

Excerpted from: United States Housing Act of 1937 as Amended by the Quality Housing and Work Responsibility Act of 1998 as of 3/2/99:

NOTE: See bolded text for key provisions relating to MOAs and IPs:

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*(i) REVIEW AND DETERMINATION OF COMPLIANCE.—*

*(1) REVIEW.—Subject to paragraph (2), after submission of the public housing agency plan or any amendment or modification to the plan to the Secretary, to the extent that the Secretary considers such action to be necessary to make determinations under this paragraph, the Secretary shall review the public housing agency plan (including any amendments or modifications thereto) and determine whether the contents of the plan—*  
*(A) set forth the information required by this section and this Act to be contained in a public housing agency plan;*

*(B) are consistent with information and data available to the Secretary, including the approved comprehensive housing affordability strategy under title I of the Cranston-Gonzalez National Affordable Housing Act for the jurisdiction in which the public housing agency is located; and*

*(C) are not prohibited by or inconsistent with any provision of this title or other applicable law.*

*(2) ELEMENTS EXEMPTED FROM REVIEW.—The Secretary may, by regulation, provide that one or more elements of a public housing agency plan shall be reviewed only if the element is challenged, except that the Secretary shall review the information submitted in each plan pursuant to paragraphs (3)(B), (8), and (15) of subsection (d).*

*(3) DISAPPROVAL.—The Secretary may disapprove a public housing agency plan (or any amendment or modification thereto) only if Secretary determines that the contents of the plan (or amendment or modification) do not comply with the requirements under subparagraph (A) through (C) of paragraph (1).*

*(4) DETERMINATION OF COMPLIANCE.—*

*(A) IN GENERAL.—Except as provided in subsection (j)(2), not later than 75 days after the date on which a public housing agency plan is submitted in accordance with this section, the Secretary shall make the determination under paragraph (1) and provide written notice to the public housing agency if the plan has been disapproved. If the Secretary disapproves the plan, the notice shall state with specificity the reasons for the disapproval.*

*(B) FAILURE TO PROVIDE NOTICE OF DISAPPROVAL.—In the case of a plan disapproved, if the Secretary does not provide notice of disapproval under subparagraph (A) before the expiration of the period described in subparagraph (A), the Secretary shall be considered, for purposes of this Act, to have made a determination that the plan complies with the requirements under this section and the agency shall be considered to have been notified of compliance upon the expiration of such period. The preceding sentence shall not preclude judicial review regarding such compliance pursuant to chapter 7 of title 5, United States Code, or an action regarding such compliance under section 1979 of the Revised*

*Statutes of the United States (42 U.S.C. 1983).*

*(5) PUBLIC AVAILABILITY.—A public housing agency shall make the approved plan of the agency available to the general public.*

*(j) TROUBLED AND AT-RISK PHAS.—*

*(1) IN GENERAL.—The Secretary may require, for each public housing agency that is at risk of being designated as troubled under section 6(j)(2) or is designated as troubled under section 6(j)(2), that the public housing agency plan for such agency.*

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*include such additional information as the Secretary determines to be appropriate, in accordance with such standards as the Secretary may establish or in accordance with such determinations as the Secretary may make on an agency-by-agency basis.*

*(2) TROUBLED AGENCIES.—The Secretary shall provide explicit written approval or disapproval, in a timely manner, for a public housing agency plan submitted by any public housing agency designated by the Secretary as a troubled public housing agency under section 6(j)(2).*

*(k) STREAMLINED PLAN.—In carrying out this section, the Secretary may establish a streamlined public housing agency plan for—*

*(A) public housing agencies that are determined by the Secretary to be high performing public housing agencies;*

*(B) public housing agencies with less than 250 public housing units that have not been designated as troubled under section 6(j)(2); and*

*(C) public housing agencies that only administer tenant-based assistance and that do not own or operate public housing.*

