

**STEWART B. MCKINNEY HOMELESS ASSISTANCE  
AMENDMENTS ACT OF 1988 (Sections 904 and 1012)**

[Public Law 100–628; 102 Stat. 3259; 42 U.S.C. 3544]

【Currency: This publication is a compilation of the text of Public Law 100-628. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

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**SEC. 904. [42 U.S.C. 3544] PREVENTING FRAUD AND ABUSE IN HOUSING  
AND URBAN DEVELOPMENT PROGRAMS.**

(a) DEFINITIONS.—As used in this section:

(1) SECRETARY.—The term “Secretary” means the Secretary of Housing and Urban Development.

(2) APPLICANT; PARTICIPANT.—The terms “applicant” and “participant” shall have such meanings as the Secretary by regulation shall prescribe, except that such terms shall include members of an applicant’s or participant’s household, and such terms shall not include persons whose involvement is only in their official capacity, such as State or local government officials and officers of lending institutions.

(3) PUBLIC HOUSING AGENCY.—The term “public housing agency” means any agency described in section 3(b)(6) of the United States Housing Act of 1937.

(4) PROGRAM OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—The term “program of the Department of Housing and Urban Development” includes Indian housing programs assisted under title II of the United States Housing Act of 1937<sup>1</sup>.

(b) APPLICANT AND PARTICIPANT CONSENT.—As a condition of initial or continuing eligibility for participation in any program of the Department of Housing and Urban Development involving initial and periodic review of an applicant’s or participant’s income, and to assure that the level of benefits provided under the program is correct, the Secretary may require that an applicant or participant—

(1) sign a consent form approved by the Secretary authorizing the Secretary, the public housing agency, or the owner responsible for determining eligibility for or level of benefits to

<sup>1</sup>Section 501(a) of the Native American Housing Assistance and Self-Determination Act of 1996 (P.L. 104–330; 110 Stat. 4041) repealed title II of the United States Housing Act of 1937.

request current or previous employers to verify salary and wage information pertinent to the applicant's or participant's eligibility or level of benefits;

(2) sign a consent form approved by the Secretary authorizing the Secretary or the public housing agency responsible for determining eligibility or level of benefits to request a State agency charged with the administration of the State unemployment law to release wage information with respect to such applicant or participant or information regarding whether such applicant or participant is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received (or to be received) by such applicant or participant;

(3) sign a consent form approved by the Secretary authorizing the Secretary to request the Commissioner of Social Security and the Secretary of the Treasury to release information pursuant to section 6103(l)(7)(D)(ix) of the Internal Revenue Code of 1986 with respect to such applicant or participant for the sole purpose of the Secretary verifying income information pertinent to the applicant's or participant's eligibility or level of benefits; and

(4) only in the case of an applicant or participant that is a member of a family described in section 3(f)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a(f)(2)), sign an agreement under which the applicant or participant agrees to provide to the appropriate public housing agency, or the owner responsible for determining the participant's eligibility or level of benefits, the information required under section 3(f)(1) of such Act for the sole purpose of verifying income information pertinent to the applicant's or participant's eligibility or level of benefits, and comply with such agreement.

Except as provided in this subsection, this consent form shall not be used to request taxpayer return information protected by section 6103 of the Internal Revenue Code of 1986.

(c) ACCESS TO RECORDS.—

(1) AMENDMENTS TO SOCIAL SECURITY ACT.—(A) Section 303 of the Social Security Act (42 U.S.C. 503) is amended by adding at the end the following new subsection:

“(i)<sup>2</sup>(1)

(B) Section 304(a)(2) of the Social Security Act (42 U.S.C. 504(a)(2)) is amended by striking “(e), or (h)” and inserting “(e), (h), or (i)”.

(2) APPLICANT AND PARTICIPANT PROTECTIONS.—(A) In order to protect applicants for, and recipients of, benefits under the programs of the Department of Housing and Urban Development from the improper use of information obtained pursuant to the requirements of section 303(i) of the Social Security Act from the State agency charged with the administration of the State unemployment compensation law, pursuant to section 3(d)(1) of the United States Housing Act of 1937 from the applicant or participant, or pursuant to section 6103(l)(7)(D)(ix) of the Internal Revenue Code of 1986 from the Commissioner

<sup>2</sup>Section 303(i) of the Social Security Act (42 U.S.C. 503(i)) is set forth, *post*, in this part.”

of Social Security or the Secretary of the Treasury, officers and employees of the Department of Housing and Urban Development and (in the case of information obtained pursuant to such section 303(i) or 3(d)(1)) representatives of public housing agencies may only use such information—

(i) to verify an applicant's or participant's eligibility for or level of benefits; or

(ii) in the case of an owner or public housing agency responsible for determining eligibility for or level of benefits, to inform such owner or public housing agency that an applicant's or participant's eligibility for or level of benefits is uncertain and to request such owner or public housing agency to verify such applicant's or participant's income information.

(B) No Federal, State, or local agency, or public housing agency, or owner responsible for determining eligibility for or level of benefits receiving such information may terminate, deny, suspend, or reduce any benefits of an applicant or participant until such agency or owner has taken appropriate steps to independently verify information relating to—

(i) the amount of the wages, other earnings or income, or unemployment compensation involved,

(ii) whether such applicant or participant actually has (or had) access to such wages, other earnings or income, or benefits for his or her own use, and

(iii) the period or periods when, or with respect to which, the applicant or participant actually received such wages, other earnings or income, or benefits.

