of title 12, the Secretary may give preference to applications for assistance involving not more than 20 per centum of the dwelling units in a project. In according any such preference, the Secretary shall compare applications received during distinct time periods not exceeding sixty days in duration.

(6) The Secretary shall take such steps as may be necessary, including the making of contracts for assistance payments in amounts in excess of the amounts required at the time of the initial renting of dwelling units, the reservation of annual contributions authority for the purpose of amending housing assistance contracts, or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts, to assure that assistance payments are increased on a timely basis to cover increases in maximum monthly rents or decreases in family incomes.

(7) To the extent authorized in contracts entered into by the Secretary with a public hous-

^a See References in Text note below.

ing agency, such agency may purchase any structure containing one or more dwelling units assisted under this section for the purpose of reselling the structure to the tenant or tenants occupying units aggregating in value at least 80 per centum of the structure's total value. Any such resale may be made on the terms and conditions prescribed under section 1437c(h) of this title and subject to the limitation contained in such section.

(8) Each contract under this section shall provide that the owner will notify tenants at least 90 days prior to the expiration of the contract of any rent increase which may occur as a result of the expiration of such contract.

(9) Not less than 1 year prior to terminating any contract under which assistance payments are received under this section (but not less than 90 days in the case of housing certificates or vouchers under subsection (b) or (c) of this section), an owner shall provide written notice to the Secretary and the tenants involved of the proposed termination, specifying the reasons for the termination with sufficient detail to enable the Secretary to evaluate whether the termination is lawful and whether there are additional actions that can be taken by the Secretary to avoid the termination. The Secretary shall review the owner's notice, shall consider whether there are additional actions that can be taken by the Secretary to avoid the termination, and shall ensure a proper adjustment of the contract rents for the project in conformity with the requirements of paragraph (2). The Secretary shall issue a written finding of the legality of the termination and the reasons for the termination, including the actions considered or taken to avoid the termination. For purposes of this paragraph, the term "termination" means the expiration of the assistance contract or an owner's refusal to renew the assistance contract.

(10) If an owner provides notice of proposed termination under paragraph (9) and the contract rent is lower than the maximum monthly rent for units assisted under subsection (b)(1) of this section, the Secretary shall adjust the contract rent based on the maximum monthly rent for units assisted under subsection (b)(1) of this section and the value of the lower income housing after rehabilitation.

(d) Required provisions and duration of contracts for assistance payments; waiver of limitation

(1) Contracts to make assistance payments entered into by a public housing agency with an owner of existing housing units shall provide (with respect to any unit) that—

(A) the selection of tenants for such unit shall be the function of the owner, subject to the provisions of the annual contributions contract between the Secretary and the agency, except that (i) the tenant selection criteria used by the owner shall give preference to families which occupy substandard housing, are paying more than 50 per centum of family income for rent, or are involuntarily displaced at the time they are seeking assistance under this section; and (ii) the public housing agency may provide for circumstances in which families who do not qualify

for any preference established in clause (i) are provided assistance before families who do qualify for such preference, except that not more than 10 percent (or such higher percentage determined by the Secretary to be necessary to ensure that public housing agencies can assist families in accordance with subsection (u)(2) of this section or determined by the Secretary to be appropriate for other good cause) of the families who initially receive assistance in any 1-year period (or such shorter period selected by the public housing agency before the beginning of its first full year subject to this clause) may be families who do not qualify for such preference;

(B)(i) the lease between the tenant and the owner shall be for at least one year or the term of such contract, whichever is shorter, and shall contain other terms and conditions specified by the Secretary; and

(ii) the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause;

(C) maintenance and replacement (including redecoration) shall be in accordance with the standard practice for the building concerned as established by the owner and agreed to by the agency; and

(D) the agency and the owner shall carry out such other appropriate terms and conditions as may be mutually agreed to by them.

(2)(A) Each contract for an existing structure entered into under this section shall be for a term of not less than one month nor more than one hundred and eighty months. Where the Secretary enters into an annual contributions contract with a public housing agency pursuant to which the agency will enter into a contract for assistance payments with respect to an existing structure, the contract for assistance payments may not be attached to the structure unless (i) the Secretary and the public housing agency approve such action, and (ii) the owner agrees to rehabilitate the structure other than with assistance under this chapter and otherwise complies with the requirements of this section, except that the Secretary shall permit the public housing agency to approve such attachment with respect to not more than 15 percent of the assistance provided by the public housing agency if the requirements of clause (ii) are met.

(B) The Secretary shall permit any public housing agency to approve the attachment of assistance under subsection (b)(1) of this section with respect to any newly constructed structure if—

(i) the owner or prospective owner agrees to construct the structure other than with assistance under this chapter and otherwise complies with the requirements of this section; and

(ii) the aggregate assistance provided by the public housing agency pursuant to this subparagraph and the last sentence of subparagraph (A) does not exceed 15 percent of the assistance provided by the public housing agency.

(C) Any contract for assistance payments that is attached to a structure under this paragraph shall (at the option of the public housing agency but subject to available funds) be renewable for 2 additional 5-year terms, except that the aggregate term of the initial contract and renewals shall not exceed 15 years.

(3) Notwithstanding any other provision of law, with the approval of the Secretary the public housing agency administering a contract under this section with respect to existing housing units may exercise all management and maintenance responsibilities with respect to those units pursuant to a contract between such agency and the owner of such units.

(e) Restrictions on contracts for assistance payments

(1) Nothing in this chapter shall be deemed to prohibit an owner from pledging, or offering as security for any loan or obligation, a contract for assistance payments entered into pursuant to this section: *Provided*, That such security is in connection with a project constructed or rehabilitated pursuant to authority granted in this section, and the terms of the financing or any refinancing have been approved by the Secretary.

(2) For the purpose of upgrading and thereby preserving the Nation's housing stock, the Secretary is authorized to make assistance payments under this section directly or through public housing agencies pursuant to contracts with owners or prospective owners who agree to upgrade housing so as to make and keep such housing decent, safe, and sanitary through upgrading which involves less than substantial rehabilitation, as such upgrading and rehabilitation are defined by the Secretary. The Secretary is authorized to prescribe such terms and conditions for contracts entered into under this section pursuant to this paragraph as the Secretary determines to be necessary and appropriate, except that such terms and conditions, to the maximum extent feasible, shall be consistent with terms and conditions otherwise applicable with respect to other dwelling units assisted under this section. Notwithstanding subsection (c)(1) of this section, the Secretary may, in carrying out the preceding sentence, establish a maximum monthly rent (for units upgraded pursuant to this paragraph) which exceeds the fair market rental by not more than 20 per centum if such units are located in an area where the Secretary finds cost levels so require, except that the Secretary may approve maximum monthly rents which exceed the fair market rentals by more than 20 but not more than 30 per centum where the Secretary determines that special circumstances warrant such higher rent or where necessary to the implementation of a local housing assistance plan. The Secretary is also authorized to make assistance available under this section pursuant to this paragraph to any unit in a housing project which, on an overall basis, reflects the need for such upgrading. The Secretary shall increase the amount of assistance provided under this paragraph above the amount of assistance otherwise permitted by this paragraph and subsection (c)(1) of this section, if the Secretary determines such increase necessary to assist in

the sale of multifamily housing projects owned by the Department of Housing and Urban Development.

(f) Definitions

As used in this section—

(1) the term "owner" means any private person or entity, including a cooperative, or a public housing agency, having the legal right to lease or sublease newly constructed or substantially rehabilitated dwelling units as described in this section;

(2) the terms "rent" or "rental" mean, with respect to members of a cooperative, the charges under the occupancy agreements between such members and the cooperative; and

(3) the term "debt service" means the required payments for principal and interest made with respect to a mortgage secured by housing assisted under this chapter.

(g) Regulations applicable for implementation of assistance payments

Notwithstanding any other provision of this chapter, assistance payments under this section may be provided, in accordance with regulations prescribed by the Secretary, with respect to some or all of the units in any project approved pursuant to section 1701q of title 12.

(h) Nonapplicability of inconsistent provisions to contracts for assistance payments

Sections 1437c(e) and 1437d of this title, and any other provisions of this chapter which are inconsistent with the provisions of this section shall not apply to contracts for assistance entered into under this section.

(i) Repealed. Pub. L. 98-181, title II, § 209(a)(4), Nov. 30, 1983, 97 Stat. 1183

(j) Assistance for manufactured homes

(1) The Secretary may enter into contracts to make assistance payments under this subsection to assist lower income families by making rental assistance payments on behalf of any such family which utilizes a manufactured home as its principal place of residence. Such payments may be made with respect to the rental of the real property on which there is located a manufactured home which is owned by any such family or with respect to the rental by such family of a manufactured home and the real property on which it is located. In carrying out this subsection, the Secretary may—

(A) enter into annual contributions contracts with public housing agencies pursuant to which such agencies may enter into contracts to make such assistance payments to the owners of such real property, or

(B) enter into such contracts directly with the owners of such real property.

(2)(A) A contract entered into pursuant to this paragraph shall establish the maximum monthly rent (including maintenance and management charges) which the owner is entitled to receive for the space on which a manufactured home is located and with respect to which assistance payments are to be made. The maximum monthly rent shall not exceed by more than 10 per centum the fair market rental

established by the Secretary periodically (but not less than annually) with respect to the market area for the rental of real property suitable for occupancy by families assisted under this paragraph.

(B) The amount of any monthly assistance payment with respect to any family which rents real property which is assisted under this paragraph, and on which is located a manufactured home which is owned by such family shall be the difference between the rent the family is required to pay under section 1437a(a) of this title and the sum of—

(i) the monthly payment made by such family to amortize the cost of purchasing the manufactured home;

(ii) the monthly utility payments made by such family, subject to reasonable limitations prescribed by the Secretary; and

(iii) the maximum monthly rent permitted with respect to the real property which is rented by such family for the purpose of locating its manufactured home;

except that in no case may such assistance exceed the total amount of such maximum monthly rent.

(3)(A) Contracts entered into pursuant to this paragraph shall establish the maximum monthly rent permitted with respect to the manufactured home and the real property on which it is located and with respect to which assistance payments are to be made. The maximum monthly rent shall not exceed by more than 10 per centum the fair market rental established by the Secretary periodically (but not less than annually) with respect to the market area for the rental of a manufactured home and the real property on which it is located suitable for occupancy by families assisted under this paragraph, except that the maximum monthly rent may exceed the fair market rental by more than 10 but not more than 20 per centum where the Secretary determines that special circumstances warrant such higher maximum rent.

(B) The amount of any monthly assistance payment with respect to any family which rents a manufactured home and the real property on which it is located and which is assisted under this paragraph shall be the difference between the rent the family is required to pay under section 1437a(a) of this title and the sum of—

(i) the monthly utility payments made by such family, subject to reasonable limitations prescribed by the Secretary; and

(ii) the maximum monthly rent permitted with respect to the manufactured home and the real property on which it is located.

(4) The provisions of subsection (c)(2) of this section shall apply to the adjustments of maximum monthly rents under this subsection.

(5) Each contract entered into under this subsection shall be for a term of not less than one month and not more than 180 months, except that in any case in which the manufactured home park is substantially rehabilitated or newly constructed, such term may not be less than 240 months, nor more than the maximum term for a manufactured home loan permitted under section 1703(b) of title 12.

(6) The Secretary may carry out this subsection without regard to whether the manufactured home park is existing, substantially rehabilitated, or newly constructed.

(7) In the case of any substantially rehabilitated or newly constructed manufactured home park containing spaces with respect to which assistance is made under this subsection, the principal amount of the mortgage attributable to the rental spaces within the park may not exceed an amount established by the Secretary which is equal to or less than the limitation for manufactured home parks described in section 1713(c)(3) of title 12, and the Secretary may increase such limitation in high cost areas in the manner described in such section.

(8) The Secretary may prescribe other terms and conditions which are necessary for the purpose of carrying out the provisions of this subsection and which are consistent with the purposes of this subsection.

(k) Verification of income

The Secretary shall establish procedures which are appropriate and necessary to assure that income data provided to public housing agencies and owners by families applying for or receiving assistance under this section is complete and accurate. In establishing such procedures, the Secretary shall randomly, regularly, and periodically select a sample of families to authorize the Secretary to obtain information on these families for the purpose of income verification, or to allow those families to provide such information themselves. Such information may include, but is not limited to, data concerning unemployment compensation and Federal income taxation and data relating to benefits made available under the Social Security Act [42 U.S.C. 301 et seq.], the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.], or title 38. Any such information received pursuant to this subsection shall remain confidential and shall be used only for the purpose of verifying incomes in order to determine eligibility of families for benefits (and the amount of such benefits, if any) under this section.

(l), (m) Repealed. Pub. L. 98-181, title II, § 209(a)(5), Nov. 30, 1983, 97 Stat. 1183

(n) Assistance for dwellings without bathrooms and kitchens; conditions; waiver of limitations

In making assistance available under subsections (b)(1) and (e)(2) of this section, the Secretary may provide assistance with respect to residential properties in which some or all of the dwelling units do not contain bathroom or kitchen facilities, if—

(1) the property is located in an area in which there is a significant demand for such units, as determined by the Secretary;

(2) the unit of general local government in which the property is located and the local public housing agency approve of such units being utilized for such purpose; and

(3) in the case of assistance under subsection (b)(1) of this section, the unit of general local government in which the property is located and the local public housing agency cer-

tify to the Secretary that the property complies with local health and safety standards.

The Secretary may waive, in appropriate cases, the limitation and preference described in the second and third sentences of section 1437a(b)(3) of this title with respect to the assistance made available under this subsection.

(o) Amount of assistance; eligible families; vacancies; term of contract; quality standards; adjustments; annual contributions rate; use of surplus; types of housing

(1) The Secretary may provide assistance using a payment standard in accordance with this subsection. The payment standard shall be used to determine the monthly assistance which may be paid for any family, as provided in paragraph (2) of this subsection, and shall be based on the fair market rental established under subsection (c) of this section.

(2) The monthly assistance payment for any family shall be the amount by which the payment standard for the area exceeds 30 per centum of the family's monthly adjusted income, except that such monthly assistance payment shall not exceed the amount by which the rent for the dwelling unit (including the amount allowed for utilities in the case of a unit with separate utility metering) exceeds 10 per centum of the family's monthly income.

(3) Assistance payments may be made only for (A) a family determined to be a very low-income family at the time it initially receives assistance, (B) a family previously assisted under this chapter. In selecting families to be assisted, preference shall be given to families which, at the time they are seeking assistance, occupy substandard housing, are involuntarily displaced, or are paying more than 50 per centum of family income for rent, or (C) a family that is determined to be a lower income family at the time it initially receives assistance and that is displaced by activities under section 1437o(c) of this title. A public housing agency may provide for circumstances in which families who do not qualify for any preference established in the preceding sentence are provided assistance under this subsection before families who do qualify for such preference, except that not more than 10 percent (or such higher percentage determined by the Secretary to be necessary to ensure that public housing agencies can assist families in accordance with subsection (u)(2) of this section or determined by the Secretary to be appropriate for other good cause) of the families who initially receive assistance in any 1-year period (or such shorter period selected by the public housing agency before the beginning of its first full year subject to this sentence) may be families who do not qualify for such preference.

(4) If a family vacates a dwelling unit before the expiration of a lease term, no assistance payment may be made with respect to the unit after the month during which the unit was vacated.

(5) A contract with a public housing agency for annual contributions under this subsection shall be for an initial term of sixty months. The Secretary shall require (with respect to any unit) that (A) the public housing agency in-

spect the unit before any assistance payment may be made to determine that it meets housing quality standards for decent, safe, and sanitary housing established by the Secretary for the purpose of this section, and (B) the public housing agency make annual or more frequent inspections during the contract term. No assistance payment may be made for a dwelling unit which fails to meet such quality standards, unless any such failure is promptly corrected by the owner and the correction verified by the public housing agency.

(6)(A) The amount of assistance payments under this subsection may, in the discretion of the public housing agency, be adjusted annually where necessary to assure continued affordability. The aggregate amount of adjustments pursuant to the preceding sentence may not exceed the amount of any excess of the annual contributions provided for in the contract over the amount of assistance payments actually paid (including amounts which otherwise become available during the contract period).

(B) For the purpose of subparagraph (A), each contract with a public housing agency for annual contributions under this subsection shall provide annual contributions equal to 115 per centum of the estimated aggregate amount of assistance required during the first year of the contract.

(C) Any amounts not needed for adjustments under subparagraph (A) may be used to provide assistance payments for additional families.

(7) A public housing agency may utilize authority available under this subsection to provide assistance with respect to cooperative or mutual housing which has a resale structure which maintains affordability for lower income families where the agency determines such action will assist in maintaining the affordability of such housing for such families.

(8) The Secretary may set aside up to 5 percent of the budget authority available under this subsection as an adjustment pool. The Secretary shall use amounts in the adjustment pool for adjustments pursuant to paragraph (6)(A) to ensure continued affordability where the Secretary determines additional assistance for this purpose is necessary, based on documentation submitted by a public housing agency.

(p) Shared housing for elderly and handicapped

In order to assist elderly families (as defined in section 1437a(b)(3) of this title who elect to live in a shared housing arrangement in which they benefit as a result of sharing the facilities of a dwelling with others in a manner that effectively and efficiently meets their housing needs and thereby reduces their cost of housing, the Secretary shall permit assistance provided under the existing housing and moderate rehabilitation programs to be used by such families in such arrangements. In carrying out this subsection, the Secretary shall issue minimum habitability standards for the purpose of assuring decent, safe, and sanitary housing for such families while taking into account the special circumstances of shared housing.

(q) Administrative fees for certificate and housing voucher programs

(1) The Secretary shall establish a fee for the costs incurred in administering the certificate and housing voucher programs under subsections (b) and (o) of this section. The amount of the fee for each month for which a dwelling unit is covered by an assistance contract shall be 8.2 percent of the fair market rental established under subsection (c)(1) of this section for a 2-bedroom existing rental dwelling unit in the market area of the public housing agency. The Secretary may increase the fee if necessary to reflect the higher costs of administering small programs and programs operating over large geographic areas.

(2)(A) The Secretary shall also establish reasonable fees (as determined by the Secretary) for—

(i) the costs of preliminary expenses (not to exceed \$275) that the public housing agency documents it has incurred in connection with new allocations of assistance under the certificate and housing voucher programs under subsections (b) and (o) of this section;

(ii) the costs incurred in assisting families who experience difficulty (as determined by the Secretary) in obtaining appropriate housing under the programs; and

(iii) extraordinary costs approved by the Secretary.

(B) The method used to calculate fees under subparagraph (A) shall be the same for the certificate and housing voucher programs under subsections (b) and (o) of this section and shall take into account local cost differences.

(3) The Secretary may establish or increase a fee in accordance with this subsection only to such extent or in such amounts as are provided in appropriation Acts.

(r) Portability of certificates and vouchers; authority of public housing agency; Secretary to consider reduction in families in preceding fiscal year; authority of Secretary under other law unrestricted

(1) Any family assisted under subsection (b) or (o) of this section may receive such assistance to rent an eligible dwelling unit if the dwelling unit to which the family moves is within the same, or a contiguous, metropolitan statistical area as the metropolitan statistical area within which is located the area of jurisdiction of the public housing agency approving such assistance.

(2) The public housing agency having authority with respect to the dwelling unit to which a family moves under this subsection shall have the responsibility of carrying out the provisions of this subsection with respect to the family. If no public housing agency has authority with respect to the dwelling unit to which a family moves under this subsection, the public housing agency approving the assistance shall have such responsibility.

(3) In providing assistance under subsection (b) or (o) of this section for any fiscal year, the Secretary shall give consideration to any reduction in the number of resident families incurred by a public housing agency in the preceding fiscal year as a result of the provisions of this subsection.

(4) The provisions of this subsection may not be construed to restrict any authority of the Secretary under any other provision of law to provide for the portability of assistance under this section.

(s) Prohibition of denial of certificates and vouchers to residents of public housing

In selecting families for the provision of assistance under this section (including subsection (o) of this section), a public housing agency may not exclude or penalize a family solely because the family resides in a public housing project.

(t) Nondiscrimination against certificate holders and voucher holders

(1) No owner who has entered into a contract for housing assistance payments under this section on behalf of any tenant in a multifamily housing project shall refuse—

(A) to lease any available dwelling unit in any multifamily housing project of such owner that rents for an amount not greater than the fair market rent for a comparable unit, as determined by the Secretary under this section, to a holder of a certificate of eligibility under this section a proximate cause of which is the status of such prospective tenant as a holder of such certificate, and to enter into a housing assistance payments contract respecting such unit; or

(B) to lease any available dwelling unit in any multifamily housing project of such owner to a holder of a voucher under subsection (o) of this section, and to enter into a voucher contract respecting such unit, a proximate cause of which is the status of such prospective tenant as holder of such voucher.

(2) For purposes of this subsection, the term "multifamily housing project" means a residential building containing more than 4 dwelling units.

(u) Assistance for residents of rental rehabilitation projects

In the case of lower income families living in rental projects rehabilitated under section 1437o of this title or section 1490m of this title before rehabilitation—

(1) certificates or vouchers under this section shall be made for families who are required to move out of their units because of the physical rehabilitation activities or because of overcrowding;

(2) at the discretion of each public housing agency or other agency administering the allocation of assistance, certificates or vouchers under this section may be made for families who would have to pay more than 30 percent of their adjusted income for rent after rehabilitation whether they choose to remain in, or to move from, the project; and

(3) the Secretary shall allocate assistance for certificates or vouchers under this section to ensure that sufficient resources are available to address the physical or economic displacement, or potential economic displacement, of existing tenants pursuant to paragraphs (1) and (2).

(v) Terms of contracts; extensions

(1) The Secretary shall extend any expiring contract entered into under this section for loan management assistance or execute a new contract for project-based loan management assistance, if the owner agrees to continue providing housing for lower income families during the term of the contract.

(2)(A) The eligibility of a multifamily residential project for loan management assistance under this section shall be determined without regard to whether the project is subsidized or unsubsidized.

(B) In allocating loan management assistance under this section, the Secretary may give a priority to any project only on the basis that the project has serious financial problems that are likely to result in a claim on the insurance fund in the near future or the project is eligible to receive incentives under subtitle B of the Emergency Low Income Housing Preservation Act of 1987.