*(l) COMPLIANCE WITH PLAN.—*

*(1) IN GENERAL.—In providing assistance under this title, a public housing agency shall comply with the rules, standards, and policies established in the public housing agency plan of the public housing agency approved under this section.*

*(2) Investigation and enforcement.—In carrying out this title, the Secretary shall—*

*(A) provide an appropriate response to any complaint concerning noncompliance by a public housing agency with the applicable public housing agency plan; and*

*(B) if the Secretary determines, based on a finding of the Secretary or other information available to the Secretary, that a public housing agency is not complying with the applicable public housing agency plan, take such actions as the Secretary determines to be appropriate to ensure such compliance.*

**CONTRACT PROVISIONS AND REQUIREMENTS**

**SEC. 6. [42 U.S.C. 1437d] (a)** The Secretary may include in any contract for loans, contributions, sale, lease, mortgage, or any other agreement or instrument made pursuant to this

Act, such covenants, conditions, or provisions as he may deem necessary in order to insure the

lower income character of the project involved, <sup>46</sup> in a manner consistent with the public housing

agency plan. ~~47 Any such contract may contain a condition requiring the maintenance of an open space or playground in connection with the housing project involved if deemed necessary by the Secretary for the safety or health of children.~~ Any such contract shall require that, except in the case of housing predominantly for elderly or disabled families, high-rise elevator projects shall not be provided for families with children unless the Secretary makes a determination that there is no practical alternative.

<sup>46</sup> Section 511(d)(1) of the QHWRA amended section 5(a). Section 511(e) of the QHWRA made this amendment effective upon enactment of the QHWRA (October 21, 1998).

<sup>47</sup> Section 511(d)(2) of the QHWRA amended section 5(a). Section 511(e) of the QHWRA made this amendment effective upon enactment of the QHWRA (October 21, 1998)..

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(b)(1) Each contract for loans (other than preliminary loans) or contributions for the development, acquisition, or operation of public housing shall provide that the total development cost of the project on which the computation of any annual contributions under this Act may be based may not exceed the amount determined under paragraph (2) (for the appropriate structure type) unless the Secretary provides otherwise, and in any case may not exceed 110 per centum of such amount unless the Secretary for good cause determines otherwise.

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

(A) in the case of elevator type structures, 1.6; and  
(B) in the case of nonelevator type structures, 1.75.

<sup>48</sup> (3) In calculating the total development cost of a project under paragraph (2), the Secretary shall consider only capital assistance provided by the Secretary to a public housing agency that are authorized for use in connection with the development of public housing, and shall exclude all other amounts, including amounts provided under—  
(A) the HOME investment partnerships program authorized under title II of the Cranston-Gonzalez National Affordable Housing Act; or  
(B) the community development block grants program under title I of the Housing and Community Development Act of 1974.

*(4) The Secretary may restrict the amount of capital funds that a public housing agency may use to pay for housing construction costs. For purposes of this paragraph, housing construction costs include the actual hard costs for the construction of units, builders' overhead*

*and profit, utilities from the street, and finish landscaping.*

(c) Every contract for contributions shall provide that—

(1) the Secretary may require the public housing agency to review and revise its maximum

income limits if the Secretary determines that changed conditions in the locality make such

revision necessary in achieving the purposes of this Act;

(2) the public housing agency shall determine, and so certify to the Secretary, that each family in the project was admitted in accordance with duly adopted regulations and approved

income limits; and the public housing agency shall review the incomes of families living in the

project no less frequently than annually;

(3) the public housing agency shall promptly notify (i) any applicant determined to be ineligible for admission to the project of the basis for such determination and provide the applicant

upon request, within a reasonable time after the determination is made, with an opportunity for an

informal hearing on such determination, and (ii) any applicant determined to be eligible for

admission to the project of the approximate date of occupancy insofar as such date can be reasonably determined;

(4) the public housing agency shall comply with such procedures and requirements as the Secretary may prescribe to assure that sound management practices will be followed in the

operation of the project, including requirements pertaining to—

<sup>48</sup> Section 520(b) of the QHWRRA amended section 6(b) by adding paragraph (3) as shown..

