

generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

CODIFICATION

Section was not enacted as part of the United States Housing Act of 1937 which comprises this chapter.

AMENDMENTS

1967—Pub. L. 90-19 substituted “Secretary of Housing and Urban Development” for “Public Housing Commissioner”.

§ 1436. Repealed. Pub. L. 91-609, title V, § 503(4), Dec. 31, 1970, 84 Stat. 1786

Section, Pub. L. 87-70, title II, §207, June 30, 1961, 75 Stat. 165; Pub. L. 88-560, title II, §203(e), title IV, §407, Sept. 2, 1964, 78 Stat. 784, 796; Pub. L. 89-117, title XI, §1105, Aug. 10, 1965, 79 Stat. 503; Pub. L. 90-19, §18(a), May 25, 1967, 81 Stat. 25; Pub. L. 90-448, title XVII, §1714(a), Aug. 1, 1968, 82 Stat. 607, provided for low-rent housing demonstration programs and development grants. See section 1701z-1 et seq. of Title 12, Banks and Banking.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL: SAVINGS PROVISION

Pub. L. 91-609, title V, §503, Dec. 31, 1970, 84 Stat. 1785, provided in part for repeal of sections 1701d-3, 1701e, 1701e note, and 1701f of Title 12, Banks and Banking, this section, note below, section 1452a, section 1456 note, and sections 3372, 3373 of this title, effective July 1, 1971, except that the repeal shall not affect contracts, commitments, reservations, or other obligations entered pursuant to such provisions prior to July 1, 1971.

REPORT OF SELF-HELP STUDIES AND DEMONSTRATIONS

Pub. L. 90-448, title XVII, §1714(b), Aug. 1, 1968, 82 Stat. 607, providing for report to Congress within one year after Aug. 1, 1968, respecting self-help studies and demonstrations, was repealed by Pub. L. 91-609, title V, §503(7), Dec. 31, 1970, 84 Stat. 1786.

§ 1436a. Restriction on use of assisted housing by non-resident aliens

(a) Conditions for assistance

Notwithstanding any other provision of law, the applicable Secretary may not make financial assistance available for the benefit of any alien unless that alien is a resident of the United States and is—

(1) an alien lawfully admitted for permanent residence as an immigrant as defined by section 1101(a)(15) and (20) of title 8, excluding, among others, alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country;

(2) an alien who entered the United States prior to June 30, 1948, or such subsequent date as is enacted by law, has continuously maintained his or her residence in the United States since then, and is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 1259 of title 8;

(3) an alien who is lawfully present in the United States pursuant to an admission under section 1157 of title 8 or pursuant to the grant-

ing of asylum (which has not been terminated) under section 1158 of title 8;

(4) an alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 1182(d)(5) of title 8;

(5) an alien who is lawfully present in the United States as a result of the Attorney General's withholding deportation pursuant to section 1231(b)(3) of title 8;

(6) an alien lawfully admitted for temporary or permanent residence under section 1255a of title 8; or

(7) an alien who is lawfully resident in the United States and its territories and possessions under section 141 of the Compacts of Free Association between the Government of the United States and the Governments of the Marshall Islands, the Federated States of Micronesia (48 U.S.C. 1901 note) and Palau (48 U.S.C. 1931 note) while the applicable section is in effect: *Provided*, That, within Guam any any¹ citizen or national of the United States shall be entitled to a preference or priority in receiving financial assistance before any such alien who is otherwise eligible for assistance.

(b) “Financial assistance” defined

(1) For purposes of this section the term “financial assistance” means financial assistance made available pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], section 1715z or 1715z-1 of title 12, the direct loan program under section 1472 of this title or section 1472(c)(5)(D), 1474, 1490a(a)(2)(A), or 1490r of this title, subtitle A of title III of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12851 et seq.], or section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s].

(2) If the eligibility for financial assistance of at least one member of a family has been affirmatively established under the program of financial assistance and under this section, and the ineligibility of one or more family members has not been affirmatively established under this section, any financial assistance made available to that family by the applicable Secretary shall be prorated, based on the number of individuals in the family for whom eligibility has been affirmatively established under the program of financial assistance and under this section, as compared with the total number of individuals who are members of the family.