(Sept. 1, 1937, ch. 896, title I, § 8, as added Aug. 22, 1974, Pub. L. 93-383, title II, § 201(a), 88 Stat. 662, and amended Aug. 3, 1976, Pub. L. 94-375, § 2(d), (e), (g), 90 Stat. 1068; Apr. 30, 1977, Pub. L. 95-24, title I, § 101(c), 91 Stat. 55; Oct. 12, 1977, Pub. L. 95-128, title II, § 201(c)-(e), 91 Stat. 1128; Oct. 31, 1978, Pub. L. 95-557, title II, § 206(d)(1), (e), (f), 92 Stat. 2091, 2092; Dec. 21, 1979, Pub. L. 96-153, title II, §§ 202(b), 206(b), 210, 211(b), 93 Stat. 1106, 1108-1110; Oct. 8, 1980, Pub. L. 96-399, title II, § 203, title III, § 308(c)(3), 94 Stat. 1629, 1641; Aug. 13, 1981, Pub. L. 97-35, title III, §§ 322(e), 324-326(a), (e)(1), 329H(a), 95 Stat. 402, 405-407, 410; Nov. 30, 1983, Pub. L. 98-181, title II, §§ 203(b)(1), (2), 207-209(a), 210, 211, 97 Stat. 1178, 1181-1183; Oct. 17, 1984, Pub. L. 98-479, title I, § 102(b)(6)-(10), 98 Stat. 2221, 2222; Feb. 5, 1988, Pub. L. 100-242, title I, §§ 141-149, title II, §§ 203(a), 262, 101 Stat. 1849-1853, 1878, 1890; redesignated title I, June 29, 1988, Pub. L. 100-358, § 5, 102 Stat. 681; Nov. 7, 1988, Pub. L. 100-628, title X, §§ 1004(a), 1005(b)(1), (c), 1006, 1014(b), (c), 1029, 102 Stat. 3264, 3265, 3269, 3272.)

AMENDMENT OF SECTION

For repeal of amendment by section 203(a) of Pub. L. 100-242, see Effective and Termination Dates of 1988 Amendment note below.

REFERENCES IN TEXT

Section 1720 of title 12, referred to in subsec. (o)(5), was repealed by Pub. L. 98-161, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

The Social Security Act, referred to in subsec. (k), is act Aug. 14, 1935, ch. 531, 49 Stat. 820, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Food Stamp Act of 1977, referred to in subsec. (k), is Pub. L. 95-525, Aug. 31, 1978, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under 2011 of Title 7 and Tables.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (v)(2)(B), is title II of Pub. L. 100-242, Feb. 5, 1988, 102 Stat. 1877, as

amended. Subtitle B (§§ 221 to 235) of title II of Pub. L. 100-242 is classified as a note under section 1715f of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title section of note set out under section 1715f of Title 12 and Tables.

PRIOR PROVISIONS

A prior section 8 of act Sept. 1, 1937, ch. 896, 50 Stat. 891, as amended, which authorized the promulgation of rules and regulations by the Authority, was classified to section 1408 of this title prior to the revision of act Sept. 1, 1937, by Pub. L. 93-383.

AMENDMENTS

1988—Subsec. (b)(1). Pub. L. 100-242, § 141, inserted provisions at end authorizing Secretary to enter into separate contributions contracts with each public housing agency to obligate authority approved each year, beginning with fiscal year 1988.

Subsec. (c)(1). Pub. L. 100-242, § 142(a), inserted before last sentence "Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in the market area suitable for occupancy by persons assisted under this section."

Pub. L. 100-242, § 142(b), inserted at end "The Secretary shall establish separate fair market rentals under this paragraph for Westchester County in the State of New York."

Pub. L. 100-242, § 142(c)(1), inserted at end "If units assisted under this section are exempt from local rent control while they are so assisted or otherwise, the maximum monthly rent for such units shall be reasonable in comparison with other units in the market area that are exempt from local rent control."

Subsec. (c)(2)(C). Pub. L. 100-628, § 1004(a)(1), substituted "under subparagraphs (A) and (B)" for "as hereinbefore provided".

Pub. L. 100-628, § 1004(a)(2), inserted at end "Any maximum monthly rent that has been reduced by the Secretary after April 14, 1987, and prior to November 7, 1988, shall be restored to the maximum monthly rent in effect on April 15, 1987. For any project which has had its maximum monthly rents reduced after April 14, 1987, the Secretary shall make assistance payments (from amounts reserved for the original contract) to the owner of such project in an amount equal to the difference between the maximum monthly rents in effect on April 15, 1987, and the reduced maximum monthly rents, multiplied by the number of months that the reduced maximum monthly rents were in effect."

Pub. L. 100-242, § 142(c)(2), substituted "assisted units and unassisted units of similar quality and age in the same market area" for "assisted and comparable unassisted units" and inserted at end "If the Secretary or appropriate State agency does not complete and submit to the project owner a comparability study not later than 60 days before the anniversary date of the assistance contract under this section, the automatic annual adjustment factor shall be applied."

Pub. L. 100-242, § 142(d), inserted at end "The Secretary may not reduce the contract rents in effect on or after April 15, 1987, for newly constructed, substantially rehabilitated, or moderately rehabilitated projects assisted under this section (including projects assisted under this section as in effect prior to November 30, 1983), unless the project has been refinanced in a manner that reduces the periodic payments of the owner."

Subsec. (c)(2)(D). Pub. L. 100-242, § 142(e), struck out subpar. (D) which read as follows: "Notwithstanding the foregoing, the Secretary shall limit increases in contract rents for newly constructed or substantial-

ly rehabilitated projects assisted under this section to the amount of operating cost increases incurred with respect to comparable rental dwelling units of various sizes and types in the same market area which are suitable for occupancy by families assisted under this section. Where no comparable dwelling units exist in the same market area, the Secretary shall have authority to approve such increases in accordance with the best available data regarding operating cost increases in rental dwelling units."

Subsec. (c)(9), (10). Pub. L. 100-242, § 282(a), (b), temporarily added par. (9) and (10). See Effective and Termination Dates of 1988 Amendment note below.

Subsec. (d)(1)(A). Pub. L. 100-628, § 1014(b), inserted cl. (i) designation after "except that" and added cl. (ii) before semicolon at end.

Subsec. (d)(2). Pub. L. 100-628, § 1005(b)(1), designated existing provisions as subpar. (A), substituted "(i)" and "(ii)" for "(A)" and "(B)" wherever appearing, and added subpar. (B).

Pub. L. 100-628, § 1005(c), added subpar. (C).

Pub. L. 100-242, § 148, inserted exception authorizing Secretary to permit public housing authority to approve attachment with respect to not more than 15 percent of assistance provided by public housing agency if requirements of cl. (B) are met.

Subsec. (o)(1). Pub. L. 100-242, § 143(a)(1), substituted "The Secretary may provide assistance" for "In connection with the rental rehabilitation and development program under section 1437o of this title or the rural housing preservation grant program under section 1490m of this title, or for other purposes, the Secretary is authorized to conduct a demonstration program".

Subsec. (o)(3). Pub. L. 100-628, § 1014(c), inserted sentence at end authorizing public housing agencies to provide for circumstances in which families who do not qualify for any preference are provided assistance under this subsection before families who do qualify for such preference.

Subsec. (o)(4). Pub. L. 100-242, § 143(a)(2), (3), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: "The Secretary shall use substantially all of the authority to enter into contracts under this subsection to make assistance payments for families residing in dwellings to be rehabilitated with assistance under section 1437o of this title and for families displaced as a result of rental housing development assisted under such section or as a result of activities assisted under section 1490m of this title."

Subsec. (o)(5). Pub. L. 100-242, § 143(a)(3), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (o)(6). Pub. L. 100-242, § 143(a)(3), (b), redesignated par. (7) as (6), substituted "annually" for "as frequently as twice during any five-year period" in subpar. (A), and struck out subpar. (D) which directed that public housing agency consult with public and units of local government regarding impact of adjustments made under this section on the number of families that can be assisted. Former par. (6) redesignated (5).

Subsec. (o)(7). Pub. L. 100-242, § 143(a)(3), (c), redesignated par. (8) as (7), and struck out "not to exceed 5 per centum of the amount of" after "utilize". Former par. (7) redesignated (6).

Subsec. (o)(8). Pub. L. 100-242, § 143(a)(3), (d), added par. (8). Former par. (8) redesignated (7).

Subsecs. (q) to (u). Pub. L. 100-242, §§ 144-149, added subsecs. (q) to (u).

Subsec. (u)(3). Pub. L. 100-628, § 1006, added par. (3).

Subsec. (v). Pub. L. 100-628, § 1029, redesignated par. (2) as (1) and inserted "for project-based loan management assistance", added par. (2), and struck out former par. (1) which required that each contract entered into by Secretary for loan management assistance be for a term of 180 months.

Pub. L. 100-242, § 262(c), temporarily added subsec. (v). See Effective and Termination Dates of 1988 Amendment note below.

1984--Subsec. (d)(2). Pub. L. 98-479, § 102(b)(8), substituted "Where the Secretary enters into an annual

contributions contract with a public housing agency pursuant to which the agency will enter into a contract for assistance payments with respect to an existing structure, the contract for assistance payments may not be attached to the structure unless (A) the Secretary and the public housing agency approve such action, and (B) the owner agrees to rehabilitate the structure other than with assistance under this chapter and otherwise complies with the requirements of this section." for "A contract under this section may not be attached to the structure except where the Secretary specifically waives the foregoing limitation and the public housing agency approves such action, and the owner agrees to rehabilitate the structure other than with assistance under this chapter and otherwise complies with the requirements of this section. The aggregate term of such contract and any contract extension may not be more than 180 months."

Subsec. (e)(2). Pub. L. 98-479, § 102(b)(7), inserted at end "The Secretary shall increase the amount of assistance provided under this paragraph above the amount of assistance otherwise permitted by this paragraph and subsection (c)(1) of this section, if the Secretary determines such increase necessary to assist in the sale of multifamily housing projects owned by the Department of Housing and Urban Development."

Subsec. (n). Pub. L. 98-479, § 102(b)(8), substituted "subsections (b)(1) and (e)(2) of this section" for "subsection (b)(1), subsection (e)(2) of this section".

Subsec. (o)(3)(C). Pub. L. 98-479, § 102(b)(9), added cl. (C).

Subsec. (o)(7)(D). Pub. L. 98-479, § 102(b)(10), inserted "unit of" before "general".

1983--Subsec. (a). Pub. L. 98-181, § 209(a)(1), substituted "existing housing" for "existing, newly constructed, and substantially rehabilitated housing".

Subsec. (b)(2). Pub. L. 98-181, § 209(a)(2), repealed par. (2) which related to authorization of assistance payments by the Secretary and contractually obligated public housing agencies for construction or substantial rehabilitation of housing, modest in design, with units for occupancy by low-income families and requirement that contracts providing housing assistance and entered into after Aug. 13, 1981, specify the number of units available for occupancy by eligible families.

Subsec. (d)(1)(A). Pub. L. 98-181, § 203(b)(1), inserted ", are paying more than 50 per centum of family income for rent,".

Subsec. (d)(2). Pub. L. 98-181, § 208, inserted second and third sentences respecting waiver of limitation and limitation of contract and any extension to prescribed period.

Subsec. (e)(1). Pub. L. 98-181, § 209(a)(3), redesignated par. (4) as (1) and struck out former par. (1) which prescribed terms of 20 to 30 years for newly constructed or substantially rehabilitated dwelling units.

Subsec. (e)(2). Pub. L. 98-181, § 209(a)(3), redesignated par. (5) as (2) and struck out former par. (2) which required owners to assume ownership, management, and maintenance responsibilities, including selection of tenants and termination of tenancy for newly constructed or substantially rehabilitated dwelling units.

Pub. L. 98-181, § 203(b)(2), inserted ", are paying more than 50 per centum of family income for rent," after "substandard housing".

Subsec. (e)(3). Pub. L. 98-181, § 209(a)(3), struck out par. (3) which required that construction or substantial rehabilitation of dwelling units be eligible for mortgages insured under the National Housing Act and that assistance not be withheld by reason of availability of mortgage insurance under section 1715z-9 of title 12 or tax-exempt status obligations used to finance the construction or rehabilitation.

Subsec. (e)(4), (5). Pub. L. 98-181, § 209(a)(3), redesignated pars. (4) and (5) as (1) and (2), respectively.

Subsec. (i). Pub. L. 98-181, § 209(a)(4), repealed subsec. (i) which related to contracts with respect to substantially rehabilitated dwelling units.

Subsecs. (l), (m). Pub. L. 98-181, § 209(a)(5), repealed subsec. (l) relating to limitation of cost and rent increases, and subsec. (m) relating to preference for projects on suitable State and local government tracts.

Subsec. (n). Pub. L. 98-181, § 209(a)(6), substituted "subsection (e)(2) of this section" for "subsection (e)(5) and subsection (l) of this section".

Pub. L. 98-181, § 210(1), (2), inserted "subsection (b)(1) of this section," before "subsection (e)(5)" and a comma after "subsection (e)(5) of this section".

Subsec. (n)(3). Pub. L. 98-181, § 210(3)-(5), added par. (3).

Subsec. (o). Pub. L. 98-181, § 207, added subsec. (o).

Subsec. (p). Pub. L. 98-181, § 211, added subsec. (p). 1981—Subsec. (b)(2). Pub. L. 97-35, §§ 324(1), 325(1), inserted provisions relating to increasing housing opportunities for very low-income families and provisions relating to availability for occupancy the number of units for which assistance is committed.

Subsec. (c)(2)(D). Pub. L. 97-35, § 324(2), added par. (D).

Subsec. (c)(3). Pub. L. 97-35, § 322(e)(1), revised formula for computation of amount of monthly assistance and struck out authority to make reviews at least every two years in cases of elderly families.

Subsec. (c)(5). Pub. L. 97-35, § 325(2), inserted reference to mortgages under section 1720 of title 12.

Subsec. (c)(7). Pub. L. 97-35, § 322(e)(2), struck out par. (7) relating to percentage requirement for families with very low income and redesignated former par. (8) as (7).

Subsec. (c)(8). Pub. L. 97-35, § 326(a), added par. (8). Former par. (8) redesignated (7).

Subsec. (d)(1)(B). Pub. L. 97-35, § 326(e)(1), substituted provisions relating to terms and conditions, and termination of the lease by the owner for provisions relating to right of the agency to give notice to terminate and owner the right to make representation to agency for termination of the tenancy.

Subsec. (f). Pub. L. 97-35, § 322(e)(3), struck out pars. (1) to (3) which defined "lower income families", "very low-income families" and "income", respectively, and redesignated pars. (4) to (6) as (1) to (3), respectively.

Subsec. (h). Pub. L. 97-35, § 322(e)(4), (5), struck out reference to section 1437a(1) of this title.

Subsec. (j). Pub. L. 97-35, § 329H(a), generally revised and reorganized provisions and, as so revised and reorganized, substituted provisions relating to contracts to make assistance payments to assist lower income families by making rental assistance payments on behalf of such family, for provisions relating to annual contributions contracts to assist lower income families by making rental assistance payments.

Subsec. (j)(3). Pub. L. 97-35, § 322(e)(6), substituted in par. (3) "the rent the family is required to pay under section 1437a(a) of this title" for "25 per centum of one-twelfth of the annual income of such family".

Subsecs. (l) to (n). Pub. L. 97-35, § 324(3), added subsecs. (l) to (n).

1980—Subsec. (c)(1). Pub. L. 98-399, § 203(a), inserted provision that in the case of newly constructed and substantially rehabilitated units, the exception in the preceding sentence shall not apply to more than 20 per centum of the total amount of authority to enter into annual contributions contracts for such units which is allocated to an area and obligated with respect to any fiscal year beginning on or after Oct. 1, 1980.

Subsec. (e)(5). Pub. L. 98-399, § 203(b), inserted provision relating to the authority of the Secretary, notwithstanding subsec. (c)(1) of this section, to establish monthly rent exceeding fair market rental where cost levels so require or where necessary to the implementation of a local housing assistance plan.

Subsec. (j). Pub. L. 98-399, § 308(c)(3), substituted "manufactured home" for "mobile home" wherever appearing.

1979—Subsec. (c)(3). Pub. L. 96-153, § 202(b), substituted new provisions for computation of the amount

of monthly assistance payments with respect to dwelling units and laid down criteria to be followed by the Secretary in regard to payments to families with different income levels.

Subsec. (d)(1)(A). Pub. L. 96-153, § 206(b)(1), substituted "Secretary and the agency, except that the tenant selection criteria used by the owner shall give preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking assistance under this section." for "Secretary and the agency".

Subsec. (e)(1). Pub. L. 96-153, § 211(b), substituted "term of less than two hundred and forty months" for "term of less than one month".

Subsec. (e)(2). Pub. L. 96-153, § 206(b)(2), substituted "performance of such responsibilities, except that the tenant selection criteria shall give preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking housing assistance under this section" for "performance of such responsibilities".

Subsec. (k). Pub. L. 96-153, § 210, added subsec. (k). 1978—Subsec. (e)(5). Pub. L. 95-557, § 206(e), added par. (5).

Subsec. (l). Pub. L. 95-557, § 206(d)(1), added subsec. (l).

Subsec. (j). Pub. L. 95-557, § 206(f), added subsec. (j). 1977—Subsec. (c). Pub. L. 95-128, § 201(c), (d), inserted in par. (1) prohibition against high-rise elevator projects for families with children after Oct. 12, 1977, and struck out from par. (4) provision which prohibited payment after the sixty-day period if the unoccupied unit was in a project insured under the National Housing Act, except pursuant to section 1715z-9 of title 12.

Subsec. (d)(3). Pub. L. 95-128, § 201(e)(1), added par. (3).

Subsec. (e)(1). Pub. L. 95-24 substituted "three hundred and sixty months, except that such term may not exceed two hundred and forty months in the case of a project financed with assistance of a loan made by, or insured, guaranteed or intended for purchase by, the Federal Government, other than pursuant to section 1715z-9 of title 12" for "two hundred and forty months" and "Notwithstanding the preceding sentence, in the case of" for "In the case of".

Subsec. (e)(2). Pub. L. 95-128, § 201(e)(2), inserted provision respecting the Secretary's approval of any public housing agency for assumption of management and maintenance responsibilities of dwelling units under the preceding sentence.

1976—Subsec. (c)(4). Pub. L. 94-375, § 2(d), inserted provision extending payments to newly constructed or substantially rehabilitated unoccupied units in an amount equal to the debt service of such unit for a period not to exceed one year, provided that a good faith effort is being made to fill the unit, the unit provides decent and safe housing, the unit is not insured under the National Housing Act, except pursuant to section 1715z-9 of title 12, and the revenues from the project do not exceed the cost.

Subsec. (e)(1). Pub. L. 94-375, § 2(g), inserted "or the Farmers' Home Administration" after "State or local agency".

Subsec. (f)(6). Pub. L. 94-375, § 2(e), added par. (6).

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by section 262 of Pub. L. 100-242 applicable to any project that is eligible low income housing on or after Nov. 1, 1987, and repealed effective upon expiration of 2-year period beginning on Feb. 5, 1988, with this section amended to read as it would without such amendment, except that such repeal to have no effect on any action taken or authorized under such amendment prior to its repeal, see sections 203 and 235 of Pub. L. 100-242, set out in Preservation of Low Income Housing note under section 1715l of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1983 AMENDMENT; SAVINGS PROVISION

Section 209(b) Pub. L. 98-181 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1983, except that the provisions repealed shall remain in effect—

"(1) with respect to any funds obligated for a viable project under section 8 of the United States Housing Act of 1937 [this section] prior to January 1, 1984; and

"(2) with respect to any project financed under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q1]."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendments by sections 322(e) and 329H(a) of Pub. L. 97-35 effective Oct. 1, 1981, and amendments by sections 324, 325, and 326(a) of Pub. L. 97-35 applicable with respect to contracts entered into on or after 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.

Section 326(e)(2) of Pub. L. 97-35 provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to leases entered into on or after October 1, 1981."

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by section 202(b) of Pub. L. 96-153 effective Jan. 1, 1980, except with respect to amount of tenant contribution required of families whose occupancy commenced prior to such date, see section 202(c) of Pub. L. 96-153, set out as a note under section 1437a of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 206(d)(2) of Pub. L. 95-557 provided that: "The amendment made by this subsection [amending this section] shall become effective with respect to contracts entered into on or after 270 days following the date of enactment of this Act [Oct. 31, 1978]."

Amendment by section 206(e), (f) of 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 not later than Jan. 1, 1975, see section 201(b) of Pub. L. 93-383, set out as a note under section 1437 of this title.

PROHIBITION OF REDUCTION OF CONTRACT RENTS; BUDGET COMPLIANCE

Section 1004(b) of Pub. L. 100-628 provided that: "During fiscal year 1989, the amendment made by subsection (a)(2) [amending this section] shall be effective only to such extent or in such amounts as are provided in appropriation Acts. For purposes of section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 [Public Law 100-119] [2 U.S.C. 909], to the extent that this section has the effect of transferring an outlay of the United States from one fiscal year to an adjacent fiscal year, the transfer is a necessary (but secondary) result of a significant policy change."

PROJECT-BASED LOWER-INCOME HOUSING ASSISTANCE; IMPLEMENTATION OF PROGRAM

Section 1005(a) of Pub. L. 100-628 provided that: "To implement the amendment made by section 148 of the Housing and Community Development Act of 1987 [Pub. L. 100-242, see 1988 Amendment note above], the Secretary of Housing and Urban Development shall issue regulations that take effect not later than 30 days after the date of the enactment of this Act [Nov. 7, 1988]. Until the effective date of the regulations, the Secretary of Housing and Urban Development shall consider each application from a public

housing agency to attach a contract for assistance payments to a structure, in accordance with the amendment made by such section 148 to section 8(d)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(2)), and shall promptly approve such application if it meets the requirements of such section 8(d)(2)."

PROJECT-BASED LOWER-INCOME HOUSING ASSISTANCE IN NEW CONSTRUCTION; REGULATIONS IMPLEMENTING PROGRAM

Section 1005(b)(2) of Pub. L. 100-628 provided that: "To implement the amendments made by this subsection [amending this section], the Secretary of Housing and Urban Development shall issue regulations that take effect not later than 90 days after the date of the enactment of this Act [Nov. 7, 1988]."

USE OF FUNDS RECAPTURED FROM REFINANCING STATE FINANCE PROJECTS

Section 1012 of Pub. L. 100-628 provided that: "(a) IN GENERAL.—In the case of any State financed project that was provided a financial adjustment factor under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) and is being refinanced, 50 percent of the amounts that are recaptured from the project shall be made available to the State housing finance agency in the State where the project is located for use in providing decent, safe, and sanitary housing affordable to very low-income families or persons.

