

Sections 202 and 204 and housing provision of the DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 1997

[Public Law 104–204; 110 Stat. 2894; 12 U.S.C. 1715z–11a]

[As Amended Through P.L. 109–171, Enacted February 8, 2006]

[Currency: This publication is a compilation of the text of Public Law 104–204. 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. 202. [42 U.S.C. 1437f note] ADMINISTRATIVE FEES.—Notwithstanding section 8(q) of the United States Housing Act of 1937, as amended—

(a) The Secretary shall establish fees for the cost of administering the certificate, voucher and moderate rehabilitation programs.

(1)(A) For fiscal year 1997, the fee for each month for which a dwelling unit is covered by an assistance contract shall be 7.5 percent of the base amount, adjusted as provided herein, in the case of an agency that, on an annual basis, is administering a program of no more than 600 units, and 7 percent of the base amount, adjusted as provided herein, for each additional unit above 600.

(B) The base amount shall be the higher of—

(i) the fair market rental for fiscal year 1993 for a 2-bedroom existing rental dwelling unit in the market area of the agency; and

(ii) such fair market rental for fiscal year 1994, but not more than 103.5 percent of the amount determined under clause (i).

(C) The base amount shall be adjusted to reflect changes in the wage data or other objectively measurable data that reflect the costs of administering the program during fiscal year 1996; except that the Secretary may require that the base amount be not less than a minimum amount and not more than a maximum amount.

(2) For subsequent fiscal years, the Secretary shall publish a notice in the Federal Register, for each geographic area, establishing the amount of the fee that would apply for the agen-

cies administering the program, based on changes in wage data or other objectively measurable data that reflect the cost of administering the program, as determined by the Secretary.

(3) The Secretary may increase the fee if necessary to reflect higher costs of administering small programs and programs operating over large geographic areas.

(4) The Secretary may decrease the fee for PHA-owned units.

(b) Beginning in fiscal year 1997 and thereafter, the Secretary shall also establish reasonable fees (as determined by the Secretary) for—

(1) the costs of preliminary expenses, in the amount of \$500, for a public housing agency, but only in the first year it administers a tenant-based assistance program under the United States Housing Act of 1937 and only if, immediately before the effective date of this Act, it was not administering a tenant-based assistance program under the 1937 Act (as in effect immediately before the effective date of this Act), in connection with its initial increment of assistance received;

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

(3) extraordinary costs approved by the Secretary.

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SEC. 204. [12 U.S.C. 1715z–11a] DISPOSITION OF HUD-OWNED PROPERTIES.—(a) FLEXIBLE AUTHORITY FOR MULTIFAMILY PROJECTS.—During fiscal year 1997 and fiscal years thereafter, the Secretary may manage and dispose of multifamily properties owned by the Secretary, including, for fiscal years 1997, 1998, 1999, 2000, and thereafter, the provision of grants and loans from the General Insurance Fund (12 U.S.C. 1735(c)) for the necessary costs of rehabilitation, demolition, or construction on the properties (which shall be eligible whether vacant or occupied) and multifamily mortgages held by the Secretary on such terms and conditions as the Secretary may determine, notwithstanding any other provision of law. A grant provided under this subsection during fiscal years 2006 through 2010 shall be available only to the extent that appropriations are made in advance for such purposes and shall not be derived from the General Insurance Fund.

(b) TRANSFER OF UNOCCUPIED AND SUBSTANDARD HOUSING TO LOCAL GOVERNMENTS AND COMMUNITY DEVELOPMENT CORPORATIONS.—

(1) TRANSFER AUTHORITY.—Notwithstanding the authority under subsection (a) and the last sentence of section 204(g) of the National Housing Act (12 U.S.C. 1710(g)), the Secretary of Housing and Urban Development shall transfer ownership of any qualified HUD property, subject to the requirements of this section, to a unit of general local government having jurisdiction for the area in which the property is located or to a community development corporation which operates within such a unit of general local government in accordance with this subsection, but only to the extent that units of general local government and community development corporations consent

to transfer and the Secretary determines that such transfer is practicable.