(C) Such applicant or participant shall be informed by the agency or owner of the findings made by the agency or owner on the basis of such verified information, and shall be given an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility factors under the program.

(3) PENALTY.—(A) Any person who knowingly and willfully requests or obtains any information concerning an applicant or participant pursuant to the authority contained in section 303(i) of the Social Security Act, section 3(d)(1) of the United States Housing Act of 1937, or section 6103(l)(7)(D)(ix) of the Internal Revenue Code of 1986 without consent or agreement, as applicable, pursuant to subsection (b) of this section or under false pretenses, or any person who knowingly and willfully discloses any such information in any manner to any individual not entitled under any law to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. The term "person" as used in this paragraph shall include an officer or employee of the Department of Housing and Urban Development, an officer or employee of any public housing agency, and any owner responsible for determining eligibility for or level of benefits (or employee thereof).

(B) Any applicant or participant affected by (i) a negligent or knowing disclosure of information referred to in this section, section 303(i) of the Social Security Act, section 3(d)(1) of the United States Housing Act of 1937, or section 6103(l)(7)(D)(ix)

of the Internal Revenue Code of 1986 about such person by an officer or employee of any public housing agency or owner (or employee thereof), which disclosure is not authorized by this section, such section 303(i), such section 3(d)(1), such section 6103(l)(7)(D)(ix), or any regulation implementing this section, such section 303(i), such section 3(d)(1), or such section 6103(l)(7)(D)(ix), or for which consent, pursuant to subsection (b) of this section, has not been granted, or (ii) any other negligent or knowing action that is inconsistent with this section, such section 303(i), such section 3(d)(1), such section 6103(l)(7)(D)(ix), or any such implementing regulation may bring a civil action for damages and such other relief as may be appropriate against any officer or employee of any public housing agency or owner (or employee thereof) responsible for any such unauthorized action. The district court of the United States in the district in which the affected applicant or participant resides, in which such unauthorized action occurred, or in which the applicant or participant alleged to be responsible for any such unauthorized action resides, shall have jurisdiction in such matters. Appropriate relief that may be ordered by such district courts shall include reasonable attorney's fees and other litigation costs.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the provisions of this section shall take effect on September 30, 1989.

(2) OPTIONAL EARLY IMPLEMENTATION.—At the initiative of a State or an agency of the State, and with the approval of the Secretary of Labor, the amendments made by subsection (c)(1) may be made effective in such State on any date before September 30, 1989, which is more than 90 days after the date of the enactment of this section.

(3) REQUIREMENTS FOR STATE AGENCIES.—In the case of any State the legislature of which has not been in session for at least 30 calendar days (whether or not consecutive) between the date of the enactment of this Act and September 30, 1989, the amendments made by subsection (c)(1) shall take effect 30 calendar days after the first day on which such legislature is in session on or after September 30, 1989.

(e) CONDITIONS OF RELEASE OF INFORMATION BY THIRD PARTIES.—An applicant or participant under any program of the Department of Housing and Urban Development may not be required or requested to consent to the release of information by third parties as a condition of initial or continuing eligibility for participation in the program unless—

(1) the request for consent is made, and the information secured is maintained, in accordance with this section,<sup>3</sup> section 552a of title 5, United States Code; and

<sup>3</sup> So in law.

(2) the consent that is requested is appropriately limited, with respect to time and information relevant and necessary to meet the requirements of this section. <sup>4</sup>

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**SEC. 1012. [42 U.S.C. 1437f note] USE OF FUNDS RECAPTURED FROM REFINANCING STATE AND LOCAL FINANCE PROJECTS.**

(a) **DEFINITION OF QUALIFIED PROJECT.**—For purposes of this section, the term “qualified project” means any State financed project or local government or local housing agency financed project, that—

(1) was—

(A) provided a financial adjustment factor under section 8 of the United States Housing Act of 1937; or

(B) constructed or substantially rehabilitated pursuant to assistance provided under a contract under section 8(b)(2) of the United States Housing Act of 1937 (as in effect on September 30, 1983) entered into during any of calendar years 1979 through 1984; and

(2) is being refinanced.

(b) **AVAILABILITY OF FUNDS.**—The Secretary shall make available to the State housing finance agency in the State in which a qualified project is located, or the local government or local housing agency initiating the refinancing of the qualified project, as applicable, an amount equal to 50 percent of the amounts recaptured from the project (as determined by the Secretary on a project-by-project basis). Notwithstanding any other provision of law, such amounts shall be used only for providing decent, safe, and sanitary housing affordable for very low-income families and persons.

(c) **APPLICABILITY AND BUDGET COMPLIANCE.**—

(1) **RETROACTIVITY.**—This section shall apply to refinancings of projects for which settlement occurred or occurs before, on, or after the date of the enactment of the Housing and Community Development Act of 1992, subject to the provisions of paragraph (2).

(2) **BUDGET COMPLIANCE.**—This section shall apply only to the extent or in such amounts as are provided in appropriation Acts.

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<sup>4</sup>Section 903 of the Housing and Community Development Act of 1992, Pub. L. 102-550, approved October 28, 1992, added subsection (e). Subsection (b) of such section provides for the development of a new release form meeting the requirements of section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988.