"(b) BUDGET COMPLIANCE.—Subsection (a) shall be effective only to such extent or in such amounts as are provided in appropriation Acts."

PUBLIC HOUSING COMPREHENSIVE TRANSITION DEMONSTRATION

Section 126 of Pub. L. 100-242 provided that:

"(a) ESTABLISHMENT OF DEMONSTRATION PROGRAM.—The Secretary of Housing and Urban Development (in this section referred to as the 'Secretary') shall carry out a program to demonstrate the effectiveness of providing a comprehensive program of services to participating public housing residents in order to ensure the successful transition of such residents to private housing. In carrying out the demonstration program, the Secretary shall consult with the heads of other appropriate Federal agencies to design and implement procedures to carry out the transition from public housing.

"(b) SCOPE OF DEMONSTRATION PROGRAM.—The Secretary shall carry out the demonstration program with respect to public housing administered by the Housing Authority of the City of Charlotte, in the State of North Carolina. The Secretary may also carry out the demonstration program with respect to public housing administered by not more than 10 additional public housing agencies.

"(c) REQUIREMENTS OF DEMONSTRATION PROGRAM.—The demonstration program shall consist of the following requirements:

"(1) CONTRACT OF PARTICIPATION.—Each participating public housing agency may enter into a voluntary contract with any family that is to commence residence in a public housing project administered by the public housing agency. The contract shall be made part of the lease, shall set forth the provisions of the demonstration program, and shall specify the resources to be made available to the participating family and the responsibilities of the participating family.

"(2) REMEDIATION PHASE.—

"(A) During not to exceed the first 2 years of residence of a participating family in public housing, the public housing agency shall ensure the provision of remediation services to the family in accordance with the terms and conditions of the contract of participation, which may include—

- "(l) remedial education;
- "(ii) completion of high school;
- "(iii) job training and preparation;
- "(iv) substance abuse treatment and counseling;
- "(v) training in homemaking skills and parenting; and
- "(vi) training in money management.

"(B) During the remediation phase, the amount of rent charged the family may not be increased on the basis of any increase in earned income of the family.

"(3) TRANSITION PHASE.—

"(A) During not to exceed a 5-year period following completion of the remediation stage—

- "(i) the head of the family shall be required to have full-time employment; and
- "(ii) the public housing agency shall ensure the provision of counseling for the family with respect to homeownership, money management, and problem solving.

"(B) During the transition phase, the amount of rent charged the family—

- "(i) may be increased on the basis of any increase in family income; and
- "(ii) may not be decreased on the basis of any decrease in earned income due to voluntary termination of employment.

"(4) ENCOURAGEMENT OF SAVINGS.—The public housing agency shall take appropriate actions (including the establishment of an escrow savings account) to encourage each participating family to save funds during the remediation and transition phases.

"(5) EFFECT OF INCREASES IN FAMILY INCOME.—

"(A) Any increase in the earned income of a family during participation in the demonstration program under this section may not be considered as income or a resource for the purpose of denying the eligibility of, or reducing the amount of benefits payable to, the family under any other Federal law, unless the income of the family increases at any time to not less than 50 percent of the median income of the area (as determined by the Secretary with adjustments for smaller and larger families).

"(B) If at any time during the participation of a family in the demonstration program the income of the family increases to not less than 80 percent of the median income of the area (as determined by the Secretary with adjustments for smaller and larger families), the participation of the family in the demonstration program shall terminate.

"(6) COMPLETION OF TRANSITION.—Each family participating in the demonstration program shall be required to complete the transition out of public housing during a period of not more than 7 years. The public housing agency shall extend the period for any family that requests an extension for good cause.

"(d) REPORTS TO CONGRESS.—

"(1) INTERIM REPORT.—Not later than 2 years after the date of the enactment of this Act [Feb. 5, 1988], the Secretary shall submit to the Congress an interim report evaluating the effectiveness of the demonstration program under this section.

"(2) FINAL REPORT.—Not later than 60 days after the termination of the demonstration program under subsection (f), the Secretary shall submit to the Congress a final report evaluating the effectiveness of the demonstration program under this section.

"(e) REGULATIONS.—The Secretary shall issue such regulations as may be necessary to carry out this section.

"(f) TERMINATION OF DEMONSTRATION PROGRAM.—The demonstration program under this section shall terminate upon the expiration of the 7-year period beginning on the date of the enactment of this Act [Feb. 5, 1988]."

NONDISCRIMINATION AGAINST SECTION 8 CERTIFICATE HOLDERS AND VOUCHER HOLDERS

Section 183(c) of Pub. L. 100-242 provided that: "No owner of a subsidized project (as defined in section 203(i)(2) of the Housing and Community Development Amendments of 1978 [12 U.S.C. 1701z-11(i)(2)], as amended by section 181(h) of this Act) shall refuse—

"(1) to lease any available dwelling unit in any such project of such owner that rents for an amount not greater than the fair market rent for a comparable unit, as determined by the Secretary under section 8 of the United States Housing Act of 1937 [this section], to a holder of a certificate of eligibility under such section, a proximate cause of which is the status of such prospective tenant as a holder of such certificate, and to enter into a housing assistance payments contract respecting such unit; or

"(2) to lease any available dwelling unit in any such project of such owner to a holder of a voucher under section 8(o) of such Act, and to enter into a voucher contract respecting such unit, a proximate cause of which is the status of such prospective tenant as holder of such voucher."

WITHDRAWAL BY OWNERS, DEVELOPERS, AND SPONSORS FROM PROGRAMS UNDER THIS SECTION; SURVEY AND DETERMINATION OF NUMBER; NOTIFICATION OF RENT INCREASES; REPORT TO CONGRESS; REGULATIONS TO PREVENT CONFLICT OF INTEREST ON THE PART OF FEDERAL, STATE, AND LOCAL OFFICIALS; RECOVERY OF LEGAL EXPENSES; CONTENTS OF ANNUAL REPORT

Section 326(b)-(d) of Pub. L. 97-35 provided that:

"(b)(1) Within one year after the date of enactment of this Act [Aug. 13, 1981], the Secretary of Housing and Urban Development shall conduct a survey to determine the number of projects which are assisted under section 8 of the United States Housing Act of 1937 [this section] and are owned by developers or sponsors with five-year annual contributions contracts who plan to withdraw from the section 8 program when their contracts expire and who will increase rents in those projects to levels that the current residents of those projects will not be able to afford. Where such survey indicates that an owner intends to withdraw from the program, the Secretary shall notify affected residents of possible rent increases.

"(2) Not later than one year after the date of the enactment of this Act [Aug. 13, 1981], the Secretary shall transmit to the Congress a report indicating alternative 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) The Secretary of Housing and Urban Development, after consultation with the Attorney General, shall develop regulations to prevent possible conflicts of interest on the part of Federal, State, and local government officials with regard to participation in projects assisted under section 8 of the United States Housing Act of 1937 [this section], and shall make such regulations effective not later than 180 days after the date of enactment of this Act [Aug. 13, 1981].

"(d)(1) The Secretary of Housing and Urban Development shall permit public housing agencies to retain, out of judgments obtained by them in recovering amounts wrongfully paid as a result of fraud and abuse in the housing assistance program under section 8 of the United States Housing Act of 1937 [this section], an amount equal to the greater of (A) the legal expenses incurred in obtaining such judgments, or (B) 50 percent of the amount actually collected on the judgments.

"(2) The Secretary of Housing and Urban Development shall include in the annual report under section 8 of the Department of Housing and Urban Development Act [section 3538 of this title] a summary of cases brought to its attention by public housing au-

thorities for prosecution or civil action, and shall describe the handling of such cases by such authorities and by the Department of Housing and Urban Development and the resolution of such cases in the court system."

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 the Secretary of Housing and Urban Development conduct a study for the purpose of examining alternative means of encouraging the 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 the Congress no later than one year after Oct. 31, 1978, for the 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. 2096, 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."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1436a, 1437a, 1437c, 1437g, 1437j, 1437l, 1437m, 1437n, 1437o, 1437p, 1437s, 1439, 1472, 1483, 1490j, 1490m, 4822, 5302, 5304, 11401 of this title; title 12 sections 1701q, 1701s, 1701z-11, 1701z-12, 1701z-13, 1716f, 1715z-1, 1715z-1a, 1715z-1c, 1715z-15; title 26 sections 42, 142, 143, 1250; title 40 App. section 207.

§ 1437g. Annual contributions for operation of lower income housing

(a) Determination of amounts; contract authorization; standards for payments; necessity of contribution contracts; performance funding system; audit

(1) In addition to the contributions authorized to be made for the purposes specified in section 1437c of this title, the Secretary may make annual contributions to public housing agencies for the operation of lower income housing projects. The contributions payable annually under this section shall not exceed the amounts which the Secretary determines are required (A) to assure the lower income character of the projects involved, (B) to achieve and maintain adequate operating services and reserve funds, and (C) 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. The Secretary shall embody the provisions for such annual contributions in a contract guaranteeing their payment subject to the availability of funds, and such contract shall provide that no disposition of the lower 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. 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.

(2) The Secretary may not make assistance available under this section for any lower income housing project unless such project is one developed pursuant to a contributions contract authorized by section 1437c of this title but not subject to section 1437f of this title, except that after the duration of any such contributions contract with respect to a lower income housing project, the Secretary may provide assistance under this section with respect to such project as long as the lower income nature of such project is maintained.

(3)(A) For purposes of making payments under this section, the Secretary shall utilize a performance funding system that is substantially based on the system defined in regulations and in effect on February 5, 1988 (as modified by this paragraph), and that estab-

lishes standards for costs of operation and reasonable projections of income, taking into account the character and location of the project and the characteristics of the families served, in accordance with a formula representing the operations of a prototype well-managed project. Such performance funding system shall be established in consultation with public housing agencies and their associations, be contained in a regulation promulgated by the Secretary prior to the start of any fiscal year to which it applies, and remain in effect for the duration of such fiscal year without change. Notwithstanding the preceding sentences, the Secretary shall revise the performance funding system by June 15, 1988, to accurately reflect the increase in insurance costs incurred by public housing agencies.

(B) Under the performance funding system established under this paragraph--

(i) in the first year that the reductions occur, any public housing agency shall share equally with the Secretary any cost reductions due to the differences between projected and actual utility rates attributable to actions taken by the agency which lead to such reductions;

(ii) in the case of any public housing agency that receives financing (from a person other than the Secretary) or enters into a performance contract to undertake energy conservation improvements in a public housing project, under which payment does not exceed the cost of the energy saved as a result of the improvements during a negotiated contract period of not more than 12 years that is approved by the Secretary--

(I) the public housing agency shall retain 100 percent of any cost avoidance due to differences between projected and actual utility consumption (adjusted for heating degree days) attributable to the improvements, until the term of the financing agreement is completed, at which time the annual utility expense level 3-year rolling base procedures shall be applied using--

(a) in the first year following the end of the contract period, the energy use during the 2 years prior to installation of the energy conservation improvements and the last contract year;

(b) in the second year following the end of the contract period, the energy use during the 1 year prior to installation of the energy conservation improvements and the 2 years following the end of the contract period; and

(c) in the third year following the end of the contract period, the energy use in the 3 years following the end of the contract period; or

(II) the Secretary shall provide an additional operating subsidy above the current allowable utility expense level equivalent to the cost of the energy saved as a result of the improvements and sufficient to cover payments for the improvements through the term of the contract or agreement;

(iii) there shall be a formal review process for the purpose of providing such revisions

(either increases or reductions) to the allowable expense level of a public housing agency as necessary--

(I) to correct inequities and abnormalities that exist in the base year expense level of such public housing agency;

(II) to accurately reflect changes in operating circumstances since the initial determination of such base year expense level; and

(III) to ensure that the allowable expense limit accurately reflects the higher cost of operating the project in an economically distressed unit of local government and the lower cost of operating the project in an economically prosperous unit of local government; and

(iv) if a public housing agency redesigns or substantially rehabilitates a public housing project so that 2 or more dwelling units are combined to create a single larger dwelling unit, the payments received under this section shall not be reduced solely because of the resulting reduction in the number of dwelling units if not less than the same number of individuals will reside in the new larger dwelling unit as resided in the dwelling units that were combined to form such larger dwelling unit.

(b) Limitation on amount of aggregate rentals paid by families residing in dwelling units receiving annual contributions

The aggregate rentals required to be paid in any year by families residing in the dwelling units administered by a public housing agency receiving annual contributions under this section shall not be less than an amount equal to one-fifth of the sum of the incomes of all such families.

(c) Authorization of appropriation

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.

(d) Distribution of remaining appropriated funds to housing projects incurring excessive costs

If, in any fiscal year beginning after September 30, 1979, any funds which have been appropriated for such year remain after applying the provisions of the second and fourth sentences of subsection (a)(1) of this section, the Secretary shall distribute such funds to lower income housing projects which incurred excessive costs which were beyond their control and the full extent of which was not taken into account in the original distribution of funds for such fiscal year.

(e) Time of payment

In the case of any public housing agency that submits its budget for any fiscal year of such agency to the Secretary in a timely manner in accordance with the regulations issued by the Secretary under this section, assistance to be provided to such agency under this section for such fiscal year shall commence not later than the 1st month of such fiscal year, and shall be paid in accordance with such payment schedule

UNITED STATES CODE

1988 EDITION

SUPPLEMENT I

CONTAINING THE GENERAL AND PERMANENT LAWS OF
THE UNITED STATES, ENACTED DURING THE
101ST CONGRESS, FIRST SESSION

Prepared and published under authority of Title 2, U.S. Code, Section 285b,
by the Office of the Law Revision Counsel of the House of Representatives



JANUARY 3, 1989, TO JANUARY 22, 1990

VOLUME TWO

TITLE 37—PAY AND ALLOWANCES OF THE
UNIFORMED SERVICES

TO

TITLE 50—WAR AND NATIONAL DEFENSE
TABLES, POPULAR NAMES, AND INDEX

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1990

(c) Appropriations

The amount specified for purposes of subsections (a) and (b) of this section shall be—

[See main edition for text of (1) and (2)]

(3) \$2,700,000,000 for the fiscal years 1984, 1985, 1986, 1987, and 1989;

(4) \$2,750,000,000 for the fiscal year 1988; and

(5) \$2,800,000,000 for each fiscal year after fiscal year 1989.

(As amended Dec. 19, 1989, Pub. L. 101-239, title VIII, § 8016, 103 Stat. 2470.)

AMENDMENTS

1989—Subsec. (c)(3), Pub. L. 101-239, § 8016(1), substituted "1987, and 1989;" for "and 1987, and for each succeeding fiscal year other than the fiscal year 1988; and".

Subsec. (c)(5), Pub. L. 101-239, § 8016(2), (3), added par. (5).

CHAPTER 8—LOW-INCOME HOUSING**CHAPTER REFERRED TO IN OTHER SECTIONS**

This chapter is referred to in sections 1382a, 1404a, 1434, 1436a, 1436b, 1437j-1, 1439, 1471, 1485, 1490a, 1502, 1503, 1504, 1586, 1590, 1594c, 1766, 3013, 5153, 5515, 8003 of this title; title 12 sections 24, 1441a, 1701g, 1701r-1, 1715z-1a, 1701z-3, 1701z-11, 1715t; title 20 sections 244, 633, 635, 645; title 25 section 640d-14.

SUBCHAPTER I—GENERAL PROGRAM OF ASSISTED HOUSING**SUBCHAPTER REFERRED TO IN OTHER SECTIONS**

This subchapter is referred to in sections 1437aa, 1437bb, 3535 of this title.

§ 1437a. Rental payments

(a) Families included; amount

[See main edition for text of (1)]

(2)(A) Any public housing agency may provide that each family residing in a public housing project owned and operated by such agency (or in lower income housing assisted under section 1437f of this title that contains more than 2,000 dwelling units) shall pay as monthly rent for not more than a 5-year period an amount determined by such agency to be appropriate that does not exceed a maximum amount that—

[See main edition for text of (i) to (iii)]

(B) The 5-year limitation established in subparagraph (A) shall not apply to any family residing in a public housing project administered by an Indian public housing agency. The terms of all ceiling rents established prior to December 15, 1989, shall be extended for the 5-year period beginning on December 15, 1989.

[See main edition for text of (b) and (c)]

(As amended Dec. 15, 1989, Pub. L. 101-235, title III, § 302, 103 Stat. 2043.)

AMENDMENTS

1989—Subsec. (a)(2)(A), Pub. L. 101-235, § 302(1), substituted "5-year period" for "3-year period".

Subsec. (a)(2)(B), Pub. L. 101-235, § 302(2), substituted "5-year limitation" for "3-year limitation" and in-

serted at end "The terms of all ceiling rents established prior to December 15, 1989, shall be extended for the 5-year period beginning on December 15, 1989."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 503, 1437f, 1437i, 1437o, 1437r, 1437s, 1471, 3544, 5305, 11384 of this title; title 12 sections 1441a, 1701g, 1701z-11, 1706e, 1715z-1a, 1715z-1c, 1715z-9, 1715z-15.

§ 1437d. Contract provisions and requirements; loans and annual contributions

[See main edition for text of (a)]

(b) Public housing for Indians and Alaska Natives

(1) Each contract for loans (other than preliminary loans) or contributions for the development, acquisition, or operation of public housing and public housing for Indians and Alaska Natives in accordance with the Indian Housing Act of 1988 [42 U.S.C. 1437aa et seq.] shall provide that the total development cost of the project on which the computation of any annual contributions under this chapter may be based may not exceed the amount determined under paragraph (2) (for the appropriate structure type) unless the Secretary provides otherwise, and in any case may not exceed 110 per centum of such amount unless the Secretary for good cause determines otherwise.

(2) For purposes of paragraph (1), the Secretary shall determine the total development cost by multiplying the construction cost guideline for the project (which shall be determined by averaging the current construction costs, as listed by not less than 2 nationally recognized residential construction cost indices, for publicly bid construction of a good and sound quality) by—

(A) in the case of elevator type structures, 1.6; and

(B) in the case of nonelevator type structures, 1.75.

[See main edition for text of (c) to (m)]

(As amended Nov. 9, 1989, Pub. L. 101-144, title II, 103 Stat. 846.)

REFERENCES IN TEXT

The Indian Housing Act of 1988, referred to in subsec. (b)(1), is Pub. L. 100-358, June 29, 1988, 102 Stat. 876, which is classified principally to subchapter II (§ 1437aa et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1437aa of this title and Tables.

AMENDMENTS

1989—Subsec. (b), Pub. L. 101-144 added subsec. (b).

§ 1437f. Lower-income housing assistance

[See main edition for text of (a) and (b)]

(c) Contents and purposes of contracts for assistance payments; amount and scope of monthly assistance payments

[See main edition for text of (1)]

(2) *[See main edition for text of (A) and (B)]*
(C) Adjustments in the maximum rents under subparagraphs (A) and (B) shall not result in

material differences between the rents charged for assisted units and unassisted units of similar quality, type, and age in the same market area, as determined by the Secretary. In implementing the limitation established under the preceding sentence, the Secretary shall establish regulations for conducting comparability studies for projects where the Secretary has reason to believe that the application of the formula adjustments under subparagraph (A) would result in such material differences. The Secretary shall conduct such studies upon the request of any owner of any project, or as the Secretary determines to be appropriate by establishing, to the extent practicable, a modified annual adjustment factor for such market area, as the Secretary shall designate, that is geographically smaller than the applicable housing area used for the establishment of the annual adjustment factor under subparagraph (A). The Secretary shall establish such modified annual adjustment factor on the basis of the results of a study conducted by the Secretary of the rents charged, and any change in such rents over the previous year, for assisted units and unassisted units of similar quality, type, and age in the smaller market area. Where the Secretary determines that such modified annual adjustment factor cannot be established or that such factor when applied to a particular project would result in material differences between the rents charged for assisted units and unassisted units of similar quality, type, and age in the same market area, the Secretary may apply an alternative methodology for conducting comparability studies in order to establish rents that are not materially different from rents charged for comparable unassisted units. If the Secretary or appropriate State agency does not complete and submit to the project owner a comparability study not later than 60 days before the anniversary date of the assistance contract under this section, the automatic annual adjustment factor shall be applied. The Secretary may not reduce the contract rents in effect on or after April 15, 1987, for newly constructed, substantially rehabilitated, or moderately rehabilitated projects assisted under this section (including projects assisted under this section as in effect prior to November 30, 1983), unless the project has been refinanced in a manner that reduces the periodic payments of the owner. Any maximum monthly rent that has been reduced by the Secretary after April 14, 1987, and prior to November 7, 1988, shall be restored to the maximum monthly rent in effect on April 15, 1987. For any project which has had its maximum monthly rents reduced after April 14, 1987, the Secretary shall make assistance payments (from amounts reserved for the original contract) to the owner of such project in an amount equal to the difference between the maximum monthly rents in effect on April 15, 1987, and the reduced maximum monthly rents, multiplied by the number of months that the reduced maximum monthly rents were in effect.

[See main edition for text of (3) to (10); (d)]

(e) Restrictions on contracts for assistance payments

[See main edition for text of (1)]

(2) For the purpose of upgrading and thereby preserving the Nation's housing stock, the Secretary is authorized to make assistance payments under this section directly or through public housing agencies pursuant to contracts with owners or prospective owners who agree to upgrade housing so as to make and keep such housing decent, safe, and sanitary through upgrading which involves less than substantial rehabilitation, as such upgrading and rehabilitation are defined by the Secretary, and which shall involve a minimum expenditure of \$3,000 for a unit, including its prorated share of work to be accomplished on common areas or systems. The Secretary is authorized to prescribe such terms and conditions for contracts entered into under this section pursuant to this paragraph as the Secretary determines to be necessary and appropriate, except that such terms and conditions, to the maximum extent feasible, shall be consistent with terms and conditions otherwise applicable with respect to other dwelling units assisted under this section. Notwithstanding subsection (c)(1) of this section, the Secretary may, in carrying out the preceding sentence, establish a maximum monthly rent (for units upgraded pursuant to this paragraph) which exceeds the fair market rental by not more than 20 per centum if such units are located in an area where the Secretary finds cost levels so require, except that the Secretary may approve maximum monthly rents which exceed the fair market rentals by more than 20 but not more than 30 per centum where the Secretary determines that special circumstances warrant such higher rent or where necessary to the implementation of a local housing assistance plan. The Secretary is also authorized to make assistance available under this section pursuant to this paragraph to any unit in a housing project which, on an overall basis, reflects the need for such upgrading. The Secretary shall increase the amount of assistance provided under this paragraph above the amount of assistance otherwise permitted by this paragraph and subsection (c)(1) of this section, if the Secretary determines such increase necessary to assist in the sale of multifamily housing projects owned by the Department of Housing and Urban Development. In order to maximize the availability of low-income housing, in providing assistance under this paragraph, the Secretary shall include in any calculation or determination regarding the amount of the assistance to be made available the extent to which any proceeds are available from any tax credits provided under section 42 of title 26 (or from any syndication of such credits) with respect to the housing. For each fiscal year, the Secretary may not provide assistance pursuant to this paragraph to any project for rehabilitation of more than 100 units. Assistance pursuant to this paragraph shall be allocated according to the formula established pursuant to section 1439(d) of this title, and awarded pursuant to a competition under such section. The Secretary shall maintain a single listing of any assistance provided pursuant to this paragraph, which shall include a statement identifying the owner and location

of the project to which assistance was made, the amount of the assistance, and the number of units assisted.