(c) Preservation of families; students

(1) If, following completion of the applicable hearing process, financial assistance for any individual receiving such assistance on February 5, 1988, is to be terminated, the public housing agency or other local governmental entity involved (in the case of public housing or assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f]) or the applicable Secretary (in the case of any other financial assistance) shall take one of the following actions:

(A) Permit the continued provision of financial assistance, if necessary to avoid the divi-

¹ So in original.

sion of a family in which the head of household or spouse is a citizen of the United States, a national of the United States, or an alien resident of the United States described in any of paragraphs (1) through (6) of subsection (a). For purposes of this paragraph, the term “family” means a head of household, any spouse, any parents of the head of household, any parents of the spouse, and any children of the head of household or spouse. Financial assistance continued under this subparagraph for a family may be provided only on a prorated basis, under which the amount of financial assistance is based on the percentage of the total number of members of the family that are eligible for that assistance under the program of financial assistance and under this section.

(B)(i) Defer the termination of financial assistance, if necessary to permit the orderly transition of the individual and any family members involved to other affordable housing.

(ii) Except as provided in clause (iii), any deferral under this subparagraph shall be for a 6-month period and may be renewed by the public housing agency or other entity involved for an aggregate period of 18-months. At the beginning of each deferral period, the public housing agency or other entity involved shall inform the individual and family members of their ineligibility for financial assistance and offer them other assistance in finding other affordable housing.

(iii) The time period described in clause (ii) shall not apply in the case of a refugee under section 1157 of title 8 or an individual seeking asylum under section 1158 of title 8.

(2) Notwithstanding any other provision of law, the applicable Secretary may not make financial assistance available for the benefit of—

(A) any alien who—

(i) has a residence in a foreign country that such alien has no intention of abandoning;

(ii) is a bona fide student qualified to pursue a full course of study; and

(iii) is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such alien and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn); and

(B) the alien spouse and minor children of any alien described in subparagraph (A), if accompanying such alien or following to join such alien.

(d) Conditions for provision of financial assistance for individuals

The following conditions apply with respect to financial assistance being or to be provided for the benefit of an individual:

(1)(A) There must be a declaration in writing by the individual (or, in the case of an individual who is a child, by another on the individual's behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status. If the declaration states that the individual is not a citizen or national of the United States and that the individual is younger than 62 years of age, the declaration shall be verified by the Immigration and Naturalization Service. If the declaration states that the individual is a citizen or national of the United States, the applicable Secretary, or the agency administering assistance covered by this section, may request verification of the declaration by requiring presentation of documentation that the applicable Secretary considers appropriate, including a United States passport, resident alien card, alien registration card, social security card, or other documentation.

(B) In this subsection, the term “satisfactory immigration status” means an immigration status which does not make the individual ineligible for financial assistance.

(2) If such an individual is not a citizen or national of the United States, is not 62 years of age or older, and is receiving financial assistance on September 30, 1996, or applying for financial assistance on or after September 30, 1996, there must be presented either—

(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

(B) such other documents as the applicable Secretary determines constitutes reasonable evidence indicating a satisfactory immigration status.

In the case of an individual applying for financial assistance on or after September 30, 1996, the applicable Secretary may not provide any such assistance for the benefit of that individual before documentation is presented and verified under paragraph (3) or (4).

(3) If the documentation described in paragraph (2)(A) is presented, the applicable Secretary shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—

(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

(B) protects the individual's privacy to the maximum degree possible.

(4) In the case of such an individual who is not a citizen or national of the United States, is not 62 years of age or older, and is receiving financial assistance on September 30, 1996, or applying for financial assistance on or after September 30, 1996, if, at the time of applica-

tion or recertification for financial assistance, the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

(A) the applicable Secretary—

(i) shall provide a reasonable opportunity, not to exceed 30 days, to submit to the applicable Secretary evidence indicating a satisfactory immigration status, or to appeal to the Immigration and Naturalization Service the verification determination of the Immigration and Naturalization Service under paragraph (3),

(ii) in the case of any individual receiving assistance on September 30, 1996, may not delay, deny, reduce, or terminate the eligibility of that individual for financial assistance on the basis of the immigration status of that individual until the expiration of that 30-day period; and

(iii) in the case of any individual applying for financial assistance on or after September 30, 1996, may not deny the application for such assistance on the basis of the immigration status of that individual until the expiration of that 30-day period; and

