

conveyance of units in a public housing project for the purpose of providing homeownership opportunities for lower income families capable of assuming the responsibilities of homeownership.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-276, title V, § 531(c), Oct. 21, 1998, 112 Stat. 2574, provided that: “This section [amending this section and section 1437aaa-3 of this title and enacting provisions set out as a note under section 1437aaa-3 of this title] shall take effect on, and the amendments made by this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].”

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-19 effective for applications for demolition, disposition, or conversion to homeownership of public housing approved by the Secretary, and other consolidation and relocation activities of public housing agencies undertaken on, before, or after Sept. 30, 1995 and on or before Sept. 30, 1998, see section 1002(d) of Pub. L. 104-19, as amended, set out as a note under section 1437c of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-625, title V, § 512(b), Nov. 28, 1990, 104 Stat. 4195, provided that: “The amendment made by this section [amending this section] shall apply to any scattered-site public housing project or portion of such project disposed of after the date of the enactment of this Act [Nov. 28, 1990].”

REPLACEMENT HOUSING DEMONSTRATION PROGRAM

Pub. L. 101-625, title V, § 513(a), Nov. 28, 1990, 104 Stat. 4195, directed Secretary of Housing and Urban Development to carry out a program to demonstrate the effectiveness of replacing public housing dwelling units eligible for demolition or disposition with 5-year certificate assistance provided under 42 U.S.C. 1437f, with Secretary to carry out the demonstration only with respect to public housing dwelling units owned or operated by the public housing authority for Saint Louis, Missouri, that before the termination of the demonstration program under this subsection are approved for demolition or disposition, and with the demonstration program to terminate at end of Sept. 30, 1992.

§ 1437q. Financing limitations

On and after October 1, 1983, the Secretary—

(1) may only enter into contracts for annual contributions regarding obligations financing public housing projects authorized by section 1437c(c) of this title if such obligations are exempt from taxation under section 1437i(b) of this title, or if such obligations are issued under section 1437b of this title and such obligations are exempt from taxation; and

(2) may not enter into contracts for periodic payments to the Federal Financing Bank to offset the costs to the Bank of purchasing obligations (as described in the first sentence of section 2294(b) of title 12) issued by local public housing agencies for purposes of financing public housing projects authorized by section 1437c(c) of this title.

(Sept. 1, 1937, ch. 896, title I, § 19, as added Pub. L. 98-181, title I [title II, § 215], Nov. 30, 1983, 97 Stat. 1185; renumbered title I, Pub. L. 100-358, § 5, June 29, 1988, 102 Stat. 681.)

§ 1437r. Public housing resident management

(a) Purpose

The purpose of this section is to encourage increased resident management of public housing projects, as a means of improving existing living conditions in public housing projects, by providing increased flexibility for public housing projects that are managed by residents by—

(1) permitting the retention, and use for certain purposes, of any revenues exceeding operating and project costs; and

(2) providing funding, from amounts otherwise available, for technical assistance to promote formation and development of resident management entities.

For purposes of this section, the term “public housing project” includes one or more contiguous buildings or an area of contiguous row houses the elected resident councils of which approve the establishment of a resident management corporation and otherwise meet the requirements of this section.

(b) Program requirements

(1) Resident council

As a condition of entering into a resident management program, the elected resident council of a public housing project shall approve the establishment of a resident management corporation. When such approval is made by the elected resident council of a building or row house area, the resident management program shall not interfere with the rights of other families residing in the project or harm the efficient operation of the project. The resident management corporation and the resident council may be the same organization, if the organization complies with the requirements applicable to both the corporation and council. The corporation shall be a nonprofit corporation organized under the laws of the State in which the project is located, and the tenants of the project shall be the sole voting members of the corporation. If there is no elected resident council, a majority of the households of the public housing project shall approve the establishment of a resident council to determine the feasibility of establishing a resident management corporation to manage the project.

(2) Public housing management specialist

The resident council of a public housing project, in cooperation with the public housing agency, shall select a qualified public housing management specialist to assist in determining the feasibility of, and to help establish, a resident management corporation and to provide training and other duties agreed to in the daily operations of the project.

(3) Bonding and insurance

Before assuming any management responsibility for a public housing project, the resident management corporation shall provide fidelity bonding and insurance, or equivalent protection, in accordance with regulations and requirements of the Secretary and the public housing agency. Such bonding and insurance, or its equivalent, shall be adequate to protect

the Secretary and the public housing agency against loss, theft, embezzlement, or fraudulent acts on the part of the resident management corporation or its employees.