[See main edition for text of (f) to (v)]

(As amended Dec. 15, 1989, Pub. L. 101-235, title I, § 127, title VIII, § 801(c), (g), 103 Stat. 2025, 2058, 2059.)

AMENDMENTS

1989—Subsec. (c)(2)(C), Pub. L. 101-235, § 702(g), substituted "quality, type, and age" for "quality and age".

Pub. L. 101-235, § 702(c), inserted after first sentence "In implementing the limitation established under the preceding sentence, the Secretary shall establish regulations for conducting comparability studies for projects where the Secretary has reason to believe that the application of the formula adjustments under subparagraph (A) would result in such material differences. The Secretary shall conduct such studies upon the request of any owner of any project, or as the Secretary determines to be appropriate by establishing, to the extent practicable, a modified annual adjustment factor for such market area, as the Secretary shall designate, that is geographically smaller than the applicable housing area used for the establishment of the annual adjustment factor under subparagraph (A). The Secretary shall establish such modified annual adjustment factor on the basis of the results of a study conducted by the Secretary of the rents charged, and any change in such rents over the previous year, for assisted units and unassisted units of similar quality, type, and age in the smaller market area. Where the Secretary determines that such modified annual adjustment factor cannot be established or that such factor when applied to a particular project would result in material differences between the rents charged for assisted units and unassisted units of similar quality, type, and age in the same market area, the Secretary may apply an alternative methodology for conducting comparability studies in order to establish rents that are not materially different from rents charged for comparable unassisted units."

Subsec. (e)(2), Pub. L. 101-235, § 127(1), inserted before period at end of first sentence ", and which shall involve a minimum expenditure of \$3,000 for a unit, including its prorated share of work to be accomplished on common areas or systems".

Pub. L. 101-235, § 127(2), (3), inserted at end "In order to maximize the availability of low-income housing, in providing assistance under this paragraph, the Secretary shall include in any calculation or determination regarding the amount of the assistance to be made available the extent to which any proceeds are available from any tax credits provided under section 42 of title 26 (or from any syndication of such credits) with respect to the housing. For each fiscal year, the Secretary may not provide assistance pursuant to this paragraph to any project for rehabilitation of more than 100 units. Assistance pursuant to this paragraph shall be allocated according to the formula established pursuant to section 1439(d) of this title, and awarded pursuant to a competition under such section. The Secretary shall maintain a single listing of any assistance provided pursuant to this paragraph, which shall include a statement identifying the owner and location of the project to which assistance was made, the amount of the assistance, and the number of units assisted."

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by section 262 of Pub. L. 100-242 applicable to any project that is eligible low income housing on or after Nov. 1, 1987, and repealed effective Sept. 30, 1990, with this section amended to read as it

would without such amendment, except that such repeal to have no effect on any action taken or authorized under such amendment prior to its repeal, see sections 203 and 235 of Pub. L. 100-242, as amended, set out in Preservation of Low Income Housing note under section 1715f of Title 12, Banks and Banking.

ANNUAL ADJUSTMENT FACTORS FOR RENTS UNDER LOWER-INCOME HOUSING ASSISTANCE PROGRAM

Section 801(a), (b), (d), (e) of Pub. L. 101-235 provided that:

"(a) EFFECT OF PRIOR COMPARABILITY STUDIES.—

"(1) IN GENERAL.—In any case in which, in implementing section 8(c)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2))—

"(A) the use of comparability studies by the Secretary of Housing and Urban Development or the appropriate State agency as an independent limitation on the amount of rental adjustments resulting from the application of an annual adjustment factor under such section has resulted in the reduction of the maximum monthly rent for units covered by the contract or the failure to increase such contract rent to the full amount otherwise permitted under the annual adjustment factor, or

"(B) an assistance contract requires a project owner to make a request before becoming eligible for a rent adjustment under the annual adjustment factor and the project owner certifies that such a request was not made because of anticipated negative adjustment to the project rents,

for fiscal year 1980, and annually thereafter until regulations implementing this section take effect, rental adjustments shall be calculated as an amount equal to the annual adjustment factor multiplied by a figure equal to the contract rent minus the amount of contract rent attributable to debt service. Upon the request of the project owner, the Secretary shall pay to the project owner the amount, if any, by which the total rental adjustment calculated under the preceding sentence exceeds the total adjustments the Secretary or appropriate State agency actually approved, except that solely for purposes of calculating retroactive payments under this subsection, in no event shall any project owner be paid an amount less than 30 percent of a figure equal to the aggregate of the annual adjustment factor multiplied by the full contract rent for each year on or after fiscal year 1980, minus the sum of the rental payments the Secretary or appropriate State agency actually approved for those years. The method provided by this subsection shall be the exclusive method by which retroactive payments, whether or not requested, may be made for projects subject to this subsection for the period from fiscal year 1980 until the regulations issued under subsection (e) take effect. For purposes of this paragraph, 'debt service' shall include interest, principal, and mortgage insurance premium if any.

"(2) APPLICABILITY.—

"(A) IN GENERAL.—Subsection (a) shall apply with respect to any use of comparability studies referred to in such subsection occurring before the effective date of the regulations issued under subsection (e).

"(B) FINAL LITIGATION.—Subsection (a) shall not apply to any project with respect to which litigation regarding the authority of the Secretary to use comparability studies to limit rental adjustments under section 8(c)(2) of the United States Housing Act of 1937 has resulted in a judgment before the effective date of this Act (Dec. 15, 1989) that is final and not appealable (including any settlement agreement).

"(b) 3-YEAR PAYMENTS.—The Secretary shall provide the amounts under subsection (a) over the 3-year period beginning on the effective date of the regulations issued under subsection (e). The Secretary shall provide the payments authorized under subsection (a)

only to the extent approved in subsequent appropriations Acts. There are authorized to be appropriated such sums as may be necessary for this purpose.

"(d) **DETERMINATION OF CONTRACT RENT.**—(1) The Secretary shall upon the request of the project owner, make a one-time determination of the contract rent for each project owner referred to in subsection (a). The contract rent shall be the greater of the contract rent—

"(A) currently approved by the Secretary under section 8(c)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(c)(2)], or

"(B) calculated in accordance with the first sentence of subsection (a)(1).

"(2) All adjustments in contract rents under section 8(c)(2) of the United States Housing Act of 1937, including adjustments involving projects referred to in subsection (a), that occur beginning with the first anniversary date of the contract after the regulations issued under subsection (e) take effect shall be made in accordance with the annual adjustment and comparability provisions of sections 8(c)(2)(A) and 8(c)(2)(C) of such Act, respectively, using the one-time contract rent determination under paragraph (1).

"(e) **REGULATIONS.**—The Secretary shall issue regulations to carry out this section and the amendments made by this section [amending this section], including the amendments made by subsection (c) with regard to annual adjustment factors and comparability studies. The Secretary shall issue such regulations not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Dec. 15, 1989]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1436a, 1437a, 1437c, 1437g, 1437j, 1437l, 1437m, 1437n, 1437o, 1437p, 1437s, 1439, 1472, 1483, 1490j, 1490m, 4822, 5302, 5304, 11401 of this title; title 12 sections 1701q, 1701s, 1701z-11, 1701z-12, 1701z-13, 1715l, 1715z-1, 1715z-1a, 1715z-1c, 1715z-6, 1715z-15; title 26 sections 42, 142, 143, 1250; title 40 App. section 207.

§ 1437o. Rental rehabilitation and development grants

[See main edition for text of (a) to (c)]

(d) Grants for new construction and substantial rehabilitation

[See main edition for text of (1) to (10)]

(11) SALE OF UNITS.—

(A) **IN GENERAL.**—Notwithstanding any other provision of law, in the case of a project assisted by a development grant awarded pursuant to this section where (i) the grant was originally approved for a nonprofit cooperative, and (ii) a majority of the units in the approved project have 3 or more bedrooms, the nonprofit owner of such project may sell such units for fee simple or condominium ownership if the requirements of subparagraph (B) are met.

(B) **REQUIREMENTS.**—The requirements of this subparagraph are that—

(i) at least 80 percent of the units in the project are initially sold to households with incomes that do not exceed 80 percent of the median income of the area;

(ii) housing cost to such households shall be initially calculated at not to exceed 30 percent of actual household income;

(iii) each purchaser agrees that, during the 20-year period following the initial sale, any subsequent resale of the unit shall be to a purchaser whose income does not

exceed 80 percent of the median income for the area; and

(iv) after the 20-year period described in clause (iii), the pro rata grant attributable to a unit, which shall be secured by a deed of trust on the unit, shall be repaid upon any sale, lease, or transfer of any interest in the unit except for a sale of the unit to a purchaser whose income does not exceed 80 percent of the median income of the area.

(C) **REFINANCING.**—A refinancing of the unit involving an equity withdrawal shall require a repayment to the extent of the withdrawal not to exceed the pro rata amount of the grant attributable to the unit. A refinancing unrelated to a sale, equity withdrawal, lease, or transfer of interest shall not require repayment.

(D) **ADMINISTRATION.**—A homeowner may request grantee approval of a sale, equity withdrawal, or other transfer with postponement of the repayment or without full or partial repayment and grantee may approve if the grantee determines that—

(i) an undue hardship will result from the application of the repayment requirement, such as where the proceeds are insufficient to repay the loan in full; or

(ii) postponing repayment is in the interest of neighborhood growth and stability.

(E) **EFFECT OF REPAYMENT.**—Upon repayment of the grant, any program requirements affecting the unit shall terminate. The grantee shall use repayments of the grant for low and moderate income housing as prescribed by the Secretary. Notwithstanding any existing project covenants or inconsistencies with this section, the Secretary shall take all action necessary to implement this paragraph.

[See main edition for text of (e)]

(f) Applicability of requirements or agreements

Requirements imposed by or agreements made with States and units of general local government regarding rents in structures assisted under this section (including requirements relating to the rents which may be charged after rehabilitation) shall not apply to a structure assisted under this section unless (1) such requirements are imposed or agreements are entered into pursuant to a State law or local ordinance of general applicability which was enacted and in effect in that jurisdiction prior to November 30, 1983, and (2) such requirements or agreements would apply generally to structures not assisted under this section. This subsection shall not apply to requirements relating to rents imposed on a structure as a condition of receiving financial assistance under a program of the State of New York or City of New York for the rehabilitation of the structure if (1) the dollar amount of the State or municipal financial assistance (including the principal amount of loans) exceeds the dollar amount of financial assistance provided for the structure under this section, and (2) the structure is privately owned by (A) a person or family whose income does not exceed 80 percent of the median income for the metropolitan statistical

code of federal regulations

Housing and Urban Development

24

PARTS 700 TO 1699

Revised as of April 1, 1990

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF APRIL 1, 1990

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Published by
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National Archives and Records
Administration

as a Special Edition of
the Federal Register

**U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1990**

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a Disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS); or

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(9) Temporary, nonrecurring or sporadic income (including gifts); or

(10) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937. A notice will be published in the FEDERAL REGISTER and distributed to PHAs and owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

(d) If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized, subject to a redetermination at the end of the shorter period.

[49 FR 19936, May 10, 1984, as amended at 50 FR 29591, June 24, 1985; 50 FR 39097, Sept. 27, 1985; 51 FR 21308, June 11, 1986; 52 FR 34113, Sept. 9, 1987; 53 FR 4388, Feb. 16, 1988; 53 FR 7734, Mar. 10, 1988]

§ 813.107 Total tenant payment.

(a) *Total tenant payment for families whose initial lease is effective on or after August 1, 1982.* Total Tenant Payment shall be the highest of the following, rounded to the nearest dollar:

(1) 30 percent of Monthly Adjusted Income;

(2) 10 percent of Monthly Income; or

(3) If the Family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the Family's actual

housing costs, is specifically designated by such agency to meet the Family's housing costs, the monthly portion of such payments which is so designated. If the Family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (a)(3) shall be the amount resulting from one application of the percentage.

(b) *Total tenant payment for families whose initial lease was effective before August 1, 1982.* Total Tenant Payment shall be calculated in accordance with paragraph (a) of this section, except that instead of 30 percent, the percentage applied to Monthly Adjusted Income shall be in accord with the following table:

Effective date of reexamination	Percentage
Aug. 1, 1982 to Sept. 30, 1982.....	26
Oct. 1, 1982 to Sept. 30, 1983.....	27
Oct. 1, 1983 to Sept. 30, 1984.....	28
Oct. 1, 1984 to Sept. 30, 1985.....	29
Oct. 1, 1985 and after.....	30

(c) *Special conditions.* (1) For purposes of this section, a Family is considered to be a Family whose initial lease was effective before August 1, 1982 only if it satisfies one of the following conditions:

(i) The Family resided on July 31, 1982 in a unit under lease with assistance under the Section 8, Section 10(c), Section 23, Public Housing or Indian Housing Program, and its assistance has been continuous thereafter in the same project; or

(ii) The Family resided in a unit under lease in a HUD-owned project paying a below market rent at the time HUD sold the project; received assistance under the Section 8 Program immediately after sale; and the Family's assistance has been continuous thereafter in the same project; or

(iii) The Family resided on April 30, 1983 in a unit under lease with assistance under the Rent Supplement Program (Section 101 of the Housing and Urban Development Act of 1965), or the Section 236 Rental Assistance Program (Section 236(f)(2) of the Nation-

al Housing Act); continued to receive such assistance until the Family was converted to assistance under the Section 8 Program; and after conversion its assistance has been continuous in the same project; or

(iv) The Family resided in a unit under lease with assistance under the Rent Supplement Program or the Section 236 Rental Assistance Program; was converted to assistance under the Section 8 Program on or after August 1, 1982 and before May 1, 1983; and continued to receive assistance under the Rent Supplement or the Section 236 Rental Assistance Program until the time of conversion, and after conversion its assistance has been continuous in the same project.

(2) So long as a Family whose initial lease was effective prior to August 1, 1982, continues to reside in the same Project, its Total Tenant Payment shall not be increased by more than 10 percent during any 12-month period as a result of: (i) Application of the percentages in subsection (b) of this section, and (ii) application of the changes in the definitions contained in §§ 813.102 and 813.106 from definitions of comparable terms in regulations in effect immediately prior to July 1, 1984.

(3) So long as a Family whose initial lease was effective on or after August 1, 1982, but which was in occupancy on June 30, 1984, continues to reside in the same project, its Total Tenant Payment shall not be increased by more than 10 percent during any 12-month period as a result of application of the changes in the definitions contained in §§ 813.102 and 813.106 from definitions of comparable terms in regulations in effect immediately prior to July 1, 1984.

(4) In the case of a Family receiving rental assistance under Section 521(a) of the Housing Act of 1949 on November 30, 1983, whose assistance is converted to Section 8 assistance on or after such date, the Total Tenant Payment payable by such Family shall not be increased by more than 10 percent during any 12-month period as a result of (i) such conversion, and (ii) if such Family was in occupancy on June 30, 1984, and continues to reside in the same project, application of the

changes in the definitions contained in §§ 813.102 and 813.106 from definitions of comparable terms in regulations in effect immediately prior to July 1, 1984.

(5) This paragraph (c)(5) applies to any Family that was converted to Section 8 assistance from assistance under the Rent Supplement Program, the Section 236 Rental Assistance Program, or the Section 23 Program on or after October 1, 1984, whose head of household, spouse or sole member was 62 years of age or older on the date of conversion. So long as such Family continues to reside in the same project, its Total Tenant Payment shall not be increased by more than 10 percent during any 12-month period as a result of such conversion.

(6) This paragraph (c)(6) applies to any Family that was converted to Section 8 assistance from assistance under the Rent Supplement Program, the Section 236 Rental Assistance Program, or the Section 23 Program on or after October 1, 1981, and before October 1, 1984, whose head of household, spouse or sole member was 62 years of age or older on the date of conversion and that continued to reside in the same project on November 30, 1983. At the first regularly scheduled or interim reexamination for such Family using the 1984 revised definitions of income, the PHA or Owner shall recompute the contribution due from such Family for the period from December 1, 1983, or the date of conversion, whichever is later, to the effective date of such reexamination. Such recomputation shall be based on an assumption that the Family's contribution immediately prior to conversion was the lesser of (i) the actual contribution charged to the Family, or (ii) 25% of such Family's Annual Income After Allowances as determined as of the date of conversion or, if no reexamination was conducted as of such date, as determined at the first reexamination thereafter. The contribution of such Family for periods following conversion and prior to the effective date of the first reexamination using the 1984 revised definitions of income, shall be recomputed on a basis which provides that such contribution is not increased by more than 10%

during any 12-month period as a result of conversion. If the contribution actually charged to such Family during the period commencing December 1, 1983 (or the date of conversion, if later) exceeds the maximum amount chargeable according to such recomputation, the excess amount collected shall first be offset against any amounts due from the Family to the PHA or Owner and any remaining balance shall be the amount due to the Family. This amount due the Family may be paid to the Family, or it may be applied as a credit to the Tenant Rent due immediately after the effective date of such reexamination. If the amount of any such credit to a Family exceeds 25 percent of the Total Tenant Payment due from such Family, such credit may be applied in not more than four installments. So long as such Family continues to reside in the same project, its Total Tenant Payment for periods commencing on the effective date of the first reexamination using the 1984 revised definitions of income, shall not be increased by more than 10 percent during any 12-month period as a result of the conversion, and application of the changes in the definitions contained in §§ 813.102 and 813.106 from definitions of comparable terms in regulations in effect immediately prior to July 1, 1984. If a Family to which this paragraph (c)(6) would otherwise apply vacates a unit after November 30, 1983, and before the first reexamination using the 1984 revised definitions of income, the PHA or Owner will notify the Family of the possibility of a rent adjustment for the period commencing December 1, 1983 (or the date of conversion, if later). In order to obtain a refund, such a Family must submit (within 60 days of receiving the notice) a request therefor, including a current address to which any refund can be sent. For any Family making such a timely request, the PHA or Owner will make all calculations necessary to determine whether an adjustment is due to the Family under this paragraph (c)(6) and, if so, the amount of any such adjustment will first be offset against any amounts due from the Family and any Section 8 damage and rent claims HUD has

paid to the Owner on the Family's behalf, and any balance will be refunded to the Family.

(7) For the purposes of paragraphs (c) (1) through (6) of this section, the "same project" includes—

(i) For the Public Housing, Section 10(c), Section 23, and Section 8 Existing Housing (Finders-Keepers) and Moderate Rehabilitation Programs, units in the same program of a PHA and, in the case of an involuntary move, units in any of a PHA's programs; and

(ii) For all other programs, units in buildings located in adjacent sites that are managed as one project.

(8) The limitations contained in paragraphs (c) (2) through (6) of this section do not apply to portions of increases in Total Tenant Payment which are attributable to increases in income or changes in Family composition or circumstances unrelated to the factors referred to in paragraphs (c) (2) through (6) of this section.

(9) The limitations contained in paragraphs (c) (2) through (6) of this section do not apply to Families subject to paragraph (a)(3) of this section when the welfare agency includes as the housing component of the Family's grant an amount equal to the Total Tenant Payment, without reduction.

(10) In order to facilitate administration of the limitations provided in paragraphs (c) (2) through (4) and (6) of this section, upon any regular or interim reexamination of a Family which was in occupancy on June 30, 1984, the PHA or Owner shall continue to collect and verify information which would have been taken into account in calculating Annual Income and Annual Income After Allowances, as defined in regulations in effect immediately prior to July 1, 1984, as if such regulations were in effect at the date of such reexamination.

(11) The limitations prescribed in paragraphs (c) (2) through (6), of this section, shall be applied in accordance with procedures prescribed by HUD.

(Approved by the Office of Management and Budget under control number 2502-0204)

§ 813.108

[49 FR 19936, May 10, 1984; 49 FR 28718, June 29, 1984, as amended at 50 FR 24621, June 12, 1985]

§ 813.108 Utility reimbursement.

Where applicable, the Utility Reimbursement shall be paid to the Family in the manner provided in the pertinent program regulation. If the Family and the utility company consent, a PHA or Owner may pay the Utility Reimbursement jointly to the Family and the utility company, or directly to the utility company.

§ 813.109 Initial determination, verification, and reexamination of family income and composition.

(a) *Responsibility for initial determination and reexamination.* The owner or PHA shall be responsible for determination of eligibility for admission, for determination of Annual Income, Adjusted Income and Total Tenant Payment, and for reexamination of family income and composition at least annually, as provided in pertinent program regulations and handbooks (see, e.g., part 880, subpart F, and part 881, subpart F, which, for purposes of this part, shall apply (as appropriate) to projects developed under part 885, subparts B and C; part 882, subparts B and E; part 883, subpart G; part 884, subpart B; part 886, subparts A and C; part 887, subpart H; and for the disclosure and verification of Social Security Numbers. As used in this part, the "effective date" of an examination or reexamination refers to:

(1) In the case of an examination for admission, the effective date of the initial occupancy; and

(2) In the case of a reexamination of an existing tenant, the effective date of the redetermined housing assistance payment with respect to the Housing Voucher program (part 887) and the effective date of the redetermined Total Tenant Payment.