(B) if any documents or additional information are submitted as evidence under subparagraph (A), or if appeal is made to the Immigration and Naturalization Service with respect to the verification determination of the Service under paragraph (3)—

(i) the applicable Secretary shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents or additional information for official verification,

(ii) pending such verification or appeal, the applicable Secretary may not—

(I) in the case of any individual receiving assistance on September 30, 1996, delay, deny, reduce, or terminate the eligibility of that individual for financial assistance on the basis of the immigration status of that individual; and

(II) in the case of any individual applying for financial assistance on or after September 30, 1996, deny the application for such assistance on the basis of the immigration status of that individual; and

(iii) the applicable Secretary shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

(5) If the applicable Secretary determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status, the applicable Secretary shall—

(A) deny the application of that individual for financial assistance or terminate the eligibility of that individual for financial assistance, as applicable;

(B) provide that the individual may request a fair hearing during the 30-day period

beginning upon receipt of the notice under subparagraph (C); and

(C) provide to the individual written notice of the determination under this paragraph, the right to a fair hearing process, and the time limitation for requesting a hearing under subparagraph (C).

(6) The applicable Secretary shall terminate the eligibility for financial assistance of an individual and the members of the household of the individual, for a period of not less than 24 months, upon determining that such individual has knowingly permitted another individual who is not eligible for such assistance to reside in the public or assisted housing unit of the individual. This provision shall not apply to a family if the ineligibility of the ineligible individual at issue was considered in calculating any proration of assistance provided for the family.

For purposes of this subsection, the term “applicable Secretary” means the applicable Secretary, a public housing agency, or another entity that determines the eligibility of an individual for financial assistance.

(e) Regulatory actions against entities for erroneous determinations regarding eligibility based upon citizenship or immigration status

The applicable Secretary shall not take any compliance, disallowance, penalty, or other regulatory action against an entity with respect to any error in the entity’s determination to make an individual eligible for financial assistance based on citizenship or immigration status—

(1) if the entity has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

(2) because the entity, under subsection (d)(4)(A)(ii) (or under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99-603)), was required to provide a reasonable opportunity to submit documentation, or

(3) because the entity, under subsection (d)(4)(B)(ii) (or under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99-603)), was required to wait for the response of the Immigration and Naturalization Service to the entity’s request for official verification of the immigration status of the individual, or the response from the Immigration and Naturalization Service to the appeal of that individual.

(f) Verification system; liability of State or local government agencies or officials; prior consent agreements, court decrees or court orders unaffected

(1) Notwithstanding any other provision of law, no agency or official of a State or local government shall have any liability for the design or implementation of the Federal verification system described in subsection (d) if the implementation by the State or local agency or official is in accordance with Federal rules and regulations.

(2) The verification system of the Department of Housing and Urban Development shall not supersede or affect any consent agreement entered into or court decree or court order entered prior to February 5, 1988.

(g) Reimbursement for costs of implementation

The applicable Secretary is authorized to pay to each public housing agency or other entity an amount equal to 100 percent of the costs incurred by the public housing agency or other entity in implementing and operating an immigration status verification system under subsection (d) (or under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99-603)).

(h) “Applicable Secretary” defined

For purposes of this section, the term “applicable Secretary” means—

(1) the Secretary of Housing and Urban Development, with respect to financial assistance administered by such Secretary and financial assistance under subtitle A of title III of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12851 et seq.]; and

(2) the Secretary of Agriculture, with respect to financial assistance administered by such Secretary.

(i) Verification of eligibility

(1) In general

No individual or family applying for financial assistance may receive such financial assistance prior to the affirmative establishment and verification of eligibility of at least the individual or one family member under subsection (d) by the applicable Secretary or other appropriate entity.

(2) Rules applicable to public housing agencies

A public housing agency (as that term is defined in section 3 of the United States Housing Act of 1937 [42 U.S.C. 1437a])—

(A) may, notwithstanding paragraph (1) of this subsection, elect not to affirmatively establish and verify eligibility before providing financial assistance²

(B) in carrying out subsection (d)—

(i) may initiate procedures to affirmatively establish or verify the eligibility of an individual or family under this section at any time at which the public housing agency determines that such eligibility is in question, regardless of whether or not that individual or family is at or near the top of the waiting list of the public housing agency;

(ii) may affirmatively establish or verify the eligibility of an individual or family under this section in accordance with the procedures set forth in section 1324a(b)(1) of title 8; and

(iii) shall have access to any relevant information contained in the SAVE system (or any successor thereto) that relates to any individual or family applying for financial assistance.