(4) Management responsibilities

A resident management corporation that qualifies under this section, and that supplies insurance and bonding or equivalent protection sufficient to the Secretary and the public housing agency, shall enter into a contract with the public housing agency establishing the respective management rights and responsibilities of the corporation and the public housing agency. Such contract shall be consistent with the requirements of this chapter applicable to public housing projects and may include specific terms governing management personnel and compensation, access to public housing project records, submission of and adherence to budgets, rent collection procedures, tenant income verification, tenant eligibility determinations, tenant eviction, the acquisition of supplies and materials, rent determination, community service requirements,¹ and such other matters as may be appropriate. The contract shall be treated as a contracting out of services and shall be subject to any provision of a collective bargaining agreement regarding contracting out to which the public housing agency is subject.

(5) Annual audit

The books and records of a resident management corporation operating a public housing project shall be audited annually by a certified public accountant. A written report of each audit shall be forwarded to the public housing agency and the Secretary.

(c) Assistance amounts

A contract under this section for management of a public housing project by a resident management corporation shall provide for—

(1) the public housing agency to provide a portion of the assistance to agency from the Capital and Operating Funds to the resident management corporation in accordance with subsection (e) for purposes of operating the public housing project covered by the contract and performing such other eligible activities with respect to the project as may be provided under the contract;

(2) the amount of income expected to be derived from the project itself (from sources such as rents and charges);

(3) the amount of income to be provided to the project from the other sources of income of the public housing agency (such as interest income, administrative fees, and rents); and

(4) any income generated by a resident management corporation of a public housing project that exceeds the income estimated under the contract shall be used for eligible activities under subsections (d)(1) and (e)(1) of section 1437g of this title.

(d) Waiver of Federal requirements

(1) Waiver of regulatory requirements

Upon the request of any resident management corporation and public housing agency,

and after notice and an opportunity to comment is afforded to the affected tenants, the Secretary may waive (for both the resident management corporation and the public housing agency) any requirement established by the Secretary (and not specified in any statute) that the Secretary determines to unnecessarily increase the costs or restrict the income of a public housing project.

(2) Waiver to permit employment

Upon the request of any resident management corporation, the Secretary may, subject to applicable collective bargaining agreements, permit residents of such project to volunteer a portion of their labor.

(3) Exceptions

The Secretary may not waive under this subsection any requirement with respect to income eligibility for purposes of section 1437n of this title, rental payments under section 1437a(a) of this title, tenant or applicant protections, employee organizing rights, or rights of employees under collective bargaining agreements.

(e) Direct provision of operating and capital assistance

(1) In general

The Secretary shall directly provide assistance from the Operating and Capital Funds to a resident management corporation managing a public housing development pursuant to a contract under this section, but only if—

(A) the resident management corporation petitions the Secretary for the release of the funds;

(B) the contract provides for the resident management corporation to assume the primary management responsibilities of the public housing agency; and

(C) the Secretary determines that the corporation has the capability to effectively discharge such responsibilities.

(2) Use of assistance

Any assistance from the Operating and Capital Funds provided to a resident management corporation pursuant to this subsection shall be used for purposes of operating the public housing developments of the agency and performing such other eligible activities with respect to public housing as may be provided under the contract.

(3) Responsibility of public housing agency

If the Secretary provides direct funding to a resident management corporation under this subsection, the public housing agency shall not be responsible for the actions of the resident management corporation.

(4) Calculation of Operating Fund allocation

Notwithstanding any provision of section 1437g of this title or any regulation under such section, and subject to the exception provided in paragraph (3), the portion of the amount received by a public housing agency under section 1437g of this title that is due to an allocation from the Operating Fund and that is allocated to a public housing project managed by a resident management corporation shall not

¹ So in original.

be less than the public housing agency per unit monthly amount provided in the previous year as determined on an individual project basis.

(5) Calculation of total income

(A) Subject to subparagraph (B), the amount of funds provided by a public housing agency to a public housing project managed by a resident management corporation may not be reduced during the 3-year period beginning on February 5, 1988, or on any later date on which a resident management corporation is first established for the project.

(B) If the total income of a public housing agency (including any amounts from the Capital or Operating Funds provided to the public housing agency under section 1437g of this title) is reduced or increased, the income provided by the public housing agency to a public housing project managed by a resident management corporation shall be reduced or increased in proportion to the reduction or increase in the total income of the public housing agency, except that any reduction in amounts from the Operating Fund that occurs as a result of fraud, waste, or mismanagement by the public housing agency shall not affect the funds provided to the resident management corporation.