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~~(A)<sup>49</sup> the establishment, after public notice and an opportunity for public comment, of a written system of preferences for admission to public housing, if any, that is not inconsistent with the comprehensive housing affordability strategy under title I of the Cranston-Gonzalez National Affordable Housing Act;~~

<sup>50</sup> (A) making dwelling units in public housing available for occupancy, which shall provide that the public housing agency may establish a system for making dwelling units available that provides preference for such occupancy to families having certain characteristics; each system of preferences established pursuant to this subparagraph shall be based upon local housing needs and priorities, as determined by the public housing agency using generally accepted data sources, including any information obtained pursuant to an opportunity for public comment as provided under section 5A(f) and under the requirements applicable to the comprehensive housing affordability strategy for the relevant jurisdiction;

(B) the establishment of satisfactory procedures designed to assure the prompt

payment and collection of rents and the prompt processing of evictions in the case of nonpayment of rent;

(C) the establishment of effective tenant-management relationships designated to assure the satisfactory standards of tenant security and project maintenance are formulated

and that the public housing agency (together with tenant councils where they exist) enforces those standards fully and effectively;

(D) the development by local housing authority managements of viable homeownership opportunity programs for low-income families capable of assuming the responsibilities of homeownership;

(E) <sup>51</sup> ~~except in the case of agencies not receiving operating assistance under section 9~~ for each agency that receives assistance under this title, the establishment and maintenance of a system of accounting for rental collections and costs (including administrative, utility, maintenance, repair and other operating costs) for each project or operating cost center (as determined by the Secretary), which collections and costs shall be made available to the general public and submitted to the appropriate local public official (as determined by the Secretary); except that the Secretary may permit agencies owning or operating less than 500 units to comply with the requirements of this subparagraph by accounting on an agency-wide basis; and

(F) requiring the public housing agency to ensure and maintain compliance with subtitle C of title VI of the Housing and Community Development Act of 1992 and any regulations issued under such subtitle.

(d) Every contract for contributions with respect to a low-income housing project shall provide that no contributions by the Secretary shall be made available for such project unless such

project (exclusive of any portion thereof which is not assisted by contributions under this Act) is

exempt from all real and personal property taxes levied or imposed by the State, city, county, or

other political subdivision; and such contract shall require the public housing agency to make

<sup>49</sup> Section 402(d)(1) of The Balanced Budget Downpayment Act, I, Pub. L. 104-99, approved January 26, 1996, amended this subparagraph to read

as shown. Section 402(f) of such Act provides as follows:

"(f) This section shall be effective upon the enactment of this Act and only for fiscal years 1996, 1997, and 1998."

<sup>50</sup> Section 514(a)(1) of the QHWRA amended section 6(c)(4)(A) to read as shown. Section 514(g) of the QHWRA made this amendment effective

upon enactment of the QHWRA (October 21, 1998).

<sup>51</sup> Section 529(1) of the QHWRA amended section 6(c)(4)(E)..

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payments in lieu of taxes equal to 10 per centum of the sum of the shelter rents charged in such

project, or such lesser amount as (i) is prescribed by State law, or (ii) is agreed to by the local

governing body in its agreement for local cooperation with the public housing agency required

under section 5(e)(2) of this Act, or (iii) is due to failure of a local public body or bodies other

than the public housing agency to perform any obligation under such agreement. If any such project is not exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivision, such contract shall provide, in lieu of the requirement for tax exemption and payments in lieu of taxes, that no contributions by the Secretary shall be made available for such project unless and until the State, city, county, or other political subdivision in which such project is situated shall contribute, in the form of cash or tax remission, the amount by which the taxes paid with respect to the project exceed 10 per centum of the shelter rents charged in such project.