² So in original. Probably should be followed by “; and”.

(3) Eligibility of families

For purposes of this subsection, with respect to a family, the term “eligibility” means the eligibility of each family member.

(Pub. L. 96-399, title II, §214, Oct. 8, 1980, 94 Stat. 1637; Pub. L. 97-35, title III, §329(a), Aug. 13, 1981, 95 Stat. 408; Pub. L. 99-603, title I, §121(a)(2), Nov. 6, 1986, 100 Stat. 3386; Pub. L. 100-242, title I, §164(a)-(f)(1), Feb. 5, 1988, 101 Stat. 1860-1863; Pub. L. 104-193, title IV, §441(a), Aug. 22, 1996, 110 Stat. 2276; Pub. L. 104-208, div. C, title III, §308(g)(7)(D)(ii), title V, §§572-576, Sept. 30, 1996, 110 Stat. 3009-624, 3009-684, 3009-685, 3009-687; Pub. L. 105-276, title V, §592(a), Oct. 21, 1998, 112 Stat. 2653; Pub. L. 106-504, §3(b), Nov. 13, 2000, 114 Stat. 2312; Pub. L. 114-201, title I, §113, July 29, 2016, 130 Stat. 804.)

Editorial Notes

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (b), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to this chapter (§1437 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsecs. (b)(1) and (h)(1), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, as amended. Subtitle A of title III of the Act, known as the National Homeownership Trust Act, is classified generally to subchapter III (§12851 et seq.) of chapter 130 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

Section 101 of the Housing and Urban Development Act of 1965, referred to in subsec. (b), is section 101 of Pub. L. 89-117, title I, Aug. 10, 1965, 79 Stat. 451, which enacted section 1701s of Title 12, Banks and Banking, and amended sections 1451 and 1465 of this title.

The Immigration Reform and Control Act of 1986, referred to in subsecs. (e)(2), (3) and (g), is Pub. L. 99-603, Nov. 6, 1986, 100 Stat. 3359. For complete classification of this Act to the Code, see Short Title of 1986 Amendments note set out under section 1101 of Title 8, Aliens and Nationality, and Tables.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1980, and not as part of the United States Housing Act of 1937 which comprises this chapter.

AMENDMENTS

2016—Subsec. (a)(7). Pub. L. 114-201 substituted “any citizen or national of the United States shall be entitled to a preference or priority in receiving financial assistance before any such alien who is otherwise eligible for assistance.” for “such alien shall not be entitled to a preference in receiving assistance under this Act over any United States citizen or national resident therein who is otherwise eligible for such assistance.”

2000—Subsec. (a)(7). Pub. L. 106-504 added par. (7).

1998—Subsec. (b)(2). Pub. L. 105-276, §592(a)(1), substituted “applicable Secretary” for “Secretary of Housing and Urban Development”.

Subsec. (c)(1)(B). Pub. L. 105-276, §592(a)(2), aligned cls. (ii) and (iii) with cl. (i).

Subsec. (d)(1)(A). Pub. L. 105-276, §592(a)(3)(A), in last sentence, substituted “applicable Secretary, or” for “Secretary of Housing and Urban Development, or” and “applicable Secretary considers” for “Secretary considers”.

Subsec. (d)(2). Pub. L. 105-276, §592(a)(3)(B), aligned concluding provisions with par. (2) and inserted “applicable” before “Secretary” in concluding provisions.

Subsec. (d)(4)(B)(ii). Pub. L. 105-276, § 592(a)(3)(C), inserted “applicable” before “Secretary” in introductory provisions.

Subsec. (d)(5). Pub. L. 105-276, § 592(a)(3)(D), substituted “the applicable Secretary shall” for “the Secretary shall” in introductory provisions.

Subsec. (d)(6). Pub. L. 105-276, § 592(a)(3)(E), inserted “applicable” before “Secretary”.

Subsec. (h). Pub. L. 105-276, § 592(a)(5), redesignated subsec. (h), relating to verification of eligibility, as (i).