(6) Retention of excess revenues

(A) Any income generated by a resident management corporation of a public housing project that exceeds the income estimated for purposes of this subsection shall be excluded in subsequent years in calculating (i) the allocations from the Operating Fund for the public housing agency under section 1437g of this title; and (ii) the funds provided by the public housing agency to the resident management corporation.

(B) Any revenues retained by a resident management corporation under subparagraph (A) shall be used for purposes of improving the maintenance and operation of the public housing project, for establishing business enterprises that employ residents of public housing, or for acquiring additional dwelling units for low-income families.

(f), (g) Repealed. Pub. L. 105-276, title V, § 532(a)(5), Oct. 21, 1998, 112 Stat. 2575

(h) Applicability

Any management contract between a public housing agency and a resident management corporation that is entered into after November 7, 1988, shall be subject to this section and the regulations issued to carry out this section.

(Sept. 1, 1937, ch. 896, title I, § 20, as added Pub. L. 100-242, title I, § 122, Feb. 5, 1988, 101 Stat. 1839; renumbered title I, Pub. L. 100-358, § 5, June 29, 1988, 102 Stat. 681; amended Pub. L. 100-628, title X, § 1003, Nov. 7, 1988, 102 Stat. 3263; Pub. L. 101-625, title IV, § 415, title V, §§ 514, 572(1), Nov. 28, 1990, 104 Stat. 4160, 4196, 4236; Pub. L. 102-550, title I, § 117, Oct. 28, 1992, 106 Stat. 3695; Pub. L. 105-276, title V, § 532(a), Oct. 21, 1998, 112 Stat. 2574.)

Editorial Notes

PRIOR PROVISIONS

A prior section 1437r, act Sept. 1, 1937, ch. 896, § 20, as added Nov. 6, 1986, Pub. L. 99-603, title I, § 121(b)(6), 100 Stat. 3391, related to payment for implementation of immigration status verification system, prior to repeal by Pub. L. 100-242, § 164(f)(2).

AMENDMENTS

1998—Subsec. (b)(4). Pub. L. 105-276, § 532(a)(1), inserted “, rent determination, community service requirements,” after “materials”.

Subsec. (c). Pub. L. 105-276, § 532(a)(2), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: “Public housing projects managed by resident management corporations may be provided with comprehensive improvement assistance under section 1437i of this title for purposes of renovating such projects in accordance with such section. If such renovation activities (including the planning and architectural design of the rehabilitation) are administered by a resident management corporation, the public housing agency involved may not retain, for any administrative or other reason, any portion of the assistance provided pursuant to this subsection unless otherwise provided by contract.”

Subsec. (d)(3), (4). Pub. L. 105-276, § 532(a)(3), redesignated par. (4) as (3) and struck out heading and text of former par. (3). Text read as follows: “Not later than 6 months after February 5, 1988, the Secretary shall submit to the Congress a report setting forth any additional waivers of Federal law that the Secretary determines are necessary or appropriate to carry out the provisions of this section. In preparing the report, the Secretary shall consult with resident management corporations and public housing agencies.”

Subsec. (e)(1) to (3). Pub. L. 105-276, § 532(a)(4)(B), added subsec. heading and pars. (1) to (3) and struck out former subsec. heading and former pars. (1) to (3), which in par. (1), specified amount of operating subsidy to be allocated to a public housing project managed by a resident management corporation; in par. (2), set forth requirements for any contract for management of a project entered into by a public housing agency and a resident management corporation; and in par. (3), prohibited reduction of funds provided by an agency to a project during 3-year period beginning on date on which resident management corporation is first established for the project, and provided for proportional reduction or increase if total income of agency is reduced or increased.

Subsec. (e)(4), (5). Pub. L. 105-276, § 532(a)(4)(B), added pars. (4) and (5). Former par. (4) redesignated (6).

Subsec. (e)(6). Pub. L. 105-276, § 532(a)(4)(A), redesignated par. (4) as (6).

Subsec. (e)(6)(A)(i). Pub. L. 105-276, § 532(a)(4)(C), substituted “the allocations from the Operating Fund for” for “the operating subsidies provided to”.

Subsec. (f). Pub. L. 105-276, § 532(a)(5), struck out heading and text of subsec. (f) which required Secretary to provide financial assistance to resident management corporations or resident councils that obtain technical assistance for the development of resident management entities, limited assistance to \$100,000 with respect to any public housing project, authorized appropriations for fiscal years 1993 and 1994, and limited assistance to corporations or councils where assistance was provided under subchapter II-A of this chapter.