~~<sup>52</sup>(e) Every contract for contributions shall provide that whenever in any year the receipts of a public housing agency in connection with a low-income housing project exceed its expenditures (including debt service, operation, maintenance, establishment of reserves, and other costs and charges), an amount equal to such excess shall be applied, or set aside for application, to purposes which, in the determination of the Secretary, will effect a reduction in the amount of subsequent annual contributions.~~

<sup>53</sup>(f) HOUSING QUALITY REQUIREMENTS.—

(1) IN GENERAL.—Each contract for contributions for a public housing agency shall require that the agency maintain its public housing in a condition that complies with standards which meet or exceed the housing quality standards established under paragraph (2).

(2) FEDERAL STANDARDS.—The Secretary shall establish housing quality standards under this paragraph that ensure that public housing dwelling units are safe and habitable. Such standards shall include requirements relating to habitability, including maintenance, health and sanitation factors, condition, and construction of dwellings, and shall, to the greatest extent practicable, be consistent with the standards established under section 8(o)(8)(B)(i). The Secretary may determine whether the laws, regulations, standards, or codes of any State or local jurisdiction meet or exceed these standards, for purposes of this subsection.

(3) ANNUAL INSPECTIONS.—Each public housing agency that owns or operates public housing shall make an annual inspection of each public housing project to determine whether units in the project are maintained in accordance with the requirements under paragraph (1). The agency shall retain the results of such inspections and, upon the request of the Secretary, the Inspector General for the Department of Housing and Urban Development, or any auditor conducting an audit under section 5(h), shall make such results available.

[(f) [Repealed.]]

(g) Every contract for contributions (including contracts which amend or supersede contracts previously made) may provide that—

(1) upon the occurrence of a substantial default in respect to the covenants or conditions to which the public housing agency is subject (as such substantial default shall

<sup>52</sup> Section 529(2) of the QHWRA deleted section 6(e).

<sup>53</sup> Section 530 of the QHWRA amended section 6 by adding paragraph (f)..

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be defined in such contract), the public housing agency shall be obligated at the option of the Secretary either to convey title in any case where, in the determination of the Secretary

(which determination shall be final and conclusive), such conveyance of title is necessary to achieve the purposes of this Act, or to deliver to the Secretary possession of the project, as then constituted, to which such contract relates; and

(2) the Secretary shall be obligated to reconvey or redeliver possession of the project, as constituted at the time of reconveyance or redelivery, to such public housing agency or to its successor (if such public housing agency or a successor exists) upon such terms as shall be prescribed in such contract, and as soon as practicable (i) after the Secretary is satisfied that all defaults with respect to the project have been cured, and that the project will, in order to fulfill the purposes of this Act, thereafter be operated in accordance with the terms of such contract; or (ii) after the termination of the obligation to make annual contributions available unless there are any obligations or covenants of the

public housing agency to the Secretary which are then in default.<sup>54</sup> Any prior conveyances and reconveyances or deliveries and redeliveries of possession shall not exhaust the right to require a conveyance or delivery of possession of the project to the Secretary pursuant to subparagraph (1)<sup>55</sup> upon the subsequent occurrence of a substantial default.

Whenever such a contract for annual contributions includes provisions which the Secretary in

such contract determines are in accordance with this subsection, and the portion of the annual

contribution payable for debt service requirements pursuant to such contract has been pledged by

the public housing agency as security for the payment of the principal and interest on any of its

obligations, the Secretary (notwithstanding any other provisions of this Act) shall continue to

make such annual contributions available for the project so long as any of such obligations remain

outstanding, and may covenant in such contract that in any event such annual contributions shall

in each year be at least equal to an amount which, together with such income or other funds as are

actually available from the project for the purpose at the time such annual contribution is made,

will suffice for the payment of all installments, falling due within the next succeeding twelve

months, of principal and interest on the obligations for which the annual contributions provided

for in the contract shall have been pledged as security. In no case shall such annual contributions be in excess of the maximum sum specified in the contract involved, nor for longer than the remainder of the maximum period fixed by the contract.