(2) QUALIFIED HUD PROPERTIES.—For purposes of this subsection, the term “qualified HUD property” means any property for which, as of the date that notification of the property is first made under paragraph (3)(B), not less than 6 months have elapsed since the later of the date that the property was acquired by the Secretary or the date that the property was determined to be unoccupied or substandard, that is owned by the Secretary and is—

- (A) an unoccupied multifamily housing project;
- (B) a substandard multifamily housing project; or
- (C) an unoccupied single family property that—
 - (i) has been determined by the Secretary not to be an eligible asset under section 204(h) of the National Housing Act (12 U.S.C. 1710(h)); or
 - (ii) is an eligible asset under such section 204(h), but—
 - (I) is not subject to a specific sale agreement under such section; and
 - (II) has been determined by the Secretary to be inappropriate for continued inclusion in the program under such section 204(h) pursuant to paragraph (10) of such section.

(3) TIMING.—The Secretary shall establish procedures that provide for—

- (A) time deadlines for transfers under this subsection;
- (B) notification to units of general local government and community development corporations of qualified HUD properties in their jurisdictions;
- (C) such units and corporations to express interest in the transfer under this subsection of such properties;
- (D) a right of first refusal for transfer of qualified HUD properties to units of general local government and community development corporations, under which—
 - (i) the Secretary shall establish a period during which the Secretary may not transfer such properties except to such units and corporations;
 - (ii) the Secretary shall offer qualified HUD properties that are single family properties for purchase by units of general local government at a cost of \$1 for each property, but only to the extent that the costs to the Federal Government of disposal at such price do not exceed the costs to the Federal Government of disposing of property subject to the procedures for single family property established by the Secretary pursuant to the authority under the last sentence of section 204(g) of the National Housing Act (12 U.S.C. 1710(g));
 - (iii) the Secretary may accept an offer to purchase a property made by a community development corporation only if the offer provides for purchase on a cost recovery basis; and

(iv) the Secretary shall accept an offer to purchase such a property that is made during such period by such a unit or corporation and that complies with the requirements of this paragraph; and

(E) a written explanation, to any unit of general local government or community development corporation making an offer to purchase a qualified HUD property under this subsection that is not accepted, of the reason that such offer was not acceptable.

(4) OTHER DISPOSITION.—With respect to any qualified HUD property, if the Secretary does not receive an acceptable offer to purchase the property pursuant to the procedure established under paragraph (3), the Secretary shall dispose of the property to the unit of general local government in which property is located or to community development corporations located in such unit of general local government on a negotiated, competitive bid, or other basis, on such terms as the Secretary deems appropriate.

(5) SATISFACTION OF INDEBTEDNESS.—Before transferring ownership of any qualified HUD property pursuant to this subsection, the Secretary shall satisfy any indebtedness incurred in connection with the property to be transferred, by canceling the indebtedness.

(6) DETERMINATION OF STATUS OF PROPERTIES.—To ensure compliance with the requirements of this subsection, the Secretary shall take the following actions:

(A) UPON ENACTMENT.—Upon the enactment of this subsection, the Secretary shall promptly assess each residential property owned by the Secretary to determine whether such property is a qualified HUD property.

(B) UPON ACQUISITION.—Upon acquiring any residential property, the Secretary shall promptly determine whether the property is a qualified HUD property.

(C) UPDATES.—The Secretary shall periodically reassess the residential properties owned by the Secretary to determine whether any such properties have become qualified HUD properties.

(7) TENANT LEASES.—This subsection shall not affect the terms or the enforceability of any contract or lease entered into with respect to any residential property before the date that such property becomes a qualified HUD property.

(8) USE OF PROPERTY.—Property transferred under this subsection shall be used only for appropriate neighborhood revitalization efforts, including homeownership, rental units, commercial space, and parks, consistent with local zoning regulations, local building codes, and subdivision regulations and restrictions of record.

(9) INAPPLICABILITY TO PROPERTIES MADE AVAILABLE FOR HOMELESS.—Notwithstanding any other provision of this subsection, this subsection shall not apply to any properties that the Secretary determines are to be made available for use by the homeless pursuant to subpart E of part 291 of title 24, Code of Federal Regulations, during the period that the properties are so available.

(10) PROTECTION OF EXISTING CONTRACTS.—This subsection may not be construed to alter, affect, or annul any legally binding obligations entered into with respect to a qualified HUD property before the property becomes a qualified HUD property.