Subsec. (h)(1). Pub. L. 105-276, § 592(a)(4)(A), substituted “No” for “Except in the case of an election under paragraph (2)(A), no” and “subsection (d)” for “this section” and inserted “applicable” before “Secretary”.

Subsec. (h)(2)(A). Pub. L. 105-276, § 592(a)(4)(B)(i), added subpar. (A) and struck out former subpar. (A) which read as follows: “may elect not to comply with this section; and”.

Subsec. (h)(2)(B). Pub. L. 105-276, § 592(a)(4)(B)(ii), substituted “in carrying out subsection (d)” for “in complying with this section” in introductory provisions.

Subsec. (i). Pub. L. 105-276, § 592(a)(5), redesignated subsec. (h), relating to verification of eligibility, as (i). 1996—Subsec. (a). Pub. L. 104-193, § 441(a)(1), substituted “applicable Secretary” for “Secretary of Housing and Urban Development” in introductory provisions.

Subsec. (a)(5). Pub. L. 104-208, § 308(g)(7)(D)(ii), substituted “section 1231(b)(3)” for “section 1253(h)”.

Subsec. (b). Pub. L. 104-208, § 572, designated existing provisions as par. (1) and added par. (2).

Pub. L. 104-193, § 441(a)(2), inserted “the direct loan program under section 1472 of this title or section 1472(c)(5)(D), 1474, 1490a(a)(2)(A), or 1490r of this title, subtitle A of title III of the Cranston-Gonzalez National Affordable Housing Act,” after “1715z-1 of title 12.”

Subsec. (c). Pub. L. 104-193, § 441(a)(1), substituted “applicable Secretary” for “Secretary of Housing and Urban Development” in two places.

Subsec. (c)(1). Pub. L. 104-208, § 573(1), substituted “shall” for “may, in its discretion,” in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 104-208, § 573(2), inserted at end “Financial assistance continued under this subparagraph for a family may be provided only on a prorated basis, under which the amount of financial assistance is based on the percentage of the total number of members of the family that are eligible for that assistance under the program of financial assistance and under this section.”

Subsec. (c)(1)(B). Pub. L. 104-208, § 573(3), designated first sentence of existing provisions as cl. (i), designated second and third sentences of existing provisions as cl. (ii) and substituted “Except as provided in clause (iii), any deferral” for “Any deferral” and “18-months” for “3 years”, and added cl. (iii).

Subsec. (d). Pub. L. 104-208, § 574(1), inserted “or to be” after “being” in introductory provisions.

Pub. L. 104-193, § 441(a)(3), substituted “applicable Secretary” for “Secretary” wherever appearing in pars. (2) to (6).

Pub. L. 104-193, § 441(a)(1), (4), substituted “the term ‘applicable Secretary’” for “the term ‘Secretary’” and “applicable Secretary” for “Secretary of Housing and Urban Development” in closing provisions.

Subsec. (d)(1)(A). Pub. L. 104-208, § 574(2), inserted at end “If the declaration states that the individual is not a citizen or national of the United States and that the individual is younger than 62 years of age, the declaration shall be verified by the Immigration and Naturalization Service. If the declaration states that the individual is a citizen or national of the United States, the Secretary of Housing and Urban Development, or the agency administering assistance covered by this section, may request verification of the declaration by requiring presentation of documentation that the Secretary considers appropriate, including a United States passport, resident alien card, alien registration card, social security card, or other documentation.”

Subsec. (d)(2). Pub. L. 104-208, § 574(3), substituted “on September 30, 1996, or applying for financial assistance on or after September 30, 1996” for “on February 5, 1988” in introductory provisions and added concluding provisions.

Subsec. (d)(4). Pub. L. 104-208, § 574(4)(A), substituted “on September 30, 1996, or applying for financial assistance on or after September 30, 1996” for “on February 5, 1988” in introductory provisions.

Subsec. (d)(4)(A)(i). Pub. L. 104-208, § 574(4)(B)(i)(I), inserted “, not to exceed 30 days,” after “reasonable opportunity”.

Subsec. (d)(4)(A)(ii), (iii). Pub. L. 104-208, § 574(4)(B)(i)(II), (ii), added cls. (ii) and (iii) and struck out former cl. (ii) which read as follows: “may not delay, deny, reduce, or terminate the individual’s eligibility for financial assistance on the basis of the individual’s immigration status until such a reasonable opportunity has been provided; and”.