(h) On or after October 1, 1983, the Secretary may enter into a contract involving new construction only if the public housing agency demonstrates to the satisfaction of the Secretary

that the cost of new construction in the neighborhood where the public housing agency determines the housing is needed is less than the cost of acquisition or acquisition and rehabilitation in such neighborhood, including any reserve fund under subsection (i), would be.

(i) The Secretary may, upon application by a public housing agency in connection with the acquisition of housing for use as public housing, establish and set aside a reserve fund in an amount not to exceed 30 per centum of the acquisition cost which shall be available for use for major repairs to such housing.

(j)(1) The Secretary shall develop and publish in the Federal Register indicators to assess the management performance of public housing agencies and resident management corporations.

The indicators shall be established by rule under section 553 of title 5, United States Code. Such

<sup>54</sup> So in law. Period probably should be semicolon.

<sup>55</sup> So in law. Probably intended to refer to paragraph (1).

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indicators shall enable the Secretary to evaluate the performance of public housing agencies and resident management corporations in all major areas of management operations. The Secretary shall, in particular, use the following indicators:<sup>56</sup>

(A) The number and percentage of vacancies within an agency's inventory, including the progress that an agency has made within the previous 3 years to reduce such vacancies.

~~<sup>57</sup>(B) The amount and percentage of funds obligated to the public housing agency under section 14 of this Act which remain unexpended after 3 years.~~ (B) *The amount and percentage of funds provided to the public housing agency from the Capital Fund under section 9(d) which remain unobligated by the public housing agency after 3 years.*

(C) The percentage of rents uncollected.

(D) The <sup>58</sup>energyutility consumption (with appropriate adjustments to reflect different regions and unit sizes).

<sup>59</sup>(E) The average period of time that an agency requires to repair and turn-around vacant units.

(F) The proportion of maintenance work orders outstanding, including any

progress that an agency has made during the preceding 3 years to reduce the period of time required to complete maintenance work orders.

(G) The percentage of units that an agency fails to inspect to ascertain maintenance or modernization needs within such period of time as the Secretary deems appropriate (with appropriate adjustments, if any, for large and small agencies).

<sup>60</sup> (H) *The extent to which the public housing agency—*

*(i) coordinates, promotes, or provides effective programs and activities to promote the economic self-sufficiency of public housing residents; and*  
*(ii) provides public housing residents with opportunities for involvement in the administration of the public housing.*

(I) *The extent to which the public housing agency—*

*(i) implements effective screening and eviction policies and other anticrime strategies; and*  
*(ii) coordinates with local government officials and residents in the project and implementation of such strategies.*

(J) *The extent to which the public housing agency is providing acceptable basic housing conditions.*

<sup>61</sup> (H)(K) Any other factors as the Secretary deems appropriate.<sup>62</sup>

<sup>56</sup> Section 113(e)(1)(C) of the Housing and Community Development Act of 1992 (Public Law 102-550; 106 Stat. 3691) amended this sentence by striking "indicators." and inserting "indicators for public housing agencies, to the extent practicable:". Because the matter to be struck by the

amendment does not appear in this sentence, the amendment could not be executed.

<sup>57</sup> Section 564(1)(A) of the QHWRRA amended section 6(j)(1)(B) to read as shown.

<sup>58</sup> Section 564(1)(B) of the QHWRRA amended section 6(j)(1)(D).

<sup>59</sup> Section 564(1)(C) of the QHWRRA directs that subparagraph (E) be placed after subparagraph (D). This is already the case and, therefore,

section 564(1)(C) could not be executed.

<sup>60</sup> Section 564(1)(E) of the QHWRRA amended section 6(j)(1) by adding subparagraphs (H) - (J).