(b) *Verification.* As a condition of housing assistance under any program covered by this part, the PHA or Owner shall require the Family head and other such Family members as it designates to execute a HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency,

24 CFR Ch. VIII (4-1-90 Edition)

to furnish or release to the PHA or Owner and to HUD such information as the PHA, Owner or HUD determines to be necessary. The PHA or Owner shall also require the Family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining or auditing a Family's eligibility to receive housing assistance, for determining the Family's Adjusted Income or Tenant Rent, for verifying related information, or for monitoring compliance with equal opportunity requirements. The use or disclosure of information obtained from a Family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this Part 813 or the housing program under which the Family is receiving or applying for assistance.

(Approved by the Office of Management and Budget under control number 2502-0204 and 2577-0083)

[49 FR 19936, May 10, 1984, as amended at 53 FR 34412; Sept. 6, 1988, 53 FR 36450, Sept. 20, 1988; 54 FR 39702, Sept. 27, 1989; 55 FR 11905, Mar. 30, 1990]

§ 813.110 Transition provision.

(a) *Delayed implementation for rent calculations.* This part is effective on July 1, 1984. However, implementation of the definitions of Annual Income and Adjusted Income contained in this part shall take place in time to be applied to examinations for admission and reexaminations effective on or after August 1, 1985.

(b) *Examinations and reexaminations effective before August 1, 1985.* In the case of the following categories of tenants, the PHA or Owner shall conduct the examination or reexamination as scheduled and may determine the tenant's contribution in accordance with regulations and procedures in effect immediately before July 1, 1984 (including the percentage to be applied to adjusted income in the case of such tenants pursuant to § 813.107 based on the effective date of the examination or reexamination):

(1) Any current tenant for whom the examination or regularly scheduled re-

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Housing and Urban Development

24

PARTS 700 TO 1699

Revised as of April 1, 1990

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**U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1990**

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

tween this part and Part 811, Part 811 will control.

Subpart B—Definitions, Project Eligibility and Other Requirements

§ 880.201 Definitions.

ACC. (Annual Contributions Contract) For a private-owner/PHA project, for which the Contract is administered by a PHA, the ACC is the contract between the PHA (as contract administrator) and HUD. Under the ACC, HUD commits to provide the PHA with the funds needed to make housing assistance payments to the owner and to pay the PHA for HUD-approved administrative fees, and the PHA agrees to perform the duties of a contract administrator.

Agreement. (Agreement to Enter into Housing Assistance Payments Contract) The Agreement between the owner and the contract administrator which provides that, upon satisfactory completion of the project in accordance with the HUD-approved final proposal, the administrator will enter into the Contract with the owner.

Allocation area. A municipality, county, one or more Indian areas, or group of contiguous municipalities or counties identified by HUD or in an approved Areawide Housing Opportunity Plan for the purpose of allocating housing assistance to support economically feasible housing projects.

Annual income. As defined in Part 813 of this chapter.

Assisted unit. A dwelling unit eligible for assistance under a Contract.

Contract. (Housing Assistance Payments Contract) The Contract entered into by the owner and the contract administrator upon satisfactory completion of the project, which sets forth the rights and duties of the parties with respect to the project and the payments under the Contract.

Contract Administrator. The entity which enters into the Contract with the owner and is responsible for monitoring performance by the owner. The contract administrator is a PHA in the case of private-owner/PHA projects, and HUD in private-owner/HUD and PHA-owner/HUD projects.

Contract Rent. The total amount of rent specified in the Contract as pay-

able by HUD and the tenant to the owner for an assisted unit. In the case of the rental of only a manufactured home space, "contract rent" is the total rent specified in the Contract as payable by HUD and the tenant to the owner for rental of the space, including fees or charges for management and maintenance services with respect to the space, but excluding utility charges for the manufactured home.

Decent, safe and sanitary. Housing is decent, safe and sanitary at project completion if the dwelling units and related facilities are accepted by HUD as meeting the requirements of the Agreement. Housing continues to be decent, safe and sanitary if it is maintained in a condition substantially the same as at the time of acceptance.

Elderly Family. As defined in Parts 812 and 813 of this chapter.

Fair Market Rent. HUD's determination of the rents, including utilities (except telephone), ranges and refrigerators, parking, and all maintenance, management and other essential housing services, which would be required to obtain, in a particular market area, privately developed and owned, newly constructed rental housing of modest design with suitable amenities. In the case of manufactured home spaces, Fair Market Rent is HUD's determination of the rents that would be required to obtain, in a particular market area, privately developed and owned spaces of modest design in newly constructed manufactured home parks, including maintenance and management services with respect to the space, but excluding utility charges for the manufactured home.

Family (eligible family). As defined in Part 812 of this chapter.

Final proposal. The detailed description of a proposed project to be assisted under this part, which an owner submits after selection of the preliminary proposal, except where a preliminary proposal is not required under § 880.303(c). (The final proposal becomes an exhibit to the Agreement and is the standard by which HUD judges acceptable construction of the project.)

Gross Rent. As defined in Part 813 of this chapter.

Household type. The three household types are (1) elderly and handicapped, (2) family, and (3) large family.

Housing Assistance Payment. The payment made by the contract administrator to the Owner of an assisted unit as provided in the Contract. Where the unit is leased to an eligible Family, the payment is the difference between the Contract Rent and the Tenant Rent. An additional payment is made to the Family when the Utility Allowance is greater than the Total Tenant Payment. In the case of a Family renting only a manufactured home space as provided in §880.202(j), the Housing Assistance Payment is the difference between the Gross Rent and the Total Tenant Payment, but such payment may not exceed the Contract Rent for the space, and no additional payment is made to the Family. A Housing Assistance Payment, known as a "vacancy payment", may be made to the Owner when an assisted unit is vacant, in accordance with the terms of the Contract.

Housing Assistance Plan. A housing plan which is submitted by a unit of general local government and approved by HUD as being acceptable under the standards of 24 CFR, Part 570.

Housing type. The three housing types are new construction, rehabilitation, and existing housing.

HUD. The Department of Housing and Urban Development.

Independent Public Accountant. A Certified Public Accountant or a licensed or registered public accountant, having no business relationship with the owner except for the performance of audit, systems work and tax preparation. If not certified, the Independent Public Accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title "public accountant," only Certified Public Accountants may be used.

Lower Income Family. As defined in Part 813 of this chapter.

New Communities. New community developments approved under Title IV of the Housing and Urban Develop-

ment Act of 1968 and Title VII of the Housing and Urban Development Act of 1970.

NOFA. (Notification of Fund Availability) The notice published by HUD announcing the availability of contract authority for housing assistance and inviting the submission of proposals.

Owner. Any private person or entity (including a cooperative) or a public entity which qualifies as a PHA, having the legal right to lease or sublease newly constructed dwelling units assisted under this part. The term owner also includes the person or entity submitting a proposal under this part.

Partially-assisted Project. A project for non-elderly families under this part which includes more than 50 units of which 20 percent or fewer are assisted.

PHA. (Public Housing Agency) Any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of housing for lower-income families.

PHA-Owner/HUD Project. A project under this part which is owned by a PHA. For this type of project, the Agreement and the Contract are entered into by the PHA, as owner, and HUD, as contract administrator.

Preliminary proposal. The application describing a proposed project under this part which an owner submits in response to a NOFA in order to be selected for housing assistance.

Private-Owner/HUD Project. A project under this part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and HUD, as contract administrator.

Private-Owner/PHA Project. A project under this part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and the PHA, as contract administrator, pursuant to an ACC between the PHA and HUD. The term also covers the situation where the ACC is with one PHA and the owner is another PHA.

Project Account. A specifically identified and segregated account for each project which is established in accordance with § 880.503(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC, as applicable, each year.

Rent. In the case of an assisted unit in a cooperative project, rent means the carrying charges payable to the cooperative with respect to occupancy of the unit.

Replacement cost. The estimated construction cost of the project when the proposed improvements are completed. The replacement cost may include the land, the physical improvements, utilities within the boundaries of the land, architect's fees, and miscellaneous charges incident to construction as approved by the Assistant Secretary.

Secretary. The Secretary of Housing and Urban Development (or designee).

Small Project. A project for non-elderly families under this part which includes a total of 50 or fewer (assisted and unassisted) units.

Tenant Rent. The monthly amount defined in, and determined in accordance with Part 813 of this chapter.

Total Tenant Payment. The monthly amount defined in, and determined in accordance with Part 813 of this chapter.

Utility allowance As defined in Part 813 of this chapter, made or approved by HUD.

Utility reimbursement. As defined in Part 813 of this chapter.

Vacancy payment. The housing assistance payment made to the owner by the contract administrator for a vacant assisted unit if certain conditions are fulfilled as provided in the Contract. The amount of the vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

Very Low-income Family. As defined in Part 813 of this chapter.

[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 18923, Mar. 24, 1980; 48 FR 12703, Mar. 28, 1983; 49 FR 6714, Feb. 23, 1984; 49 FR 17449, Apr. 24, 1984; 49 FR 19943, May 10, 1984]

§ 880.202 Project eligibility.

(a) For purposes of this part, "new construction" refers to (1) housing for which construction starts after execution of the Agreement, or (2) housing which is already under construction when the Agreement is executed provided that:

(i) At the date of application to HUD, a substantial amount of construction (generally at least 25 percent) remains to be completed;

(ii) At the date of application to HUD, the project cannot be completed and occupied by eligible families without assistance under this part; and

(iii) At the time construction was initiated, all parties reasonably expected that the project would be completed and occupied without assistance under this part.

(b) The Section 8 new construction program is for rental housing only. Cooperatives are considered rental housing rather than owner-occupied housing for purposes of this part. No assistance will be provided for any unit occupied by an owner, except as provided in paragraph (j) of this section.

(c) The types of new construction rental housing which can be assisted under this part include:

(1) Single-family houses, manufactured homes (as provided in paragraph (j) of this section) and multifamily structures; and (2) housing designed for the elderly, disabled or handicapped.

(d) High-rise elevator projects for families with children are prohibited unless HUD determines that there is no practical alternative.

(e) High-rise elevator projects for the elderly may be approved only if HUD determines that high-rise construction is appropriate after taking into account land costs, safety and security factors.

(f) Projects for non-elderly families are required, where practicable, to have at least 5 percent of the housing units designed and accessible to the physically handicapped.

(g) Housing assisted under other provisions of the U.S. Housing Act of 1937, such as public housing assisted with annual contributions under Sec-

tions 5 and 9 of the Act, is not eligible for assistance under this part. Tax exemption under Section 11(b) of the Act is not considered assistance for this purpose.

(h) Conversions of new construction projects under the Section 23 Leased Housing Program to the Section 8 program will be permitted, where appropriate, provided that the Section 23 project qualifies as new construction under paragraph (a) of this section and that all parties, including HUD, agree.

(i) No proposal for housing under this part may be approved unless the requirements of 24 CFR Part 791, implementing Sections 213 (a), (b) and (c) of the Housing and Community Development Act of 1974, as amended, concerning review and comment by units of general local government, have been satisfied. (See § 880.306(c)(1).)

(j) Units in newly constructed manufactured home parks are eligible for assistance under this part. Such assistance may be provided with respect to the rental of a new manufactured home and the space on which it is located, or, where a manufactured home is owned by an eligible family, with respect to the rental of the space alone (including a space in a cooperative).

[44 FR 59410, Oct. 15, 1979, as amended at 48 FR 12703, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984]

§ 880.203 Fair market rents.

(a) Fair Market Rents are HUD's determination of the rents, including utilities (except telephone), ranges and refrigerators, parking, and all maintenance, management and other essential housing services, which would be required to obtain, in a particular market area, privately developed and owned, newly constructed rental housing of modest design with suitable amenities. In the case of manufactured home spaces, Fair Market Rent is HUD's determination of the rents that would be required to obtain, in a particular market area, privately developed and owned spaces of modest design in newly constructed manufactured home parks, including maintenance and management services with respect to the space, but excluding

utility charges for the manufactured home.

(b) Separate Fair Market Rents are established by unit size (number of bedrooms), basic structure type (detached, semi-detached/row, walk-up and elevator apartments) and occupant group (non-elderly family and elderly family, including handicapped) for individual market areas.

(c) The Fair Market Rents for (1) dwelling units designed for the elderly, disabled or handicapped are those for the appropriate size units, not to exceed 2-bedrooms for the elderly, multiplied by 1.05, (2) congregate housing dwelling units are the same as for non-congregate units, and (3) manufactured home spaces are 125 percent of the Fair Market Rents for Section 8 Existing manufactured home spaces.

(d) Fair Market Rents will be established by HUD and will be published in the FEDERAL REGISTER in accordance with Part 888 of this chapter. Revisions for one or more market areas may be initiated by HUD at any time and may be published as market conditions dictate.

[44 FR 59410, Oct. 15, 1979, as amended at 48 FR 12703, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984; 50 FR 38794, Sept. 25, 1985]

§ 880.204 Limitations on contract rents, replacement costs and amenities.

(a) *Purpose and applicability of limitations.* The purpose of the Section 8 program is to assist lower-income families in renting decent, safe and sanitary housing of modest design with suitable amenities. This section sets limitations on the contract rents, replacement costs and amenities of projects constructed under this part. These limitations are intended to permit production of suitable housing without excessive costs, design features or amenities.

(b)(1) *Limitation on contract rents.* The contract rents for a project through cost certification at completion must be within both of the following limitations:

(i) *Fair market rent.* The contract rent plus any utility allowance for the unit must not exceed the Fair Market Rent in effect at the time of processing. The published Fair Market Rents

will reflect a trended rent in order to allow for the period of construction as stated in the publication. If the scheduled construction time for a project is less, an appropriate reduction will be made in determining the approvable contract rent. The contract rent plus utility allowance may exceed the applicable Fair Market Rent under special circumstances or if needed to implement a local Housing Assistance Plan:

(A) By up to 10 percent with the approval of the HUD field office manager, or

(B) Except in the case of the rental of a manufactured home space only, by up to 20 percent with the approval of the Assistant Secretary.

(ii) *Rent reasonableness.* The contract rent must be reasonable. Contract rents will be considered reasonable only under the following conditions:

(A) When HUD determines that the rents compare reasonably to or are below the rents of unassisted units of similar age, design and location which provide comparable amenities and services; or

(B) Rents may exceed those determined by market comparison by no more than 20 percent (10 percent for the rental of manufactured home spaces only) only in cases where warranted by cost and expense estimates provided by the owner at final proposal and cost certification at completion, as specified in §§ 880.308 and 880.405; or

(C) For small projects and partially assisted projects, the rents may exceed the comparable rents by up to 10 percent without the cost justification set forth in paragraph (b)(1)(ii)(B) of this section.

(2) *Limitation on contract rent increases.* Between selection of the Preliminary Proposal and cost certification at completion, increases in contract rents may be made only with HUD approval within the Fair Market Rent and rent reasonableness limitations established pursuant to paragraph (b)(1), and only to reflect the amount necessary to cover:

(i) Design changes required by HUD or the State or local government;

(ii) Changes in financing approved by HUD; or

(iii) Unforeseen factors (e.g., strikes, weather delays, delays caused by local government, substantial errors by HUD in the original processing which would otherwise result in serious inequities, and acts of God) determined by HUD to be beyond the owner's control.

All requests for increases in contract rents under this paragraph (b)(2) shall be submitted to the field office for review as soon as the need for the increase becomes apparent. After cost certification at completion, contract rents may be increased only by adjustments in accordance with § 880.609. This paragraph does not apply to any project where the Agreement was entered into before October 1, 1981.

(c) *Limitation on Replacement Costs.* (1) No proposal for a project to be assisted under this part will be selected or approved by HUD, and no Agreement may be executed for a project, with an estimated replacement cost greater than the following limits plus any additional cost not attributable to dwelling use to the extent approved by HUD. The limits applicable to the part of the project attributable to dwelling use, as determined by HUD, are as follows:

(i) The basic limits are:

(A) \$23,720 per dwelling unit without a bedroom;

(B) \$27,129 per dwelling unit with one bedroom;

(C) \$32,983 per dwelling unit with two bedrooms;

(D) \$42,217 per dwelling unit with three bedrooms; and

(E) \$47,032 per dwelling unit with four or more bedrooms.

(ii) Where necessary to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, HUD may increase the limits provided in paragraph (c)(1)(i) of this section, not to exceed:

(A) \$24,962 per dwelling unit without a bedroom;

(B) \$28,614 per dwelling unit with one bedroom;

(C) \$34,795 per dwelling unit with two bedrooms;

(D) \$45,011 per dwelling unit with three bedrooms; and

(E) \$49,409 per dwelling unit with four or more bedrooms.

(iii) For any market area where cost levels so require, the Assistant Secretary may increase, at the request of the field office, the dollar amount limits set forth in paragraphs (c)(1) (i) and (ii) of this section by an amount not to exceed 75 percent.

(iv) If the Assistant Secretary finds that, because of high costs, it is not feasible to construct dwellings in Alaska, Guam, or Hawaii without the sacrifice of sound standards of construction, design, and livability within the limits in paragraphs (c)(1) (i) and (ii), of this section, the principal amount of the replacement cost limits may be increased by amounts as are necessary to compensate for additional costs, but not to exceed the maximum, including high cost area increases under paragraph (c)(1)(iii) of this section, if any, otherwise applicable by more than 50 percent.

(2) Except for the exemption contained in paragraph (c)(3) of this section, the limitation on replacement costs applies to all projects in their entirety.

(3) Partially-assisted project are exempt from the replacement cost limitation of this paragraph.

(4) The mortgage amount of a HUD-insured proposal will be determined in accordance with the limitations and requirements of the applicable mortgage insurance program.

(5) Subsequent changes to the limitations on replacement costs under paragraphs (c)(1) of this section, will be made by Notice published in the FEDERAL REGISTER and will be available on request.

(6) With respect to Agreements entered into on or after October 1, 1981, between selection of the Preliminary Proposal and cost certification at completion, increases in the HUD-approved estimate of project replacement cost are permitted only for one or more of the reasons specified in paragraph (b)(2) of this section.

(d) *Excess Costs.* The limitation of paragraph (c) of this section will not prohibit the total actual cost of a project from exceeding the limit referred

to in that paragraph. However, in determining or adjusting contract rents, HUD will not take into account or give credit for any cost which exceeds the applicable replacement cost limit.

(e) *Limitation on housing design and amenities.* Housing assisted under this part shall be modest in design. Amenities in projects assisted under this part (except partially assisted projects) will be limited to those amenities, as determined by HUD, which are generally provided in unassisted, decent, safe and sanitary housing for lower income families in the market area. The use of more durable, high-quality materials to control or reduce maintenance, repair and replacement costs will not be considered an excess amenity.

[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 18923, Mar. 24, 1980; 48 FR 12703, Mar. 28, 1983; 49 FR 8714, Feb. 23, 1984; 49 FR 17449, Apr. 24, 1984]

§ 880.205 Limitation on distributions.

(a) Non-profit owners are not entitled to distributions of project funds.

(b) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is completed. Distributions may not exceed the following maximum returns:

(1) For projects for elderly families, the first year's distribution will be limited to 6 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 6 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in the FEDERAL REGISTER.

(2) For projects for non-elderly families, the first year's distribution will be limited to 10 percent on equity. The Assistant Secretary may provide for

code of federal regulations

Housing and Urban Development

24

PARTS 700 TO 1699

Revised as of April 1, 1990

CONTAINING
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AS OF APRIL 1, 1990

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Published by
the Office of the Federal Register
National Archives and Records
Administration

as a Special Edition of
the Federal Register

**U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1990**

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

displacement and feasibility of relocation; and feasibility of the project as a whole (including likelihood of financing and marketability). Within the ranking for non-elderly family proposals, preference points will be given to small projects and partially-assisted projects (except partially-assisted projects relying on permanent financing available through the Government National Mortgage Association under the authority of Section 305 of the National Housing Act). Any deviation in the ranking procedures as set forth in this paragraph and the program handbook must be approved by the Assistant Secretary and included in the developer's packet.

(c) Owners who submit proposals will be notified in writing as to whether their proposals have been found not approvable, found approvable but not selected, or selected. Selection notifications will include any special conditions or requirements applicable to the proposal. Owners who are notified of the selection of their proposals must notify the field office of their acceptance of the notification within the time period specified in the notification and must submit a final proposal by the deadline stated in the notification unless an extension of the deadline is approved by the field office. Owners of proposals found not approvable will be notified of the reason for the finding. One file copy of each proposal will be retained by the field office. Proposals found approvable and determined to be of high quality but not selected will be retained by the field office for reconsideration when additional contract authority becomes available in the same or subsequent fiscal year (see § 880.302).

(d) Units of general local government notified under § 880.306(c) will be notified of the field office's decision regarding the proposals within their jurisdiction.

(e) When contract authority remains available after selection of proposals for housing for elderly families, or after a decision is made to reallocate unused contract authority for housing for non-elderly families, or additional contract authority becomes available due to cancellation or recapture of contract authority for a selected pro-

posal, or due to the assignment of additional contract authority within the same fiscal year, the field office will determine the allocation areas and types of housing for which the contract authority will be used in accordance with 24 CFR Part 791 and proceed in accordance with §§ 880.302 through 880.304.

[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 18924, Mar. 24, 1980; 48 FR 29219, June 24, 1983; 49 FR 6714, Feb. 23, 1984]

§ 880.308 Contents of final proposal.

(a) *Proposals for Uninsured Projects.* Final proposals for all projects except those requesting mortgage insurance will contain:

(1) Preliminary architectural drawings, including site plans, landscape plans, unit plans, general floor plans, elevations at the prescribed scale, outline specifications on the prescribed form and a listing of amenities.

(2) A statement that the documentation submitted with the preliminary proposal as required by § 880.305 (b) through (g) and (i) through (l) has not changed or a statement of the changes. In the case of special categories of projects submitted in accordance with § 880.303(c), the original documentation required by § 880.305 (b) through (l) must be submitted.

(3) Description of the terms and conditions of construction and permanent financing, including copies of the financing documents and the commitments for such financing from a lender or bond underwriter, or satisfactory evidence that commitments will be forthcoming before execution of the Agreement.

(4) For proposals for projects of five units or more, an Affirmative Fair Housing Marketing Plan.

(5) A statement of the marketing activities the owner intends to take in accordance with the requirements of § 880.601(a)(3). Such efforts might include: Participation in regional or sub-regional application pools and clearinghouses; establishment of a referral system with PHAs, other public agencies and Section 8 owners/managers in the surrounding area; and contact with and provision of information about the project to employers and

their employees, labor unions, State or areawide employment service centers and interested community groups.

(6) Evidence of management capability, a proposed management plan and certification in the prescribed form, a copy of any proposed contracts for management services, and the proposed form of lease (see § 880.606).