Subsec. (d)(4)(B)(ii). Pub. L. 104-208, § 574(4)(C), added cl. (ii) and struck out former cl. (ii) which read as follows: “pending such verification or appeal, the applicable Secretary may not delay, deny, reduce, or terminate the individual’s eligibility for financial assistance on the basis of the individual’s immigration status, and”.

Subsec. (d)(5). Pub. L. 104-208, § 574(5), inserted “, the Secretary shall” after “status” in introductory provisions, added subpars. (A) to (C), and struck out former subpars. (A) and (B) which read as follows:

“(A) the applicable Secretary shall deny or terminate the individual’s eligibility for financial assistance, and
“(B) the applicable fair hearing process shall be made available with respect to the individual.”

Subsec. (d)(6). Pub. L. 104-208, § 574(6), added par. (6) and struck out former par. (6) which read as follows: “For purposes of paragraph (5)(B), the applicable fair hearing process made available with respect to any individual shall include not less than the following procedural protections:

“(A) The applicable Secretary shall provide the individual with written notice of the determination described in paragraph (5) and of the opportunity for a hearing with respect to the determination.

“(B) Upon timely request by the individual, the applicable Secretary shall provide a hearing before an impartial hearing officer designated by the applicable Secretary, at which hearing the individual may produce evidence of a satisfactory immigration status.

“(C) The applicable Secretary shall notify the individual in writing of the decision of the hearing officer on the appeal of the determination in a timely manner.

“(D) Financial assistance may not be denied or terminated until the completion of the hearing process.”

Subsec. (e). Pub. L. 104-193, § 441(a)(1), substituted “applicable Secretary” for “Secretary of Housing and Urban Development” in introductory provisions.

Subsec. (e)(3). Pub. L. 104-208, § 575(2), inserted at end “the response from the Immigration and Naturalization Service to the appeal of that individual.”

Subsec. (e)(4). Pub. L. 104-208, § 575(1), (3), struck out par. (4) which read as follows: “because of a fair hearing process described in subsection (d)(5)(B) of this section (or provided for under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99-603)).”

Subsec. (g). Pub. L. 104-193, § 441(a)(1), substituted “applicable Secretary” for “Secretary of Housing and Urban Development”.

Subsec. (h). Pub. L. 104-208, § 576, added subsec. (h) relating to verification of eligibility.

Pub. L. 104-193, § 441(a)(5), added subsec. (h) defining “applicable Secretary”.

1988—Subsec. (a)(6). Pub. L. 100-242, § 164(a), added par. (6).

Subsec. (c). Pub. L. 100-242, § 164(b), added subsec. (c).
 Subsec. (d). Pub. L. 100-242, § 164(c)(8), amended last sentence generally. Prior to amendment, last sentence read as follows: "In this subsection and subsection (e) of this section, the term 'Secretary' refers to the Secretary and to a public housing authority or other entity which makes financial assistance available."

Subsec. (d)(2). Pub. L. 100-242, § 164(c)(1), inserted "is not 62 years of age or older, and is receiving financial assistance on February 5, 1988" after "States".

Subsec. (d)(4). Pub. L. 100-242, § 164(c)(2), in introductory provisions, inserted "is not 62 years of age or older, and is receiving financial assistance on February 5, 1988" after "States", and "or recertification" after "application".

Subsec. (d)(4)(A)(i). Pub. L. 100-242, § 164(c)(3), inserted after comma "or to appeal to the Immigration and Naturalization Service the verification determination of the Immigration and Naturalization Service under paragraph (3)".

Subsec. (d)(4)(B). Pub. L. 100-242, § 164(c)(4), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: "if there are submitted documents which the Secretary determines constitutes reasonable evidence indicating such status—".

Subsec. (d)(4)(B)(i), (ii). Pub. L. 100-242, § 164(c)(5), (6), inserted "or additional information" after "documents" in cl. (i), and "or appeal" after "verification" in cl. (ii).

Subsec. (d)(6). Pub. L. 100-242, § 164(c)(7), added par. (6).

Subsec. (e). Pub. L. 100-242, § 164(d)(1), in introductory provisions, inserted "of Housing and Urban Development" after "Secretary".