<sup>61</sup> Section 564(1)(D) of the QHWRRA amended section 6(j)(1) by redesignating paragraph (H) as paragraph (K).

<sup>62</sup> The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992, Pub. L. 102-139,

105 Stat. 757, provides as follows:

"Section 6(j)(1) of the Housing Act of 1937, 42 U.S.C. 1437d(j)(1), section 502(a) of the National Affordable Housing Act, is amended as follows:

"(1) by adding at the end of subparagraph (H) the following language: `which shall not exceed the seven factors in the statute, plus an additional five';

and

"(2) by adding as subparagraph (I) the following:

`(I) The Secretary shall:

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(2)(A)(i) The Secretary shall, under the rulemaking procedures under section 553 of title 5, United States Code, establish procedures for designating troubled public housing agencies,

which procedures shall include identification of serious and substantial failure to perform as

measured by the performance indicators specified under paragraph (1) and such other factors as

the Secretary may deem to be appropriate. <sup>63</sup> *Such procedures shall provide that an agency that*

*fails on a widespread basis to provide acceptable basic housing conditions for its residents shall*

be designated as a troubled public housing agency. The Secretary may use a simplified set of indicators for public housing agencies with less than 250 public housing units. The Secretary shall also designate, by rule under section 553 of title 5, United States Code, agencies that are troubled with respect to the program <sup>64</sup> ~~under section 14~~ for assistance from the Capital Fund under section 9(d).

(ii) The Secretary may also, in consultation with national organizations representing public housing agencies and public officials (as the Secretary determines appropriate), identify and commend public housing agencies that meet the performance standards established under paragraph (1) in an exemplary manner.

(iii) The Secretary shall establish procedures for public housing agencies to appeal designation as a troubled agency (including designation as a troubled agency for purposes of the

program <sup>65</sup> ~~under section 14~~ for assistance from the Capital Fund under section 9(d)), to petition

for removal of such designation, and to appeal any refusal to remove such designation.

(B)(i) Upon designating a public housing agency <sup>66</sup> *with more than 250 units* as troubled pursuant to subparagraph (A) and determining that an assessment under this subparagraph will

not duplicate any <sup>67</sup> ~~review conducted under section 14(p)~~ comparable and recent review, the

Secretary shall provide for an on-site, independent assessment of the management of the agency.

(ii) To the extent the Secretary deems appropriate (taking into account an agency's performance under the indicators specified under paragraph (1)), the assessment team shall also

consider issues relating to the agency's resident population and physical inventory, including the

extent to which (I) the agency's comprehensive plan prepared pursuant to section 14 adequately

and appropriately addresses the rehabilitation needs of the agency's inventory, (II) residents of the

agency are involved in and informed of significant management decisions, and (III) any projects in

the agency's inventory are severely distressed and eligible for assistance pursuant to section 24.

(iii) An independent assessment under this subparagraph shall be carried out by a team of knowledgeable individuals selected by the Secretary (referred to in this section as the "assessment

team") with expertise in public housing and real estate management. In conducting an assessment,

the assessment team shall consult with the residents and with public and private entities in the jurisdiction in which the public housing is located. The assessment team shall provide to the

Secretary and the public housing agency a written report, which shall contain, at a minimum,

(1) administer the system of evaluating public housing agencies flexibly to ensure that such agencies are not penalized as result of circumstances

beyond their control;

(2) reflect in the weights assigned to the various indicators the differences in the difficulty of managing individual projects that result from their

physical condition and their neighborhood environment; and

(3) determine a public housing agency's status as 'troubled with respect to the program under section 14' based upon factors solely related to its

ability to carry out that program.'."

The amendments were probably intended to be made to section 6(j)(1) of the United States Housing Act of 1937, as amended by section 502(a) of the

Cranston-Gonzalez National Affordable Housing Act.

<sup>63</sup> Section 564(2)(A)(i) of the QHWRA amended section 6(j)(2)(A)(i).