(7) An indication of the estimated time for completion of the project after the Agreement is signed and, if the project is to be completed in stages, identification of the units and the scheduled completion of each stage.

(8) Cost estimates in the HUD prescribed form of the replacement cost, operating expenses, income, and debt service, sufficient to enable the field office to determine the cost justified rent, where required under § 880.204(b)(1)(ii). The replacement cost may include the cost to the owner of relocation (except for payments to tenants permanently relocated pursuant to § 880.209(b)(8)(ii)). The cost estimate must indicate and reflect any anticipated benefits from land write-down, tax abatement, favorable financing terms and similar savings.

(b) Proposals for Insured Projects.

(1) For projects requiring mortgage insurance, except special categories of proposals which are discussed in paragraph (b)(3) of this section, the complete final proposal will consist of the application for firm commitment, plus submissions in accordance with paragraphs (a) (2), (5), (6) and (8) of this section.

(2) Although it is preferable for projects requiring mortgage insurance to proceed directly from preliminary proposal to the application for firm commitment/final proposal stage, an owner may elect to submit an application for SAMA or conditional commitment first. In these cases, no additional documentation other than that normally submitted for the mortgage insurance processing stage is required. SAMA letters or conditional commitments issued for mortgage-insured projects which are infeasible without Section 8 assistance will be conditioned upon the subsequent review and approval of the application for firm commitment/final proposal.

(3) In the case of special categories of proposals submitted in accordance with § 880.303 which are requesting mortgage insurance, the first proposal may be an application for conditional or firm commitment plus the proposed form of lease, applicable information on staging, if any, and the documentation required by § 880.305 (f), (g), (h), (i) (with respect to possible conflicts of interest), (k) and (l).

[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 18924, Mar. 24, 1980; 48 FR 12704, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984]

§ 880.309 Review of final proposals.

(a) All final proposals will be reviewed for compliance with program policies and standards. Material deviations from the preliminary proposal will be reviewed and may cause rejection of the proposal.

(1) Preliminary architectural drawings will be reviewed for compliance with amenity standards. In addition, HUD reserves the right to review for conformance with the HUD Minimum Property Standards, adequacy of design for tenant security and efficiency in construction and design; however, HUD has no obligation to do so and any such review or non-review will not constitute approval as to these standards.

(2) The field office will review the projected replacement cost to assure compliance with the limitations of § 880.204(c) in effect at the time. The field office will also review the proposed rents to assure that the rents are within the limitations of § 880.204(b) and are cost justified, where required under § 880.204(b)(1)(ii) concerning reasonable rents. Cost justification at this stage will consist of review by the field office of the cost and expense estimates to determine whether the estimates justify a need for rents above comparable rents based on debt service calculation.

(3) Where the final proposal requests rents higher than were approved with the preliminary proposal, such rents may be approved only after the review required in paragraph (a)(2) of this section. In addition, the field office may approve the request

§ 880.310

24 CFR Ch. VIII (4-1-90 Edition)

for an increase only if it determines, based on documentation by the owner, that the need for increased rents is due to:

(i) Factors beyond the owner's control which could not reasonably have been foreseen;

(ii) Design changes approved by the field office which are necessary because of additional requirements imposed by governmental agencies or HUD; or

(iii) HUD-approved changes in the method or terms and conditions of financing.

(b) Each owner will be notified as to whether the final proposal has been approved, rejected, or could be approved with the submission of additional information or after correction of specified deficiencies. Notifications of approval will indicate a deadline for acceptance of the notification and, for projects not requiring mortgage insurance, a deadline for submission of working drawings and architect's certifications.

[44 FR 59410, Oct. 15, 1979, as amended at 48 FR 12704, Mar. 23, 1983; 49 FR 17449, Apr. 24, 1984]

§ 880.310 Submission and review of working drawings, architect's certification and requested changes.

(a) For projects which do not involve mortgage insurance, the owner must submit working drawings and specifications to the field office for review after approval of the final proposal. The owner must also submit an architect's certification in the prescribed form that the drawings and specifications and proposed construction comply with the HUD Minimum Property Standards, local codes and ordinances, and zoning requirements. The working drawings and specifications will be reviewed for compliance with amenity standards. Any project may, at HUD's option, be reviewed for conformance with the HUD Minimum Property Standards, adequacy of design for tenant security and efficiency in construction and design; however, HUD has no obligation to do so and any such review or non-review will not constitute approval as to these standards.

(b) Any requests for rent increases or any material deviations from preliminary or final proposal which are submitted with the working drawings will be reviewed in the same manner as required in § 880.309(a).

(c) For projects involving mortgage insurance, working drawings are reviewed as part of the review of the application for firm commitment/final proposal.

§ 880.311 Execution of agreement (and ACC, if applicable).

(a) After review of the working drawings for compliance with amenity standards and acceptance of the architect's certification for projects not involving mortgage insurance, or at the time of initial endorsement in the case of projects involving mortgage insurance:

(1) In the case of private-owner/ HUD and PHA-owner/ HUD projects, HUD and the owner will execute the Agreement in the form prescribed by HUD; or

(2) In the case of private-owner/ PHA projects, HUD and the PHA will execute the ACC in the form prescribed by HUD, and thereafter the PHA and the owner will execute the Agreement in the form prescribed by HUD, and HUD will approve it.

(b) No Agreement will be executed unless HUD has approved the financing for the project, including a commitment from a lender for construction and permanent financing at rates, terms and conditions acceptable to HUD, and the final proposal is in all other respects unconditionally approved.

(c) In the case of a non-elderly family project located in a Standard Metropolitan Statistical Area (SMSA), the field office will promptly notify PHAs and Community Development Agencies in the SMSA as well as any metropolitan-wide clearinghouse, or fair housing organizations where there is no metropolitan-wide clearinghouse, of the execution of the Agreement; the size and bedroom distribution of the project; and the expected time of initial marketing and occupancy. The notification will indicate that agencies should inform the owner if they wish

to be contacted by the owner for referrals.

Subpart D—Construction Period and Cost Certification

§ 880.401 Timely performance of work.

(a) After execution of the Agreement, the owner must proceed promptly with construction as provided in the Agreement and complete the project within the time stated in the Agreement. If the owner fails to start promptly, or diligently continue or complete construction, the contract administrator will have the right to rescind the Agreement or take other appropriate action.

(b) Extensions of the time may be granted for the reasons stated in the Agreement. However, contract rents will be increased only for the reasons stated in § 880.204(b)(2).

[44 FR 59410, Oct. 15, 1979, as amended at 48 FR 12704, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984]

§ 880.402 Inspections during construction.

(a) All project records will be inspected by HUD periodically to determine compliance with Davis-Bacon Act requirements.

(b) Projects which involve HUD mortgage insurance, or another type of financing which requires HUD construction inspection, will be subject to the applicable inspection requirements.

(c) A review to determine contractor compliance with equal opportunity requirements may be conducted at any time during the construction period.

§ 880.403 [Reserved]

§ 880.404 Project completion.

(a) *Notification and evidence of completion.* The owner must notify HUD and the PHA, where the PHA is the contract administrator, when work is completed and provide HUD with:

(1) A set of as-built drawings;

(2) A certificate of occupancy and any other official approvals necessary for occupancy;

(3) A certification in the prescribed form that the project has been completed and is ready for occupancy in

accordance with the requirements of the Agreement; and

(4) For projects where a HUD construction inspection is not required during construction, a certification from the inspecting architect in the prescribed form which states that the project has been constructed in accordance with the certified working drawings and specifications, HUD Minimum Property Standards, local codes and ordinances, and zoning requirements.

(b) *Review and inspection.* Within 10 working days of the receipt of the notification and evidence of completion, HUD will review the evidence of completion for adequacy and will inspect the project to determine whether it appears that the project has been completed in accordance with the Agreement.

(c) *Acceptance of the Project.* (1) If HUD determines from review and inspection that the project (or a stage of the project) has been completed in accordance with the Agreement, the project (or stage) will be accepted.

(2) If there are any items of delayed completion which are minor items or which are incomplete because of weather conditions, and in any case which do not preclude or affect occupancy, and all other requirements of the Agreement have been met, the project (or stage) will be accepted. An escrow fund determined by HUD to be sufficient to assure completion for items of delayed completion will be required, as well as a written agreement between the contract administrator and the owner, to be included as an exhibit to the Contract, specifying the schedule for completion. If the items are not completed within the agreed time period, the contract administrator may terminate the Contract or exercise other rights under the Contract.

(3) If other deficiencies exist, HUD will determine whether and to what extent the deficiencies are correctable, and whether the contract rents should be reduced. The owner will be notified of HUD's decision. If the parties agree, HUD, the owner and the PHA, where applicable, will enter into an agreement for the correction of the deficiencies. If the deficiencies are correct-

ed within the period of time allowed, HUD will accept the project.

(4) Otherwise, the project will not be accepted, and the owner and the PHA, where applicable, will be notified with a statement of the reasons for nonacceptance. (However, see § 880.501(a) for action where evidence of completion is acceptable only with respect to physical completion of the project.)

(d) *Pending Davis-Bacon Act claims.* If there are pending claims under the provisions in the Agreement relating to the payment of prevailing wage rates, the owner will be required to place a sufficient amount, as required by HUD, in escrow as approved by HUD to assure such payments. The amount withheld may be disbursed with HUD approval for and on account of the owner or any subcontractor to the employees to whom it is due.

§ 880.405 Cost certification and adjustment of contract rents.

(a) *Submission by owner.* As soon as possible after acceptance of the project by HUD, the owner will certify the actual costs estimated under § 880.308(a)(8), and submit a cost certification including the certificate of an Independent Public Accountant to HUD in the manner and form prescribed by HUD, based on the following guidelines:

(1) Projects which involve HUD mortgage insurance will be subject to the cost certification requirements of the applicable insurance program;

(2) For projects not insured by HUD, a simplified form of cost certification will be completed and submitted;

(3) There will be no cost certification submission required for projects with rents that are equal to or less than comparable rents or for partially assisted projects or small projects except as required by § 880.204(b)(1)(ii); and

(4) The provisions of paragraphs (a) (2) and (3) of this section do not preclude the imposition of different cost certification requirements appropriate as part of project financing requirements (such as tax-exempt financing under 24 CFR Part 811).

(b) *HUD review.* Cost certifications required by this regulation will be subject to review by HUD. As part of this

review, the owner and/or contractor may be required to submit additional documentation.

(c) *Reduction of Contract Rents.* If the owner's certified costs provided in accordance with paragraph (a) of this section, as approved by HUD, are less than the cost estimate provided for in § 880.308(a)(8), the contract rents will be reduced accordingly.

(d) *Reduction of Maximum Annual Commitment.* If the contract rents are reduced under paragraph (c) of this section, the maximum annual Contract commitment (and the maximum ACC commitment, in the case of private-owner/PHA projects) will be reduced. If contract rents are reduced based on cost certification after HAP Contract execution, any overpayment between the effective date of the Contract and the cost certification cut-off date shall be applied in one of the following ways, as determined by HUD:

(1) To advance amortization;

(2) To offset the cost of approved capital improvements; or

(3) To be deposited in the reserve fund for replacements.

Any overpayment after the cost certification cut-off date will be recovered from the owner by HUD. As used in this paragraph, the cost certification cut-off date is the date that the owner selects to run its cost for interest, taxes, property insurance, and mortgage insurance premium, and for which it computes its income and expense statement. This date may be no earlier than the date HUD accepts the project as physically complete, and no later than 60 days thereafter.

[44 FR 59410, Oct. 15, 1979, as amended at 48 FR 12704, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984; 50 FR 6342, Feb. 15, 1985]

Subpart E—Housing Assistance Payments Contract

§ 880.501 The contract.

(a) *Contract.* The Housing Assistance Payments Contract sets forth rights and duties of the owner and the contract administrator with respect to the project and the housing assistance payments. The owner and contract administrator execute the Contract in the form prescribed by HUD upon sat-

isfactory completion of the project. If the field office finds that the evidence of completion is acceptable with respect to the physical completion of the project, including the certificate of occupancy and/or other official approvals required for occupancy, but the evidence of completion as required in § 880.404 in other respects is not acceptable, the field office will, upon request by the owner, execute or approve the execution of the Contract. In such case, however, until the remaining evidence of completion is submitted to and found acceptable by the field office:

(1) The contract rent for the purpose of computing housing assistance payments with respect to any unit will be the monthly amount of the debt service on the permanent obligations attributable to the unit; and

(2) Rent-up and occupancy will be subject to such conditions as the field office may require.

(b) *Effective date of Contract.* The effective date of the Contract may be earlier than the date of execution, but no earlier than the date HUD inspects and accepts the project, except as provided in paragraph (a) of this section.

(c) *Housing Assistance Payments to Owners under the Contract.* The housing assistance payments made under the Contract are:

(1) Payments to the owner to assist eligible families leasing assisted units, and

(2) Payments to the owner for vacant assisted units ("vacancy payments") if the conditions specified in § 880.610 are satisfied.

The housing assistance payments are made monthly by the contract administrator upon proper requisition by the owner, except payments for vacancies of more than 60 days, which are made semi-annually by the contract administrator upon requisition by the owner.

(d) *Amount of Housing Assistance Payments to Owner.* (1) The amount of the housing assistance payment made to the owner of a unit being leased by an eligible family is the difference between the contract rent for the unit and the tenant rent payable by the family.

(2) A housing assistance payment will be made to the owner for a vacant

assisted unit in an amount equal to 80 percent of the contract rent for the first 60 days of vacancy, subject to the conditions in § 880.611. If the owner collects any tenant rent or other amount for this period which, when added to this vacancy payment, exceeds the contract rent, the excess must be repaid as HUD directs.

(3) For a vacancy that exceeds 60 days, a housing assistance payment for the vacant unit will be made, subject to the conditions in § 880.611, in an amount equal to the principal and interest payments required to amortize that portion of the debt attributable to the vacant unit for up to 12 additional months.

(e) *Payment of Utility Reimbursement.* Where applicable, the Utility Reimbursement will be paid to the Family as an additional Housing Assistance Payment. The Contract will provide that the Owner will make this payment on behalf of the contract administrator. Funds will be paid to the Owner in trust solely for the purpose of making the additional payment. If the Family and the utility company consent, the Owner may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.

[44 FR 59410, Oct. 15, 1979, as amended at 49 FR 19943, May 10, 1984]

§ 880.502 Term of contract.

(a) *Term (except for Manufactured Home Parks).* The term of the contract will be as follows:

(1) For assisted units in a project financed with the aid of a loan insured or co-insured by the Federal government or a loan made, guaranteed or intended for purchase by the Federal government, the term will be 20 years.

(2) For assisted units in a project financed other than as described in paragraph (a)(1) of this section, the term will be the lesser of (i) the term of the project's financing (but not less than 20 years), or (ii) 30 years, or 40 years if (A) the project is owned or financed by a loan or loan guarantee from a state or local agency, (B) the project is intended for occupancy by non-elderly families and (C) the project is located in an area designated by

code of federal regulations

Housing and Urban Development

24

PARTS 700 TO 1699

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**U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1990**

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

§ 880.602

24 CFR Ch. VIII (4-1-90 Edition)

§ 880.602 Replacement reserve.

(a) A replacement reserve must be established and maintained in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items.

(1) An amount equivalent to .006 of the cost of total structures, including main buildings, accessory buildings, garages and other buildings, or any higher rate as required by HUD from time to time, will be deposited in the replacement reserve annually. This amount will be adjusted each year by the amount of the automatic annual adjustment factor.

(2) The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.

(3) All earnings including interest on the reserve must be added to the reserve.

(4) Funds will be held by the mortgagee or trustee for bondholders, and may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

(b) Partially-assisted projects are exempt from the provisions of this section.

(c) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance provisions, except in the case of partially-assisted insured projects which are subject to the applicable mortgage insurance provisions.

§ 880.603 Selection and admission of assisted tenants.

(a) *Application.* The owner must accept applications for admission to the project in the form prescribed by HUD. Both the owner (or designee) and the applicant must complete and sign the application. On request, the owner must furnish copies of all applications to HUD and the PHA, if applicable.

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for determining whether the

applicant is eligible, in accordance with parts 812 and 813 of this chapter, and part 750 of chapter VII. The owner is also responsible for the selection of families, including giving a Federal selection preference in accordance with § 880.613.

(1) Local residency requirements are prohibited. Local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the owner's HUD-approved Affirmative Fair Housing Marketing Plan. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment will be treated as residents.

(2) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason, except that the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 880.613(c)(2), unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that—

(i) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(ii) It is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission to the

project before other applicants on the waiting list.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or because of failure to meet the disclosure and verification requirements for Social Security Numbers (as provided by 24 CFR part 750), or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request HUD review of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. The informal review provisions for the denial of a Federal preference under § 880.613 are contained in paragraph (k) of that section.

(4) Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three years.

(c) *Reexamination of Family income and composition*—(1) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least every 12 months. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with part 813 of this chapter and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to meet the disclosure and verification require-

ments for Social Security Numbers, as provided by 24 CFR part 750.

(2) *Interim reexaminations.* The family must comply with provisions in its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment to the Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members.

(3) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under control number 2502-0204)

[44 FR 59410, Oct. 15, 1979, as amended at 49 FR 19943, May 10, 1984; 49 FR 26718, June 29, 1984; 51 FR 11224, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988; 53 FR 1145, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 54 FR 39702, Sept. 27, 1989]

§ 880.604 Tenant rent.

The eligible Family pays the Tenant Rent directly to the Owner.

[49 FR 19943, May 10, 1984]

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**Housing and
Urban
Development**

24

PARTS 700 TO 1699

Revised as of April 1, 1990

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With Ancillaries

Published by
the Office of the Federal Register
National Archives and Records
Administration

as a Special Edition of
the Federal Register

**U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1990**

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

§ 880.609

24 CFR Ch. VIII (4-1-90 Edition)

agreements and meetings in a tenant file for inspection by the contract administrator. The procedures of this paragraph do not preclude the family from exercising its rights under State and local law.

(f) If the security deposit, including any accrued interest, is insufficient to reimburse the owner for any unpaid tenant rent or other amount which the family owes under the lease, and the owner has provided the family with the list required by paragraph (d)(2) of this section, the owner may claim reimbursement from HUD or the PHA, as appropriate, for an amount not to exceed the lesser of:

- (1) The amount owed the owner, or
- (2) One month's contract rent, minus the amount of the security deposit plus accrued interest. Any reimbursement under this section will be applied first toward any unpaid tenant rent due under the lease. No reimbursement may be claimed for unpaid rent for the period after termination of the tenancy.

[44 FR 59410, Oct. 15, 1979, as amended at 49 FR 19943, May 10, 1984]

§ 880.609 Adjustment of contract rents.

(a) *Automatic annual adjustment of Contract Rents.* Upon request from the owner to the contract administrator, contract rents will be adjusted on the anniversary date of the contract in accordance with 24 CFR Part 888.

(b) *Special additional adjustments.* For all projects, special additional adjustments will be granted, to the extent determined necessary by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates, and utilities not covered by regulated rates, and which are not adequately compensated for by annual adjustments under paragraph (a) of this section. The owner must submit to the contract administrator required supporting data, financial statements and certifications.

(c) *Overall limitation.* Any adjustments of contract rents for a unit after Contract execution or cost certification, where applicable, must not result in material differences between

the rents charged for assisted units and comparable unassisted units except to the extent that the differences existed with respect to the contract rents set at Contract execution or cost certification, where applicable.

§ 880.610 Adjustment of utility allowances.

In connection with annual and special adjustments of contract rents, the owner must submit an analysis of the project's Utility Allowances. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the project owner must advise the contract administrator and request approval of new Utility Allowances. Whenever a Utility Allowance for a unit is adjusted, the owner will promptly notify affected families and make a corresponding adjustment of the tenant rent and the amount of the housing assistance payment for the unit.

(Approved by the Office of Management and Budget under control number 2502-0161)

[50 FR 39097, Sept. 27, 1985]

§ 880.611 Conditions for receipt of vacancy payments.

(a) *General.* Vacancy payments under the Contract will not be made unless the conditions for receipt of these housing assistance payments set forth in this section are fulfilled.

(b) *Vacancies during Rent-up.* For each assisted unit that is not leased as of the effective date of the Contract, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 80 days of vacancy if the owner:

- (1) Conducted marketing in accordance with § 880.601(a) and otherwise complied with § 880.601;
- (2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to the contract administrator.

(c) *Vacancies after Rent-Up.* If an eligible family vacates a unit, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:

(1) Certifies that he did not cause the vacancy by violating the lease, the Contract or any applicable law;

(2) Notified the contract administrator of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in § 880.601(a) (2) and (3) and paragraph (b) (2) and (3) of this section; and

(4) For any vacancy resulting from the owner's eviction of an eligible family, certifies that he has complied with § 880.607.

(d) *Vacancies for longer than 60 days.* If an assisted unit continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, the owner may apply to receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit for up to 12 additional months for the unit if:

(1) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed;

(2) The owner has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and

(3) The owner has demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the owner with revenues at least equal to project expenses (exclusive of depreciation), and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit, and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* The owner is not entitled to vacancy payments for

vacant units to the extent he can collect for the vacancy from other sources (such as security deposits, payments under § 880.608(f), and governmental payments under other programs).

§ 880.612 Reviews during management period.

(a) After the effective date of the Contract, the contract administrator will inspect the project and review its operation at least annually to determine whether the owner is in compliance with the Contract and the assisted units are in decent, safe and sanitary condition.

(b) In addition, for private-owner/PHA projects, HUD:

(1) Will review the PHA's administration of the Contract at least annually to determine whether the PHA is in compliance with the ACC, and

(2) May independently inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

§ 880.613 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this part, housing owners must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any

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Housing and Urban Development

24

PARTS 700 TO 1699

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WASHINGTON : 1990**

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

§ 885.1

- 885.730 Site and neighborhood standards.
- 885.735 Prohibited relationships.
- 885.740 Other Federal requirements.

SELECTION OF APPLICATIONS AND DURATION OF FUND RESERVATION

- 885.750 Review of applications for fund reservation.
- 885.755 Approval of applications.
- 885.770 Duration of section 202 fund reservation.
- 885.775 Transition.

DIRECT LOAN FINANCING PROCEDURES

- 885.780 Submission of site information.
- 885.800 Request for direct loan processing.
- 885.805 Approval of requests for direct loan financing.
- 885.807 Operating cost standard.
- 885.810 Amount and terms of financing.
- 885.812 Prepayment of loans.
- 885.815 Requirements prior to initial loan closing.
- 885.816 Requirements for awarding construction contracts.
- 885.820 Loan disbursement procedures
- 885.825 Completion of cost certification.