(11) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) COMMUNITY DEVELOPMENT CORPORATION.—The term “community development corporation” means a non-profit organization whose primary purpose is to promote community development by providing housing opportunities for low-income families.

(B) COST RECOVERY BASIS.—The term “cost recovery basis” means, with respect to any sale of a residential property by the Secretary, that the purchase price paid by the purchaser is equal to or greater than the sum of: (i) the appraised value of the property, as determined in accordance with such requirements as the Secretary shall establish; and (ii) the costs incurred by the Secretary in connection with such property during the period beginning on the date on which the Secretary acquires title to the property and ending on the date on which the sale is consummated.

(C) MULTIFAMILY HOUSING PROJECT.—The term “multifamily housing project” has the meaning given the term in section 203 of the Housing and Community Development Amendments of 1978.

(D) RESIDENTIAL PROPERTY.—The term “residential property” means a property that is a multifamily housing project or a single family property.

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

(F) SEVERE PHYSICAL PROBLEMS.—The term “severe physical problems” means, with respect to a dwelling unit, that the unit—

(i) lacks hot or cold piped water, a flush toilet, or both a bathtub and a shower in the unit, for the exclusive use of that unit;

(ii) on not less than three separate occasions during the preceding winter months, was uncomfortably cold for a period of more than 6 consecutive hours due to a malfunction of the heating system for the unit;

(iii) has no functioning electrical service, exposed wiring, any room in which there is not a functioning electrical outlet, or has experienced three or more blown fuses or tripped circuit breakers during the preceding 90-day period;

(iv) is accessible through a public hallway in which there are no working light fixtures, loose or missing steps or railings, and no elevator; or

(v) has severe maintenance problems, including water leaks involving the roof, windows, doors, basement, or pipes or plumbing fixtures, holes or open

cracks in walls or ceilings, severe paint peeling or broken plaster, and signs of rodent infestation.

(G) SINGLE FAMILY PROPERTY.—The term “single family property” means a 1- to 4-family residence.

(H) SUBSTANDARD.—The term “substandard” means, with respect to a multifamily housing project, that 25 percent or more of the dwelling units in the project have severe physical problems.

(I) UNIT OF GENERAL LOCAL GOVERNMENT.—The term “unit of general local government” has the meaning given such term in section 102(a) of the Housing and Community Development Act of 1974.

(J) UNOCCUPIED.—The term “unoccupied” means, with respect to a residential property, that the unit of general local government having jurisdiction over the area in which the project is located has certified in writing that the property is not inhabited.

(12) REGULATIONS.—

(A) INTERIM.—Not later than 30 days after the date of the enactment of this subsection¹, the Secretary shall issue such interim regulations as are necessary to carry out this subsection.

(B) FINAL.—Not later than 60 days after the date of the enactment of this subsection¹, the Secretary shall issue such final regulations as are necessary to carry out this subsection.

PRESERVING EXISTING HOUSING INVESTMENT

* * * [12 U.S.C. 4101 note] *Provided further*, That of the total amount provided under this head, \$350,000,000 shall be available for use in conjunction with properties that are eligible for assistance under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) or the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA), of which \$75,000,000 shall be available for obligation until March 1, 1997 for projects (1) that are subject to a repayment or settlement agreement that was executed between the owner and the Secretary prior to September 1, 1995; (2) whose submissions were delayed as a result of their location in areas that were designated as a Federal disaster area in a Presidential Disaster Declaration; or (3) whose processing was, in fact or in practical effect, suspended, deferred, or interrupted for a period of twelve months or more because of differing interpretations, by the Secretary and an owner or by the Secretary and a State or local rent regulatory agency, concerning the timing of filing eligibility or the effect of a presumptively applicable State or local rent control law or regulation on the determination of preservation value under section 213 of LIHPRHA, as amended, if the owner of such project filed notice of intent to extend the low-income affordability restrictions of the housing, or transfer to a qualified purchaser who would extend such restrictions, on or before November 1, 1993; and of which, up to \$100,000,000 may be used for rental assistance to prevent displace-

¹ The date of enactment was December 21, 2000.