<sup>64</sup> Section 564(2)(A)(ii) of the QHWRA amended section 6(j)(2)(A)(i).

<sup>65</sup> Section 564(2)(B) of the QHWRA amended section 6(j)(2)(A)(iii).

<sup>66</sup> Section 564(2)(C)(i) of the QHWRA amended section 6(j)(2)(B)(i).

<sup>67</sup> Section 564(2)(C)(ii) of the QHWRA amended section 6(j)(2)(B)(i)..

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recommendations for such management improvements as are necessary to eliminate or substantially remedy existing deficiencies.

**(C) The Secretary shall seek to enter into an agreement with each troubled public housing**

**agency, after reviewing the report submitted pursuant to subparagraph (B) <sup>68</sup> (if applicable) and**

**consulting with the agency's assessment team.**

**To the extent the Secretary deems appropriate (taking into account an agency's performance**

**under the indicators specified under paragraph (1)), such agreement shall also set forth a plan for**

**enhancing resident involvement in the management of the public housing agency.<sup>69</sup>**

**Such**

**agreement shall set forth—**

**(i) targets for improving performance as measured by the performance indicators specified under paragraph (1) and other requirements within a specified period of time;**

**(ii) strategies for meeting such targets, including a description of the technical assistance that the Secretary will make available to the agency; and**

**(iii) incentives or sanctions for effective implementation of such strategies, which may include any constraints on the use of funds that the Secretary determines are appropriate.**

**The Secretary and the public housing agency shall, to the maximum extent practicable, seek the**

**assistance of local public and private entities in carrying out the agreement.**

**(D)<sup>70</sup> The Secretary shall apply the provisions of this paragraph to resident management corporations as well as public housing agencies.**

(3)(A) Notwithstanding any other provision of law or of any contract for contributions, upon the occurrence of events or conditions that constitute a substantial default by a public housing agency with respect to the covenants or conditions to which the public housing agency is

subject or an agreement entered into under paragraph (2), the Secretary may—

~~71 (i) solicit competitive proposals from other public housing agencies and private housing management agents (which may be selected by existing tenants through administrative procedures established by the Secretary) in the eventuality that these agents may be needed for managing all, or part, of the housing administered by a public housing agency;~~

*(i) solicit competitive proposals from other public housing agencies and private housing management agents which (I) in the discretion of the Secretary, may be selected by existing public housing residents through administrative procedures established by the Secretary, and (II) if appropriate, shall provide for such agents to manage all, or part, of the housing administered by the public housing agency or all or part of the other programs of the agency;*

<sup>68</sup> Section 564(2)(D) of the QHWRA amended section 6(j)(2)(C).

<sup>69</sup> So in law. This new flush sentence probably should have been inserted after clause (iii) of this subparagraph. See section 113(a)(3)(B) of the

Housing and Community Development Act of 1992, Pub. L. 102-550.

<sup>70</sup> Indented so in law.

<sup>71</sup> Section 565(a)(1)(A) of the QHWRA amended section 6(j)(3)(A)(i) to read as shown. Section 565(b) made this amendment applicable as

follows: "(b) Applicability.—The provisions of, and duties and authorities conferred or confirmed by, the amendments made by subsection (a)

shall apply with respect to any action taken before, on, or after the effective date of this Act and shall apply to any receiver appointed for a public

housing agency before the date of the enactment of this Act.

(d) Implementation.—The Secretary may administer the amendments made by subsection (a) as necessary to ensure the efficient and effective initial implementation of this section.

(e) Applicability.—This section 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."