PROJECT ASSISTANCE CONTRACT

- 885.900 Project Assistance Contract.
- 885.905 Term of PAC.
- 885.910 Maximum annual commitment and project account.
- 885.915 Leasing to eligible families.
- 885.920 PAC administration.
- 885.925 Default by Borrower.
- 885.930 Notice upon PAC expiration.

PROJECT MANAGEMENT

- 885.940 Responsibilities of Borrower.
- 885.945 Replacement reserve.
- 885.950 Selection and admission of tenants.
- 885.955 Obligations of the family.
- 885.960 Overcrowded and underoccupied units.
- 885.965 Lease requirements.
- 885.970 Termination of tenancy and modification of lease.
- 885.972 Security deposits.
- 885.975 Adjustment of rents.
- 885.980 Adjustment of utility allowances.
- 885.985 Conditions for receipt of vacancy payments for assisted units.

APPENDIX A TO PART 885—HANDICAPPED PERSON OR INDIVIDUAL

AUTHORITY: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 8, United States Housing Act of 1937 (42 U.S.C. 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

EDITORIAL NOTE: Nomenclature changes affecting this part appear at 49 FR 8714, Feb. 23, 1984.

24 CFR Ch. VIII (4-1-90 Edition)

Subpart A—General Policy

§ 885.1 Purpose and policy.

(a) *Purpose.* The program under this part provides direct Federal loans under section 202 of the Housing Act of 1959 (42 U.S.C. 1701q) for housing projects serving elderly or handicapped families and individuals. The housing projects shall provide the necessary services for the occupants which may include, but are not limited to: Health, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services, as well as transportation where necessary to facilitate access to these services.

(b) *General policy.* A loan made under this part shall be used to finance the construction or the substantial rehabilitation of projects for elderly or handicapped families, or for the acquisition with or without moderate rehabilitation of existing housing and related facilities for group homes for nonelderly handicapped individuals.

(c) *Applicability.* (1) Subpart B of this part applies to projects for elderly or handicapped families that receive loans under section 202 of the Housing Act of 1959 and housing assistance payments under section 8 of the United States Housing Act of 1937. No project for handicapped (primarily nonelderly) families is eligible for loans or housing assistance payments under Part B, except under a reservation of loan and contract authority made before October 1, 1988.

(2) Subpart C of this part applies to projects for nonelderly handicapped families receiving loans under section 202 and project assistance payments under section 202(h) of the Housing Act of 1959. Subpart C may also apply to projects for handicapped families that received a reservation of loan authority under Subpart B under the circumstances described in § 885.775.

[54 FR 25930, June 20, 1989]

§ 885.5 Definitions.

As used in this part—

Acquisition with or without moderate rehabilitation means the acquisi-

tion of existing housing and related facilities to be used as group homes for the nonelderly handicapped. The development cost of such group homes may not include moderate rehabilitation costs (including expenditures for the rehabilitation alteration, conversion, or improvement of the housing and related facilities) in excess of 15 percent of the loan amount.

Act means section 202 of the Housing Act of 1959, as amended 12 U.S.C. 1701q.

Affiliated entities means entities that the field office determines to be related to each other in such a manner that it is appropriate to treat them as a single entity. Such relationship shall include any identity of interest among such entities or their principals and the use by any otherwise unaffiliated entities of a single Borrower or of Borrowers that have any identity of interest themselves or their principals.

Application means the application for a section 202 fund reservation, including all required forms and exhibits submitted in response to an invitation for such applications, or a request for admission to a project made by a family on a form prescribed by HUD.

Assistant Secretary means the Assistant Secretary for Housing—Federal Housing Commissioner.

Borrower means a private nonprofit corporation or a nonprofit consumer cooperative which may be established by the Sponsor, which will obtain a Section 202 loan and execute a mortgage in connection therewith as the legal owner of the project. "Borrower" does not mean a public body or the instrumentality of any public body. The purposes of the Borrower must include the promotion of the welfare of elderly and/or handicapped families. No part of the net earnings of the Borrower may inure to the benefit of any private shareholder, contributor or individual, and the Borrower may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom. Because of the nonprofit nature of the Section 202 program, no officer or director, or trustee, member, stockholder or authorized representative of the Borrower is permitted to have any financial interest in any contract in connection

with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever.

Construction means the erection or substantial rehabilitation of structures for Housing and Related Facilities. In the case of group homes for the nonelderly handicapped, this term also means acquisition of existing housing with moderate rehabilitation.

Development cost means the cost of construction or substantial rehabilitation of Housing and Related Facilities, and of the land on which they are located, including necessary site improvements and such other expenses as may be determined by the Assistant Secretary properly to be attributable to the capital cost of the construction, substantial rehabilitation or development of the Housing and Related Facilities. In the case of group homes for the nonelderly handicapped, Development Cost also means the cost of acquiring existing housing and related facilities and the cost of rehabilitation, alteration, conversion or improvement, including moderate rehabilitation, and the cost of the land on which the housing and related facilities are located.

Elderly family means:

(a) Families of two or more persons the head of which (or his or her spouse) is 62 years of age or older;

(b) The surviving member or members of any family described in paragraph (a) of this definition living in a unit assisted under this part with the deceased member of the family at the time of his or her death;

(c) A single person who is 62 years of age or older; or

(d) Two or more elderly persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well being.

Field office means any HUD Area, Insuring or Regional Office which is delegated authority to process applications under the section 202 program.

Handicapped family means:

(a) Families of two or more persons the head of which (or his or her spouse) is handicapped;

(b) The surviving member or members of any family described in paragraph (a) of this definition living in a unit assisted under this part with the deceased member of the family at the time of his or her death;

(c) A single handicapped person over the age of 18; or

(d) Two or more handicapped persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well being.

Handicapped person or individual means any adult having an impairment which is expected to be of long-continued and indefinite duration, is a substantial impediment to his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered handicapped if he or she is developmentally disabled, *i.e.*, if he or she has a severe chronic disability that:

(a) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b) Is manifested before the person attains age twenty-two;

(c) Is likely to continue indefinitely;

(d) Results in substantial functional limitations in three or more of the following areas of major life activity: (1) Self-care, (2) receptive and responsive language, (3) learning, (4) mobility, (5) self-direction, (6) capacity for independent living, and (7) economic self-sufficiency; and

(e) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

A person shall also be considered to be handicapped if he or she has a chronic mental illness, *i.e.*, if he or she has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently (*e.g.*, by limiting functional capacities relative to primary aspects of daily

living such as personal relations, living arrangements, work, recreation, etc.), and whose impairment could be improved by more suitable housing conditions. A person whose sole impairment is alcoholism or drug addiction will not be considered to be handicapped for the purposes of the section 202 program.

Housing and related facilities means rental or cooperative housing structures constructed or substantially rehabilitated as permanent residences for use by elderly or handicapped families, or acquired with or without moderate rehabilitation for use by nonelderly handicapped families as group homes. The term includes structures suitable for use by families residing in the project or in the area, such as cafeterias or dining halls, community rooms, or buildings, or other essential service facilities. In the case of acquisition with or without moderate rehabilitation, at least three years must have elapsed from the later of the date of completion of the project or the beginning of occupancy to the date of the application for a section 202 fund reservation. Except for intermediate care facilities for the mentally retarded and individuals with related conditions (see § 885.710(b)(4)(vii)), this term does not include nursing homes, hospitals, intermediate care facilities, or transitional care facilities.

Independent public accountant means a certified public accountant or a licensed or registered public accountant, having no business relationship with the Borrower or Sponsor except for the performance of audit, systems work and tax preparation. If not certified, the independent public accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title "public accountant", only certified public accountants may be used.

Nonelderly handicapped family means a handicapped family where the head of the family (and spouse, if any) is less than 62 years of age at the time of the family's initial occupancy of a project.

Region means any one of the ten HUD Regions.

Section 8 Program means the Housing Assistance Payments Program—New Construction or Substantial Rehabilitation as defined in Parts 880 and 881 of this chapter, which implements section 8 of the U.S. Housing Act of 1937, as amended.

Seed money expenses mean those expenses which are necessary to cover the costs of planning and obtaining financing for a Section 202 project and which will be incurred prior to the initial closing of the construction loan for the project.

Sponsor means any private nonprofit entity, no part of the net earnings of which inures to the benefit of any private shareholder, contributor or individual, which entity is not controlled by, or under the direction of persons or firms seeking to derive profit or gain therefrom, and which is approved by the Field Office Director as to administrative and financial capacity and responsibility. "Sponsor" does not mean a public body or the instrumentality of a public body. Because of the nonprofit nature of the section 202 program, no officer or director of the Sponsor is permitted to have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever. The prohibition in the preceding sentence does not apply to any management contracts (including the management fees associated therewith) entered into by the Borrower with the Sponsor or its nonprofit affiliate.

Substantial rehabilitation means the improvement of the condition of a property from deteriorated and substandard to good condition. Substandard or deteriorated properties are those which do not provide safe and adequate shelter, and in their present condition endanger the health, safety or well-being of the occupants. "Substantial rehabilitation" also includes renovation, alteration or remodeling for the conversion or adaptation of property to the design and condition required for use under this part.

[43 FR 8493, Mar. 1, 1978, as amended at 47 FR 51568, Nov. 16, 1982; 50 FR 9269, Mar. 7, 1985; 50 FR 38800, Sept. 25, 1985; 51 FR 12310, Apr. 10, 1986; 52 FR 29011, Aug. 5, 1987; 54 FR 25980, June 20, 1989; 55 FR 3211, Jan. 31, 1990]

Subpart B—Section 202 Projects for the Elderly or Handicapped—Section 8 Assistance

§ 885.200 Allocation of loan fund authority.

(a) Section 202 loan fund authority will be allocated by the Assistant Secretary to HUD field offices in accordance with the requirements of Section 213(d) of the Housing and Community Development Act of 1974 as set forth in 24 CFR 791.402 and 791.403.

(b) Field Office Directors will determine the amount of section 202 loan authority available under this subpart to be allocated to each allocation area in accordance with 24 CFR 791.404. In determining the number of units to be allocated to a specific allocation area, the Field Office Director must consider the three-year goals set forth in Housing Assistance Plans and the proportionality requirements with respect to housing type and household type. Where loan fund authority allocated to an allocation area would not be adequate for a feasible project, the Field Office Director may either:

(1) Combine allocation areas, or

(2) Distribute sufficient loan fund authority for a feasible project and withhold future allocations until such advance is compensated.

(c) Field Office Directors will set aside sufficient contract authority for the Section 8 Housing Assistance Payments Program for use in connection with projects to be financed under this subpart.

[43 FR 8493, Mar. 1, 1978, as amended at 54 FR 25981, June 20, 1989]

§ 885.205 Announcement of fund availability and invitations for applications for Section 202 fund reservations.

(a) Promptly upon determining the amount of loan fund authority to be allocated to each field office, the Assistant Secretary shall publish an An-

nouncement of Fund Availability in the FEDERAL REGISTER indicating:

(1) The amount of lending authority (and approximate number of units) being made available to each field office;

(2) The date by which the field offices will publish Invitations for Applications for Section 202 Fund Reservations;

(3) The earliest date applications will be accepted for processing and the closing date; and

(4) Other appropriate guidance to prospective borrowers.

(b) Each field office shall publish a single invitation in newspapers of general circulation serving the allocation areas in which the housing is desired at least once a week for two consecutive weeks. The field office shall also notify minority media, minority organizations involved in housing and community development, and groups with a special interest in housing for the elderly and physically handicapped. Copies of the invitation shall be available in the field office.

(c) The Invitation shall state:

(1) The designated allocation areas where loan fund authority is being made available, the amount of such authority and the approximate number of units this amount is expected to assist.

(2) That applications from the designated allocation areas will be evaluated first, and that only in the event that an insufficient number of approvable applications are received from the designated allocation areas will applications from other areas be considered for approval.

(3) That copies of the applicable regulations, instructions, forms and other program information may be obtained at the field office.

(4) The date, time, and place applications will be accepted.

(5) The deadline date for receipt of applications.

[43 FR 8493, Mar. 1, 1978, as amended at 54 FR 25981, June 20, 1989]

§ 885.210 Contents of applications.

(a) Each application shall include all of the information, materials, forms, and exhibits listed in paragraph (b) of this section. The Field Office will base

its determination of the eligibility of the Borrower for a reservation of Section 202 loan funds and for participation in the Section 8 Housing Assistance Payments program on the information provided in the application. Each Sponsor identified in an application must provide the information that is required of the Borrower in paragraphs (b)(10) through (b)(22) of this section.

(b) Each applicant shall include—

(1) The name, address, and telephone number of the Borrower and also of the Sponsor (if any).

(2) The name, title, address, and telephone number of the officer or member of the Board of Directors of the Borrower to whom communications should be addressed.

(3) The following specific information regarding the application:

(i) Number of Section 202 units requested.

(ii) Number of units for which Section 8 Assistance is requested. Section 8 Housing Assistance Payments are required for a minimum of 20 percent of the Section 202 units in any project. Applications contemplating use of Section 8 contract authority in less than 100 percent of the rental dwelling units must demonstrate that sufficient market demand is anticipated for the unsubsidized units to assure the feasibility of the project.

(iii) Dollar amount of Section 202 direct loan requested.

(4) A narrative description of the proposed housing, including:

(i) Number and types of structures;

(ii) Number of stories;

(iii) Number of units by size (number of bedrooms);

(iv) Special amenities or features.

(5) A narrative description of the anticipated occupancy (elderly and physically handicapped).

(6) A statement whether the Borrower (or Sponsor) has submitted or is planning to submit other applications under this part during the current fiscal year. The Borrower must indicate the city and State where any other proposed project will be located, the number of units requested, and the field office where the proposal was or will be submitted.

(7) A signed certification of the Borrower's intention to comply with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, E.O. 11246, and section 3 of the Housing and Urban Development Act of 1968.

(8) A Housing Consultant's Certificate and Contract (if consultant services have been employed by the Borrower).

(9) Evidence of the Borrower's legal status as a nonprofit corporation. If the Sponsor is a religious body, the Borrower corporation must be a separate legal entity, and no reference to religion or religious purposes may be included in its Articles of Incorporation or By-Laws. Additionally, a Borrower corporation may not engage in any other business or activity (including the operation of any other rental project), or incur any liability or obligation not related to the proposed project.

(10) A Request for Preliminary Determination of Eligibility as a Non-profit Sponsor and/or Mortgagor on a form prescribed by HUD.

(11) A statement evidencing the Borrower's ties to the community and support from local community groups.

(12) The names and addresses of the officers and directors of the Borrower, and such other information as shall be required on the prescribed form, together with a certification by each officer or director that he or she will not receive any compensation from the Borrower for his or her services, and does not have any financial interest in any contract with the Borrower, or in any firm or corporation which has a contract with the Borrower.

(13) Satisfactory evidence that the Sponsor and the Borrower--

(i) Have the necessary legal authority to finance, construct or substantially rehabilitate and maintain the project and to apply for and receive the proposed loan.

(ii) Meet any requirements as to corporate organization; and

(iii) Have the authority to enter into such contract obligations and execute such security documents as HUD may require.

Additionally, Sponsors, including churches, must have a currently effective

tax exemption ruling from the Internal Revenue Service (IRS), and, where the Sponsor and the Borrower are not the same legal entity, the Borrower must furnish evidence that it also has received a Section 501(c) (3) or (4) tax exemption ruling from the IRS or documentary evidence that it had applied for such a ruling no later than the deadline date for section 202 applications set by HUD under § 885.205 (a)(3) and (c)(5). (Consumer cooperatives and nonprofit organizations organized in the Commonwealth of Puerto Rico may be exempted from the requirement set out in the previous sentence if they are not eligible for IRS 501(c) (3) or (4) rulings.)

(14) Evidence of previous participation in HUD programs, if any, by the Borrower, its officers or directors, on such forms as may be prescribed by HUD.

(15) A description of all rental housing projects and/or medical facilities owned and operated by the Borrower.

(16) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Borrower or its officers, directors, or trustees in their corporate capacity.

(17) A description of the Borrower's past or current involvement in any programs or of its provision of services, other than housing, if any, which would give evidence of the organization's management capabilities.

(18) A statement as to whether the Borrower has received a Section 202 fund reservation since May 1, 1976.

(19) A description of the Borrower's capability to sponsor, develop, own, manage and provide appropriate services in connection with the proposed project.

(20) An estimate of start-up expenses and the source of funds to meet these expenses. If the Borrower plans to use Section 106(b) seed money loans, an application for such loan must be submitted with required attachments.

(21) Copies of balance sheet(s) and statement(s) of income and expenses for each of the past three years the Borrower has operated.

§ 885.211

24 CFR Ch. VIII (4-1-90 Edition)

(22) The following specific information with respect to the proposed project:

(i) Documentary evidence that the Borrower has control of the site, consisting of—

(A) In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding commitment to convey the site to the Borrower corporation when the Borrower receives and accepts a notice of Section 202 Fund Reservation; or

(B) In the case of a site to be acquired from other than a public body, a copy of any contract of sale for the site or a copy of any applicable site option agreement, a deed, or other legal commitment for the site.

With regard to a proposed project site that is being acquired or optioned from a general contractor or its affiliate, the Borrower may not select that contractor or affiliate to construct the Section 202 project.

(ii) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated.

(iii) A sketch of the site plan showing the general development of the site including the location of the proposed building(s), streets, parking areas and drives, service areas, and unusual site features.

(iv) Evidence that the proposed construction or substantial rehabilitation is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action to make the construction or substantial rehabilitation permissible and the basis for belief that the proposed action will be completed successfully before the receipt of the conditional commitment for direct loan financing (e.g., a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, etc.).

(v) A statement as to whether proposed project will displace site occupants. If so, the proposal shall state the number of families, individuals, and business concerns to be displaced

(identified by race or minority group status and whether they are owners or renters), and shall demonstrate that relocation is feasible and how necessary relocation payments, if any, will be funded.

(vi) A showing that the proposal meets any special requirements or restrictions necessary for compliance with the local HAP.

(vii) A statement that gross rents (contract rents plus any utility allowance) will not exceed the applicable fair market rents by more than the amount allowed under §880.204(b)(1) or §881.204(b)(1). The applicable fair market rents are those published in accordance with §888.105.

(23) A demonstration that the application meets any other requirements as may be imposed by or upon the Department and which requirements are made known to the applicant prior to submission of the application.

(Approved by the Office of Management and Budget under control number 2502-0287)

[43 FR 8493, Mar. 1, 1978, as amended at 47 FR 51568, Nov. 16, 1982; 50 FR 38800, Sept. 25, 1985; 51 FR 12311, Apr. 10, 1986; 52 FR 29011, Aug. 5, 1987; 54 FR 25982, June 20, 1989]

§ 885.211 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

To be eligible to become an owner of housing assisted under this subpart, the owner must meet the disclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under control numbers 2502-0204 and 2502-0287)

[54 FR 39707, Sept. 27, 1989]

§ 885.215 Limitation on number of units.

No organization shall participate as Sponsor, Cosponsor, or Borrower in the filing of an application or applications for a reservation of section 202 funds under this Subpart in a single region in a single fiscal year in excess of that necessary to finance the construction or substantial rehabilitation

OHIO BOARD OF TAX APPEALS

National Steelworkers Oldtimers Community)
Urban Development Company,)

Appellant,)

vs.)

William W. Wilkins,)
Tax Commissioner of Ohio,)

Appellee.)

CASE NOS. 2006-H-728
2006-H-729

(REAL PROPERTY
TAX EXEMPTION)

DECISION AND ORDER

APPEARANCES:

For the Appellant

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For the Appellee

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Entered **JAN 20 2009**

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

This matter is before the Board of Tax Appeals upon notices of appeal filed by appellant National Steelworkers Oldtimers Community Urban Development Company ("National"). Appellant appeals from final determinations of the Tax Commissioner, in which the commissioner denied National's applications for exemption of real property from taxation for tax year 2002, and remission of penalties

for 1999, 2000 and 2001.¹ National argues the subject properties are owned by an institution and used exclusively for charitable purposes and that the Tax Commissioner erred in finding that the subject properties were not entitled to exemption pursuant to R.C. 5709.12, R.C. 5709.121, and Section 16, Article VIII of the Ohio Constitution.² For the following reasons, we find National's properties are not entitled to tax exemption.

This matter is submitted to the board on the appellant's notices of appeal, the statutory transcripts ("S.T."), the record of the hearing before this board ("H.R."), including exhibits, and the briefs of counsel.

In his final determinations, the Tax Commissioner summarized the facts of the instant matters as follows:

"Even though [Appellant] states that it provides services to some of its residents in the nature of assisting with some daily needs, the property remains an unlicensed independent living facility operated in connection with

¹ While the appellant's notices of appeal name the same entity, the attached final determinations of the Tax Commissioner concern two distinct corporate entities that own separate properties (collectively "National entities"). National Steelworkers Oldtimers Community Urban Development Company of Canton Two, Inc. owns parcel number 02-45630, which the record refers to as Mayfield Manor II and is found in our case number 2006-H-728. National Steelworkers Oldtimers Community Urban Redevelopment Company of Canton, Inc. owns parcel number 02-46813, which the record refers to as Mayfield Manor I and is found in our case number 2006-H-729.

² To the extent that appellant questions the constitutionality of the Tax Commissioner's actions, this board, as an administrative agency, is without jurisdiction to consider such claims and is instead to act as a "receiver of evidence for constitutional challenges." *MCI Telecommunications Corp. v. Limbach* (1994), 68 Ohio St.3d 195, 197-198. See, also, *S.S. Kresge v. Bowers* (1960), 170 Ohio St. 405; *Cleveland Gear Co. v. Limbach* (1988), 35 Ohio St.3d 229. Additionally, appellant specified two alleged errors regarding the commissioner's jurisdiction over community reinvestment area property and the exemption requirements for urban redevelopment corporations. Appellant's notice of appeal at 4 and 5 in our case number 2006-H-729. However, we find no support in the record for these alleged errors that were raised but then not argued before this board. Consequently, we find appellant has failed to meet its burden of proof regarding these two alleged errors.

federal Housing and Urban Development ("HUD") programs.