ment of families residing in projects whose owners prepay their mortgages; and the balance of which shall be available from the effective date of this Act² for sales to preferred priority purchasers: *Provided further*, That with the exception of projects described in clauses (1), (2), or (3) of the preceding proviso, the Secretary shall, notwithstanding any other provision of law, suspend further processing of preservation applications which have not heretofore received approval of a plan of action: *Provided further*, That \$150,000,000 of amounts recaptured from interest reduction payment contracts for section 236 projects whose owners prepay their mortgages during fiscal year 1997 shall be rescinded: *Provided further*, That an owner of eligible low-income housing may prepay the mortgage or request voluntary termination of a mortgage insurance contract, so long as said owner agrees not to raise rents for sixty days after such prepayment: *Provided further*, That such developments have been determined to have preservation equity at least equal to the lesser of \$5,000 per unit or \$500,000 per project or the equivalent of eight times the most recently published monthly fair market rent for the area in which the project is located as the appropriate unit size for all of the units in the eligible project: *Provided further*, That the Secretary may modify the regulatory agreement to permit owners and priority purchasers to retain rental income in excess of the basic rental charge in projects assisted under section 236 of the National Housing Act, for the purpose of preserving the low- and moderate-income character of the housing: *Provided further*, That eligible low-income housing shall include properties meeting the requirements of this paragraph with mortgages that are held by a State agency as a result of a sale by the Secretary without insurance, which immediately before the sale would have been eligible low-income housing under LIHPRHA: *Provided further*, That notwithstanding any other provision of law, subject to the availability of appropriated funds, each low-income family, and moderate-income family who is elderly or disabled or is residing in a low-vacancy area, residing in the housing on the date of prepayment or voluntary termination, and whose rent, as a result of a rent increase occurring no later than one year after the date of the prepayment, exceeds 30 percent of adjusted income, shall be offered tenant-based assistance in accordance with section 8 or any successor program, under which the family shall pay no less for rent than it paid on such date: *Provided further*, That any family receiving tenant-based assistance under the preceding proviso may elect (1) to remain in the unit of the housing and if the rent exceeds the fair market rent or payment standard, as applicable, the rent shall be deemed to be the applicable standard, so long as the administering public housing agency finds that the rent is reasonable in comparison with rents charged for comparable unassisted housing units in the market or (2) to move from the housing and the rent will be subject to the fair market rent of³ the payment standard, as applicable, under existing program rules and procedures: *Provided further*, That the tenant-based assistance made available under the preceding two provisos are in lieu of ben-

² October 1, 1996.

³ So in law. Probably should be "or".

efits provided in subsections 223(b), (c), and (d) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990: *Provided further*, That any sales shall be funded using the capital grant available under section 220(d)(3)(A) of LIHPRHA: *Provided further*, That any extensions shall be funded using a non-interest-bearing capital (direct) loan by the Secretary not in excess of the amount of the cost of rehabilitation approved in the plan of action plus 65 percent of the property's preservation equity and under such other terms and conditions as the Secretary may prescribe: *Provided further*, That any capital grant shall be limited to seven times, and any capital loan limited to six times, the annual fair market rent for the project, as determined using the fair market rent for fiscal year 1997 for the area in which the project is located, using the appropriate apartment sizes and mix in the eligible project, except where, upon the request of a priority purchaser, the Secretary determines that a greater amount is necessary and appropriate to preserve low-income housing: *Provided further*, That section 241(f) of the National Housing Act is repealed and insurance under such section shall not be offered as an incentive under LIHPRHA and ELIHPA: *Provided further*, That up to \$10,000,000 of the amount of \$350,000,000 made available by a preceding proviso in this paragraph may be used at the discretion of the Secretary to reimburse owners of eligible properties for which plans of action were submitted prior to the effective date of this Act⁴, but were not executed for lack of available funds, with such reimbursement available only for documented costs directly applicable to the preparation of the plan of action as determined by the Secretary, and shall be made available on terms and conditions to be established by the Secretary: *Provided further*, That, notwithstanding any other provision of law, a priority purchaser may utilize assistance under the HOME Investment Partnerships Act or the Low Income Housing Tax Credit: *Provided further*, That projects with approved plans of action which exceed the limitations on eligibility for funding imposed by this Act may submit revised plans of action which conform to these limitations by March 1, 1997, and retain the priority for funding otherwise applicable from the original date of approval of their plan of action, subject to securing any additional necessary funding commitments by August 1, 1997.

⁴ October 1, 1996.