Subsec. (e)(2), (3). Pub. L. 100-242, § 164(d)(2), (3), inserted "(or under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99-603))".

Subsec. (e)(4). Pub. L. 100-242, § 164(d)(4), inserted "(or provided for under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99-603))".

Subsec. (f). Pub. L. 100-242, § 164(e), added subsec. (f).
 Subsec. (g). Pub. L. 100-242, § 164(f)(1), added subsec. (g).

1986—Subsecs. (d), (e). Pub. L. 99-603 added subsecs. (d) and (e).

1981—Subsec. (a). Pub. L. 97-35 substituted provisions relating to restrictions on use of assisted housing by resident aliens meeting further conditions for provisions relating to prohibition on financial assistance to nonimmigrant student-alien.

Subsec. (b). Pub. L. 97-35 struck out "(1)" after "(b)" and par. (2) which defined "nonimmigrant student-alien".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-276, title V, § 592(b), Oct. 21, 1998, 112 Stat. 2654, provided that: "The amendments made by this section [amending this section] are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(7)(D)(ii) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

Amendment by sections 572-576 of Pub. L. 104-208 effective Sept. 30, 1996, see section 591 of Pub. L. 104-208, set out as a note under section 1101 of Title 8.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-242, title I, § 164(h), Feb. 5, 1988, 101 Stat. 1863, provided that:

"(1) The provisions of, and amendments made by, subsections (a), (b), (e), (f), and (g) [amending this section, repealing section 1437r of this title, and enacting provisions set out below] shall take effect on the date of the enactment of this Act [Feb. 5, 1988].

"(2) The amendments made by subsections (c) and (d) [amending this section] shall take effect on October 1, 1988."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-603 effective on Oct. 1, 1988, with certain exceptions and qualifications, see section 121(c)(3), (4) of Pub. L. 99-603, set out as a note under section 1320b-7 of this title.

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.

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-208, div. C, title V, § 571, Sept. 30, 1996, 110 Stat. 3009-684, provided that: "This subtitle [subtitle E (§§ 571-577) of title V of div. C of Pub. L. 104-208, amending this section and enacting provisions set out as a note below] may be cited as the 'Use of Assisted Housing by Aliens Act of 1996'."

REGULATIONS

Pub. L. 104-208, div. C, title V, § 577, Sept. 30, 1996, 110 Stat. 3009-688, provided that:

"(a) ISSUANCE.—Not later than the 60 days after the date of enactment of this Act [Sept. 30, 1996], the Secretary of Housing and Urban Development shall issue any regulations necessary to implement the amendments made by this part [probably means this subtitle, subtitle E (§§ 571-577) of title V of div. C of Pub. L. 104-208, see Short Title of 1996 Amendment note above]. Such regulations shall be issued in the form of an interim final rule, which shall take effect upon issuance and shall not be subject to the provisions of section 533 of title 5, United States Code, regarding notice or opportunity for comment.

"(b) FAILURE TO ISSUE.—If the Secretary fails to issue the regulations required under subsection (a) before the date specified in that subsection, the regulations relating to restrictions on assistance to noncitizens, contained in the final rule issued by the Secretary of Housing and Urban Development in RIN-2501-AA63 (Docket No. R-95-1409; FR-2383-F-050), published in the Federal Register on March 20, 1995 (Vol. 60, No. 53; pp. 14824-14861), shall not apply after that date."

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

TRANSITIONAL CERTIFICATION AND DOCUMENTATION PROVISIONS

Pub. L. 100-242, title I, § 164(g), Feb. 5, 1988, 101 Stat. 1863, provided that: "In carrying out section 214 of the Housing and Community Development Act of 1980 [this section] during fiscal year 1988, the Secretary of Housing and Urban Development shall require, as a condition of providing financial assistance for the benefit of any individual, that such individual—

"(1) declare in writing, under penalty of perjury, whether or not such individual is a citizen or national of the United States; and

"(2) if not a citizen or national—

"(A) declare in writing, under penalty of perjury, the immigration status of such individual, if such individual is not less than 62 years of age and is receiving financial assistance on the date of the enactment of the Housing and Community Development Act of 1987' [Feb. 5, 1988]; or

“(B) provide such documentation regarding the immigration status of such individual as the Secretary may require by regulation.”