[Appellant] is requesting exemption for property owned by a nonprofit organization used to provide low-cost housing to elderly tenants and handicapped adults over eighteen years of age. The property, referred to as Mayfield Manor I, has a six-story apartment building located on more than two acres of land. There are 144 one bedroom apartments in the building. [*** Mayfield Manor II has an eight-story apartment building located on approximately two acres of land. There are 66 one-bedroom apartments in the building.] There is a service coordinator located on the premises. Upon request from the residents, the service coordinator provides support and assistance with obtaining housecleaning services, medical insurance paperwork, and prescription medication needs. [Appellant] also provides access to entertainment and social activities for the residents. [Appellant] receives subsidies from the Department of Housing and Urban Development." S.T. at 1-2.

The testimony presented by appellant's witnesses is consistent with the facts as stated by the commissioner. H.R. at 32-33, 40-42. At hearing before this board, appellant presented the testimony of Patricia Kohnke, director of field operations for Elderly Housing Development and Operations Corporation (EHDOC); Cynthia Jean Franz, a resident at Mayfield Manor I; Candace Fontes, the manager of the subject properties; Uris Liburd, a budget specialist and assistant accounting supervisor at EHDOC; and Stephen Wood, a certified public accountant. The appellee Tax Commissioner did not present any witnesses.

Patricia Kohnke testified that as director of field operations for EHDOC, a non-profit corporation, she oversees the operations of the subject properties.³ H.R. at 19, 75, 185. EHDOC manages 45 similar low-income senior housing properties nationwide, while its agents serve as the majority of directors on the boards of the various non-profit corporate entities that own the properties. H.R. at 19-20, 42, 75-80; appellant's Exs. 3. Kohnke testified that EHDOC arranges the financing for construction of apartment buildings through loan agreements with the federal government's Department of Housing and Urban Development ("HUD") and its sponsored entities, which provide "seed money" and enter into subsidy arrangements with HUD to provide low-income housing to senior citizens and disabled adults. H.R. at 33, 81, 83; appellant's Exs. 7 at 7, 23. EHDOC is able to charge a fee for its management services. H.R. at 218. At the subject properties, Kohnke testified that HUD sets the market rent amount that EHDOC can receive for each unit, with tenants paying thirty percent of their income and HUD paying the balance. H.R. at 104-105. Tenants can be evicted for non-payment of rent, although Kohnke testified that has never occurred. H.R. at 102; appellant's Exs. 5.

Kohnke stated that EHDOC's mission is to "build, develop and manage quality senior housing with support services in place to keep people aging in place as long as possible." H.R. at 75. By staffing its properties with a service coordinator, Kohnke testified that EHDOC provides a benefit for its low-income residents akin to

³ EHDOC is formerly known as National Council of Senior Citizens Housing Management Corporation, which was part of the National Council of Senior Citizens. H.R. at 75-76, 78.

an assisted living facility that would normally cost \$2,000 to \$3,000 per month. H.R. at 55; appellant's Exs. 12. The coordinators offer the residents support services by contacting various providers, such as Meals-on-Wheels, taxi companies, pharmacies, medical professionals, beauticians, and exercise trainers. H.R. at 40-41, 58, 145-150; appellant's Exs. 12, 13. They also assist tenants with personal finance issues, personal hygiene, apartment maintenance, and arranging social activities. Id. Through these various tenant contacts, the coordinators monitor the residents and offer assistance before problems escalate. H.R. at 60. Kohnke testified that the coordinators' daily interaction with residents provides an intangible benefit, comparable to "a surrogate family." H.R. at 47-48. She explained that by extending the time senior residents are able to live independently, EHDOC not only serves the needs of its tenants, but is able to keep low-income residents out of nursing homes, thereby deferring those much higher costs that would otherwise be borne by states and the federal government. H.R. at 55.

Cynthia Jean Franz, a resident at Mayfield Manor I, testified that she finds the living conditions much better at her current apartment than the public housing where she previously resided. H.R. at 117. She partially attributes this improved standard of living to the service coordinator, who has helped her to arrange grief counseling and to obtain medication and food. H.R. at 111.

Stephen Wood, a certified public accountant, testified that he has conducted annual HUD-required audits of the National entities for nine years. H.R. at 183-184; appellant's Exs. 6-10. Wood testified that EHDOC and the National entities

are not-for-profit corporations that have been granted an exemption from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code and receive no tax shelter benefit from the subject properties. H.R. at 185, 192-193. See also S.T. at appellant's Ex. 3 in case number 2006-H-728 and appellant's Ex. 4 in case number 2006-H-729. Finally, Wood also testified that while EHDOC charges a fee for its management services, the National entities have accrued portions of that expense. H.R. at 224-225; appellant's Exs. 7 at 7.

We begin our review by observing that the findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121, 123. Consequently, it is incumbent upon a taxpayer challenging a determination of the Tax Commissioner to rebut that presumption. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135, 143; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138, 142. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213, 215. When no competent and/or probative evidence is developed and properly presented to the board to establish that the commissioner's determination is "clearly unreasonable or unlawful," the determination is presumed to be correct. *Alcan Aluminum*, at 123.

The rule in Ohio is that all real property is subject to taxation. R.C. 5709.01. Exemption from taxation is the exception to the rule. *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186. The burden of establishing that real property should be exempt is on the taxpayer. Exemption statutes must be strictly construed.

American Society for Metals v. Limbach (1991), 59 Ohio St.3d 38, 40; *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio St.3d 432; *White Cross Hospital Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199; *Goldman v. Robert E. Bentley Post* (1952), 158 Ohio St. 205; *Natl. Tube Co. v. Glander* (1952), 157 Ohio St. 407; and *Willys-Overland Motors, Inc. v. Evatt* (1943), 141 Ohio St. 402.

In its applications for exemption, the National entities claim that the subject properties are exempt from taxation pursuant to R.C. 5709.12 and R.C. 5709.121. Under R.C. 5709.12(A), an independent living facility is defined to mean “***any residential housing facilities and related property that are not a nursing home, residential care facility, or adult care facility as defined in division (A) of section 5701.13 of the Revised Code.” Under R.C. 5709.12(B), all “[r]eal and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation ***. *** All property owned and used by a nonprofit organization exclusively for a home for the aged, as defined in section 5701.13 of the Revised Code, also shall be exempt from taxation.” Finally, under R.C. 5709.12(C)(1), “***independent living facilities and the lands connected with them *are not exempt from taxation.*” (Emphasis added.).

The National entities are not seeking an exemption pursuant to the qualifications contained within R.C. 5701.13 as a “home for the aged,” i.e., a licensed nursing home, residential care facility, or adult care facility, recognizing they are not in compliance with that statute. The record, in fact, contains no evidence to indicate the

subject properties are licensed facilities.⁴ Appellant's brief at 11. Therefore, we must concur with the commissioner's finding that the subject properties are independent living facilities, pursuant to R.C. 5709.12(A), and, as such, that use has been explicitly precluded from exemption. S.T. at 5; R.C. 5709.12(C)(1) ("*** independent living facilities and the lands connected with them are not exempt from taxation."). Although we find the National entities do not qualify for exemption as independent living facilities, we must next determine whether they qualify under R.C. 5709.12(B) or R.C. 5709.121.

To grant an exemption under R.C. 5709.12(B), it must first be determined that (1) the property belongs to an institution, and (2) the property is being used exclusively for charitable purposes. *Highland Park Owners, Inc. v. Tracy* (1994), 71 Ohio St.3d 405, 406-407.

Moreover, if an institution is found to be "charitable," it can then be held to a more relaxed standard of "exclusive charitable use" found in R.C. 5709.121. That statute provides:

"Real property and tangible personal property belonging to a charitable *** institution *** shall be considered as used exclusively for charitable *** purposes by such institution, *** if it meets one of the following requirements:

"(A) It is used by such institution, *** or by one or more other such institutions, the state, or political subdivisions under a lease, sublease, or other contractual arrangement:

⁴ National asserts that its use of the properties entails more than just the provision of elderly housing since the properties accept disabled adult tenants age 18 and older, with 25 percent of the 215 residents identified as disabled. Appellant's Exs. 11. We note that the record is inconclusive as to how many, if any, of these residents were between the ages of 18 and 62.

“(1) As a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education there;

“(2) For other charitable, educational, or public purposes;

“(B) It is made available under the direction or control of such institution, *** for use in furtherance of or incidental to its *** charitable *** purposes and not with a view to profit.”

Thus, in deciding whether property is exempt under the charitable use provisions of R.C. 5709.12(B) and 5709.121, the first determination is whether a charitable or noncharitable institution is seeking exemption. If the institution is noncharitable, its property may be exempt if it uses the property exclusively for charitable purposes. *Highland Park Owners, Inc.*, supra. If the institution is charitable, its property may be exempt if it uses the property exclusively for charitable purposes or it uses the property under the terms set forth in R.C. 5709.121. *Olmsted Falls Bd. of Edn. v. Tracy* (1997), 77 Ohio St.3d 393, 396; *Episcopal Parish v. Kinney* (1979), 58 Ohio St.2d 199; *White Cross Hosp. Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199. See, also, *Cincinnati Nature Center v. Bd. of Tax Appeals* (1976), 48 Ohio St.2d 122, 125 (To determine whether property is exempt in accordance with R.C. 5709.121, “property must [1] be under the direction or control of a charitable institution or state or political subdivision, [2] be otherwise made available ‘for use in furtherance of or incidental to’ the institution’s ‘charitable *** or public purposes,’ and [3] not be made available with a view to profit.”).

While the General Assembly has not defined what activities of an institution constitute charitable purposes, the Supreme Court of Ohio held in *Planned Parenthood Assn. of Columbus, Inc. v. Tax Commr.* (1966), 5 Ohio St.2d 117, paragraph one of the syllabus, that:

“[I]n the absence of a legislative definition, ‘charity,’ in the legal sense, is the attempt in good faith, spiritually, physically, intellectually, socially and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources, and without hope or expectation, if not with positive abnegation, of gain or profit by the donor or by the instrumentality of the charity.”

Furthermore, the phrase “used exclusively” has been interpreted by the court to mean primary use. *True Christian Evangelism v. Zaino* (2001), 91 Ohio St.3d 117, 118.

“Whether an institution renders sufficient services to persons who are unable to afford them to be considered as making charitable use of property must be determined on the totality of the circumstances ***.” *Bethesda Healthcare, Inc.*, 101 Ohio St.3d 420, 2004-Ohio-1749, at 39.

In the present matters, we first find that the National entities are not the type of institutions permitted the broader definition of “exclusive charitable use” found under R.C. 5709.121, where the threshold requirement is that the property owner be a charitable or educational institution, state or political subdivision. *True Christianity Evangelism* (1999), 87 Ohio St. 3d 48, 50. Although the record indicates that the National entities are not-for-profit corporations that may operate the subject properties without a view to profit, the entities own apartment buildings and receive market rent

from tenants. H.R. at 104-105. In *Rehab Project v. Tracy* (May 23, 1997), BTA No. 1995-R-418, unreported, which involved "rehabbed" properties that were leased for purchase under an equity-lease program to low-income tenants, this board stated:

"Although Rehab Project is a not-for-profit institution, that alone does not make it a charitable one. Despite the admirable purpose of Rehab's efforts, the fact remains that the organization is not engaged in a charitable activity, that is, building, selling, and leasing low income housing. Rehab Project performs the same function and uses the subject property in the same way as a commercial, for profit entity; that is, the purchase and rehabilitation of real property for resale. Furthermore, Rehab has an extensive leasing program, for which it exacts market rents."

"The primary use of the subject property by Rehab was, and remains, residential housing. Residential housing, even for low income individuals, is not a charitable purpose."

The same can be said about the National entities. While non-profit organizations, the primary purpose of these entities is to provide subsidized housing for which they receive rent, comparable to commercial, for-profit entities. Accordingly, we find that the National entities do not qualify as charitable institutions for purposes of making an exemption determination under R.C. 5709.121.

Even though we find the National entities to be noncharitable institutions, their property could be exempt if used exclusively for charitable purposes. *Highland Park Owners, Inc.*, supra. However, the Supreme Court has consistently held that real property rented and used purely for private residential purposes is not entitled to an exemption under R.C. 5709.12(B). In *Philada Home Fund v. Bd. of Tax*

Appeals (1966), 5 Ohio St.2d 135, despite finding a charitable purpose, the court went on to hold that “[t]he only use of this property is for private residential housing. A long line of Ohio cases hold that property partly or incidentally used for private residence is nonexempt as not used exclusively for charitable purposes.” Later, in *National Church Residences v. Lindley* (1985), 18 Ohio St.3d 53, which approved *Philada*, at 55, the court held “the furnishing of low-cost housing at or below market prices, where residents pay a part or all of their rental costs, is not, in and of itself, an exclusive use of the property for charitable purposes.”

The court in *National Church Residences* also rejected a “services exception” that had been established previously in *Carmelite Sisters, St. Rita’s Home v. Bd. of Review* (1969), 18 Ohio St.2d 41, where exemption was granted based on additional services provided to elderly tenants beyond those traditionally provided to apartment residents. In rejecting the services exception, the court relied on the criteria for the provision of senior housing required by subsequently enacted R.C. 5701.13 and the vicarious nature of the services provided to residents. See, also, *Cogswell Hall v. Kinney* (1987), 30 Ohio St.3d 43 (property rented to elderly women at rates that cover less than half of the maintenance costs held taxable); *Oikos Community Dev. Corp. v. Zaino* (Nov. 9, 2001), BTA No. 2000-T-2037, unreported (finding a 501(c)(3) tax-exempt charitable organization’s renting of multi-family properties to low-income tenants was not an exclusive use for charitable purposes and did not qualify for tax exempt status).

Based on the foregoing case law and statutory requirements, we find the subject properties are not eligible for exemption by solely providing subsidized housing to handicapped adults and elderly tenants. National argues, however, that it fulfills the entities' charitable mission and distinguishes itself from other housing providers with the services provided by the on-site coordinators. Appellant's brief at 10-11. For the following reasons, we find the provision of service coordinators at the subject properties does not demonstrate the properties are being used exclusively for charitable purposes.

We agree with National that the staff at the subject properties not only provides the traditional administrative and maintenance/repair services that any apartment complex would offer, but it also coordinates services between the tenants and social service providers that support the tenants in their goal to live independently. H.R. at 40-41; appellant's Exs. 12, 13. Nevertheless, we find that many of these services are provided by third parties and can be characterized as vicariously charitable in nature, as in *National Church Residences*, supra ("Suffice it to say that any charitable activities *** were provided by volunteer agents or benevolent organizations, and not by appellants who simply contacted these persons or organizations for the purpose of having them provide services for their residents. In the final analysis, appellants are attempting to obtain a vicarious charitable exemption similar to the theory advanced by the taxpayer and rejected by this court in *OCLC Online Computer Library Center, Inc. v. Kinney* (1984), 11 Ohio St. 3d 198.").

We also acknowledge some of National's tenants receive extra oversight directly from the service coordinators that would not normally be provided in a traditional subsidized housing setting. Appellant's Exs. 12, 13. This includes services such as medication monitoring, individual counseling, and assistance with activities of daily living. H.R. at 40-41, 58, 111, 145-150; appellant's Exs. 12, 13. Yet, again in *National Church Residences*, supra, even where the applicant did not necessarily qualify as a "home for the aged" under R.C. 5701.13, the Ohio Supreme Court rejected tax exemption when the legislature had established specific criteria for that area, citing *Toledo Retirement Living v. Board of Tax Appeals* (1971) 27 Ohio St. 2d 255, syllabus ("The General Assembly has exclusive power to choose the subjects, and to establish the criteria, for exemption from taxation. After the General Assembly has marked a specific use of property for exemption and has established the criteria therefor, the function of the judicial branch is limited to interpreting and applying those criteria. *** [T]o qualify its property for exemption from taxation, an institution which characterizes itself as a public charity, but whose purpose is to provide a 'home for the aged,' must meet the criteria therefor adopted by the General Assembly."). See, also, *Rickenbacker Port Authority v. Limbach* (1992), 64 Ohio St. 3d 628 ("the taxpayer [could not] qualify for exemption under the charitable use statute, since its general language could no longer be construed as applying to property for which specific criteria had been established. Hence, we essentially held in *Toledo Retirement* that a property, to be exempt, must qualify under the criteria of the statute specifically applicable to that property."). In this instance, while the National properties may not

qualify as a "home for the aged," the type of services provided by the service coordinators brings them within the ambit of R.C. 5701.13.⁵ As noted above, National concedes it does not meet that statute's requirements.

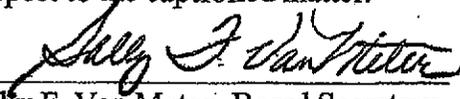
Finally, this board has previously found a charitable exemption when the use of specific services was an integral requirement for all residents as a condition for admission. See *88/96 LP and Community Housing Network v. Wilkins* (July 20, 2007), BTA No. 2005-A-55, unreported, at 12 (involving property described as "permanent affordable housing linked to a safety net" used to "provide case management services, mental health treatment, drug and alcohol treatment, health services, and those types of services that will help the individuals develop life skills so that they can continue to live in the apartment."); *St. Vincent Hotel, Inc. v. Tracy* (Apr. 25, 1997), BTA No. 1996-K-419, et. seq., unreported (finding property used as part of a general "life skills" program, which provides housing, is entitled to exemption). By contrast, the National entities do not require as a condition for living at the subject properties that its tenants utilize any services. Instead, the extra oversight provided by the service coordinators is simply available for the tenants on request.

Whereas National's intent is admirable, review of the record in this case and the applicable law demonstrates that the properties are not being used exclusively for charitable purposes as set forth in R.C. 5709.12(B). *Highland Park Owners, Inc.*, supra. Thus, the subject properties are not entitled to exemption from taxation.

⁵ See R.C. 5701.13(B)(2) ("Exemption from taxation shall be accorded *** only to those homes or parts of homes which meet the standards and provide the services specified in this section.).

Accordingly, it is the decision and order of the Board of Tax Appeals that the Tax Commissioner's final determination must be, and is, affirmed.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.


Sally F. Van Meter, Board Secretary

2009CA00024

NATIONAL STEEL WORKERS OLDTIMER COMMUNITY URBAN DEVELOPMENT VS.
WILLIAM W. WILKINS

Type Of Action :

Judge :

Case Status :

open

Filed On:

02/12/2009

PARTIES

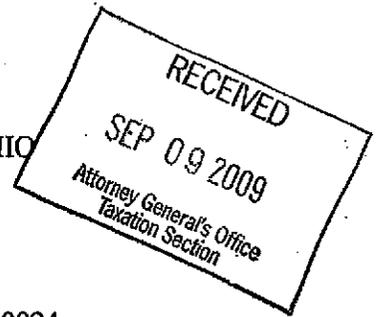
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Type

DOCKET ENTRIES

02-12-2009	NOTICE OF APPEAL FILED - BOARD OF TAX APPEALS CASE 2006-H-728.	
02-12-2009	APPELLANT'S DOCKETING STATEMENT FILED - REG CAL.	
02-12-2009	APPELLANT'S PROOF OF FILING.	
02-12-2009	APPELLANT'S PRAECIPE FILED.	
02-12-2009	COPY OF NOTICE OF APPEAL SENT TO LAWRENCE PRATT BY ORDINARY MAIL; RONALD STARKEY BY ORDINARY MAIL;	\$.00
02-13-2009	DEPOSIT DR069862 RECEIVED FROM STARKEY LAW FIRM	\$90.00
03-04-2009	FILES RECEIVED FROM BOARD OF TAX APPEALS	
03-27-2009	RECORD TRANSMITTED NOTICE SENT TO RONALD STARKEY BY ORDINARY MAIL; LAWRENCE PRATT BY ORDINARY MAIL;	\$.00
04-06-2009	APPELLEE'S APPEARANCE OF COUNSEL RYAN O'ROURKE FILED.	
04-15-2009	APPELLANT'S MOTION FOR CONSOLIDATION.JE.	
04-15-2009	APPELLANT'S MOTION FOR EXTENSION OF TIME TO FILE BRIEF.JE.	
04-24-2009	JUDGMENT ENTRY - EXTENSION OF TIME TO FILE APPELLANT BRIEF 5-18-2009	\$2.00
04-24-2009	COPY OF JUDGMENT ENTRY SENT TO RONALD STARKEY BY ORDINARY MAIL; RYAN O ROURKE BY ORDINARY MAIL;	\$.00
04-28-2009	JUDGMENT ENTRY - CONSOLIDATED CASE 2009CA0023 AND 2009CA0024. 2009CA0024 SHALL BE CONTROLLING CASE.	\$2.00
04-28-2009	COPY OF JUDGMENT ENTRY SENT TO RONALD STARKEY BY ORDINARY MAIL; RYAN O ROURKE BY ORDINARY MAIL;	\$.00
05-18-2009	BRIEF OF APPELLANT	
06-12-2009	BRIEF OF APPELLEE - SEE 2009CA0023 FOR BRIEF	
06-17-2009	REPLY BRIEF OF APPELANT- SEE 2009CA0023	
08-20-2009	COPY OF ORAL ARGUMENT SCHEDULE FOR 9-29-2009 SENT TO RYAN O ROURKE BY ORDINARY MAIL; RONALD STARKEY BY ORDINARY MAIL;	\$.00
09-08-2009	APPELLANT'S NOTICE OF DISMISSAL.NOJE.	

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT



NATIONAL STEELWORKERS
OLDTIMERS COMMUNITY
URBAN DEVELOPMENT
COMPANY

Plaintiff-Appellant

-vs-

WILLIAM W. WILKINS
TAX COMMISSIONER OF OHIO

Defendant-Appellee

CASE NO. 2009 CA 00024
2009 CA 00023

PLAINTIFFS-APPELLANTS' NOTICE OF DISMISSAL OF APPEALS

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William W. Wilkins, Tax Commissioner of Ohio

NOW come the Plaintiffs-Appellants, by and through counsel, and hereby give notice of the VOLUNTARY DISMISSAL of the above-captioned appeals.

Respectfully submitted,

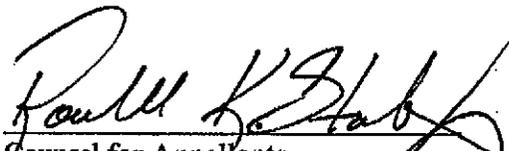
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following counsel of record by regular mail this 4th day of September, 2009:

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Counsel for Appellants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of Appendix to Brief of Appellee Richard A. Levin, Ohio Tax Commissioner was served by regular U.S. mail on this 21st day of September, 2009 upon the following counsel:

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