Subsec. (g). Pub. L. 105-276, § 532(a)(5), struck out heading and text of subsec. (g). Text read as follows: “Not later than 3 years after February 5, 1988, the Secretary shall—

“(1) conduct an evaluation and assessment of resident management, and particularly of the effect of resident management on living conditions in public housing; and

“(2) submit to the Congress a report setting forth the findings of the Secretary as a result of the eval-

uation and assessment and including any recommendations the Secretary determines to be appropriate.”

1992—Subsec. (f)(3). Pub. L. 102-550 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “(3) FUNDING.—Of amounts made available for financial assistance under section 1437f of this title, the Secretary may use to carry out this subsection not more than \$5,000,000 for each of fiscal years 1991 and 1992.”

1990—Subsec. (e)(4)(B). Pub. L. 101-625, §572(1), substituted “low-income families” for “lower income families”.

Subsec. (f)(3). Pub. L. 101-625, §514, amended par. (3) generally. Prior to amendment, par. (3) read as follows: “Of the amounts available for financial assistance under section 1437f of this title, the Secretary may use to carry out this subsection not more than \$2,500,000 for fiscal year 1988 and not more than \$2,500,000 for fiscal year 1989.”

Subsec. (f)(4). Pub. L. 101-625, §415, added par. (4).

1988—Subsec. (h). Pub. L. 100-628 added subsec. (h).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT

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

§ 1437s. Public housing homeownership and management opportunities

(a) Homeownership opportunities in general

Low-income families residing in a public housing project shall be provided with the opportunity to purchase the dwelling units in the project through a qualifying resident management corporation as follows:

(1) Formation of resident management corporation

As a condition for public housing homeownership—

(A) the adult residents of a public housing project shall have formed a resident management corporation in accordance with regulations and requirements of the Secretary prescribed under this section and section 1437r of this title;

(B) the resident management corporation shall have entered into a contract with the public housing agency establishing the respective management rights and responsibilities of the resident management corporation and the public housing agency; and

(C) the resident management corporation shall have demonstrated its ability to manage public housing effectively and efficiently for a period of not less than 3 years.

(2) Homeownership assistance

(A) The Secretary may provide assistance from the Capital Fund to a public housing project in which homeownership activities under this section are conducted.

(B) The Secretary may provide financial assistance to public housing agencies, resident management corporations, or resident councils that obtain, by contract or otherwise, training, technical assistance, and educational assistance as the Secretary determines to be

necessary to promote homeownership opportunities under this section.

(C) This paragraph shall not have effect after February 4, 1991. The Secretary may not provide financial assistance under subparagraph (B), after such date, unless the Secretary determines that such assistance is necessary for the development of a homeownership program that was initiated, as determined by the Secretary, before November 28, 1990.

(3) Conditions of purchase by a resident management corporation

(A) A resident management corporation may purchase from a public housing agency one or more multifamily buildings in a public housing project following a determination by the Secretary that—

(i) the resident management corporation has met the conditions of paragraph (1);

(ii) the resident management corporation has applied for and is prepared to undertake the ownership, management, and maintenance of the building or buildings with continued assistance from the Secretary;

(iii) the public housing agency has held one or more public hearings to obtain the views of citizens regarding the proposed purchase and, in consultation with the Secretary, has certified that the purchase will not interfere with the rights of other families residing in public housing, will not harm the efficient operation of other public housing, and is in the interest of the community;

(iv) the public housing agency has certified that it has and will implement a plan to replace public housing units sold under this section within 30 months of the sale, which plan shall provide for replacement of 100 percent of the units sold under this section by—

(I) production, acquisition, or rehabilitation of vacant public housing units by the public housing agency; and

(II) acquisition by the resident management corporation of nonpublicly owned, decent, and affordable housing units, which the resident management corporation shall operate as rental housing subject to tenant income and rent limitations comparable to the limitations applicable to public housing; and

(v) the building or buildings meet the housing quality standards applicable under section 1437d(f) of this title, and the physical condition, management, and operation of the building or buildings are sufficient to permit affordable homeownership by the families residing in the project.

(B) The price of a building purchased under the preceding sentence shall be approved by the Secretary, in consultation with the public housing agency and resident management corporation, taking into account the fair market value of the property, the ability of resident families to afford and maintain the property, and such other factors as the Secretary determines to be consistent with increasing the supply of dwelling units affordable to very low income families.