DELAYED IMPLEMENTATION OF 1981 AMENDMENT

Pub. L. 98-181, title I [title IV, §474(e)], Nov. 30, 1983, 97 Stat. 1239, provided in part that: “The Secretary may not implement the amendment to section 214 of the Housing and Community Development Act of 1980 [this section], made by section 329(a) of the Housing and Community Development Amendments of 1981 [Pub. L. 97-35], before the expiration of the one-year period following the date of the enactment of this Act [Nov. 30, 1983].”

ALIENS GRANTED CONDITIONAL ENTRY ELIGIBLE FOR ASSISTED HOUSING

Pub. L. 97-35, title III, §329(b), Aug. 13, 1981, 95 Stat. 408, provided that: “An alien who is lawfully present in the United States as a result of being granted conditional entry pursuant to section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity shall be deemed, for purposes of section 214 of the Housing and Community Development Act of 1980 [this section], to be an alien described in section 214(a)(3) of such Act [subsec. (a)(3) of this section].”

§ 1436b. Financial assistance in impacted areas

The Secretary of Housing and Urban Development shall not exclude from consideration for financial assistance under federally assisted housing programs proposals for housing projects solely because the site proposed is located within an impacted area. For the purposes of this section, the term “federally assisted housing programs” means any program authorized by the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], sections 1715z and 1715z-1 of title 12, section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], or section 1701q of title 12.

(Pub. L. 96-399, title II, §216, Oct. 8, 1980, 94 Stat. 1638.)

Editorial Notes

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to this chapter (§1437 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

Section 101 of the Housing and Urban Development Act of 1965, referred to in text, is section 101 of Pub. L. 89-117, title I, Aug. 10, 1965, 79 Stat. 451, as amended, which enacted section 1701s of Title 12, Banks and Banking, and amended sections 1451 and 1465 of this title.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1980, and not as part of the United States Housing Act of 1937 which comprises this chapter.

§ 1436c. Insurance for public housing agencies and Indian housing authorities

On and after October 28, 1991, notwithstanding any other provision of State or Federal law, regulation or other requirement, any public hous-

ing agency or Indian housing authority that purchases any line of insurance from a nonprofit insurance entity, owned and controlled by public housing agencies or Indian housing authorities, and approved by the Secretary, may purchase such insurance without regard to competitive procurement.

On and after October 28, 1991, the Secretary shall establish standards as set forth herein, by regulation, adopted after notice and comment rulemaking pursuant to subchapter II of chapter 5 of title 5, which will become effective not later than one year from October 28, 1991.

On and after October 28, 1991, in establishing standards for approval of such nonprofit insurance entities, the Secretary shall be assured that such entities have sufficient surplus capital to meet reasonably expected losses, reliable accounting systems, sound actuarial projections, and employees experienced in the insurance industry. The Secretary shall not place restrictions on the investment of funds of any such entity that is regulated by the insurance department of any State that describes the types of investments insurance companies licensed in such State may make. With regard to such entities that are not so regulated, the Secretary shall establish investment guidelines that are comparable to State law regulating the investments of insurance companies.

On and after October 28, 1991, the Secretary shall not approve additional nonprofit insurance entities until such standards have become final, nor shall the Secretary revoke the approval of any nonprofit insurance entity previously approved by the Department unless for cause and after a due process hearing.

On and after October 28, 1991, until the Department of Housing and Urban Development has adopted regulations specifying the nature and quality of insurance covering the potential personal injury liability exposure of public housing authorities and Indian housing authorities (and their contractors, including architectural and engineering services) as a result of testing and abatement of lead-based paint in federally subsidized public and Indian housing units, said authorities shall be permitted to purchase insurance for such risk, as an allowable expense against amounts available for capital improvements (modernization): *Provided*, That such insurance is competitively selected and that coverage provided under such policies, as certified by the authority, provides reasonable coverage for the risk of liability exposure, taking into consideration the potential liability concerns inherent in the testing and abatement of lead-based paint, and the managerial and quality assurance responsibilities associated with the conduct of such activities.

(Pub. L. 102-139, title II, Oct. 28, 1991, 105 Stat. 758.)

Editorial Notes

REFERENCES IN TEXT

Herein, referred to in text, probably means Pub. L. 102-139, Oct. 28, 1991, 105 Stat. 736, known as the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992. For complete classification of this Act to the Code, see Tables.