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(ii) petition for the appointment of a receiver (which may be another public housing agency or a private management corporation) of the public housing agency to any

district court of the United States or to any court of the State in which the real property of the public housing agency is situated, that is authorized to appoint a receiver for the purposes and having the powers prescribed in this subsection;

(iii) solicit competitive proposals from other public housing agencies and private entities with experience in construction management in the eventuality that such agencies or firms may be needed to oversee implementation of assistance made available <sup>72</sup> under section 14 *from the Capital Fund under section 9(d)* for the housing; and

~~73 (iv) require the agency to make other arrangements acceptable to the Secretary and in the best interests of the public housing residents for managing all, or part of, such housing.~~

~~Residents of a public housing agency designated as troubled pursuant to paragraph (2)(A) may~~

~~petition the Secretary in writing to take 1 or more of the actions referred to in this subparagraph.~~

~~The Secretary shall respond to such petitions in a timely manner with a written description of the actions, if any, the Secretary plans to take and, where applicable, the reasons why such actions differ from the course proposed by the residents.~~

*(iv) take possession of all or part of the public housing agency, including all or part of any project or program of the agency, including any project or program under any other provision of this title; and*

*(v) require the agency to make other arrangements acceptable to the Secretary and in the best interests of the public housing residents and families assisted under section 8 for managing all, or part, of the public housing administered by the agency or of the programs of the agency.*

~~<sup>74</sup> (B) The Secretary may make available to receivers and other entities selected or appointed pursuant to this paragraph such assistance as is necessary to remedy the substantial deterioration of living conditions in individual public housing developments or other related~~

~~emergencies that endanger the health, safety and welfare of the residents.~~

~~(C) In any proceeding under subparagraph (A)(ii), upon a determination that a substantial default has occurred, and without regard to the availability of alternative remedies, the court shall~~

~~appoint a receiver to conduct the affairs of the public housing agency in a manner consistent with~~

~~this Act and in accordance with such further terms and conditions as the court may provide. The~~

~~court shall have power to grant appropriate temporary or preliminary relief pending final disposition of the petition by the Secretary.~~

~~(D) The appointment of a receiver pursuant to this subsection may be terminated, upon the petition of any party, when the court determines that all defaults have been cured and the~~

~~housing operated by the public housing agency will thereafter be operated in accordance with the~~

~~covenants and conditions to which the public housing agency is subject.~~

*(B)(i) If a public housing agency is identified as troubled under this subsection, the Secretary shall notify the agency of the troubled status of the agency.*

<sup>72</sup> Section 565(a)(1)(B) of the QHWRA amended section 6(j)(3)(A)(iii). NOTE: see footnote 69 for applicability of this amendment.

<sup>73</sup> Section 565(a)(1)(C) of the QHWRA amended section 6(j)(3)(A)(iv) to read as shown and added clause (v). NOTE: see footnote 69 for applicability of this amendment.

<sup>74</sup> Section 565(a)(2) of the QHWRA amended sections 6(j)(3)(B) - (D) to read as shown and added sections 6(j)(3)(E) - (H). NOTE: see footnote

69 for applicability of this amendment..

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*(ii)(I) Upon the expiration of the 1-year period beginning on the later of the date on which the agency receives initial notice from the Secretary of the troubled status of the agency*

*under clause (i) and the date of the enactment of the Quality Housing and Work Responsibility Act of 1998, the agency shall improve its performance, as measured by the performance indicators established pursuant to paragraph (1), by at least 50 percent of the difference between the most recent performance measurement and the measurement necessary to remove that agency's designation as troubled.*

*(II) Upon the expiration of the 2-year period beginning on the later of the date on which the agency receives initial notice from the Secretary of the troubled status of the agency under clause (i) and the date of the enactment of the Quality Housing and Work Responsibility Act of 1998, the agency shall improve its performance, as measured by the performance indicators established pursuant to paragraph (1), such that the agency is no longer designated as troubled.*

*(III) In the event that a public housing agency designated as troubled under this subsection fails to comply with the requirements set forth in subclause (I) or (II), the Secretary shall—*

*(aa) in the case of a troubled public housing agency with 1,250 or more units, petition for the appointment of a receiver pursuant to subparagraph (A)(ii); or (bb) in the case of a troubled public housing agency with fewer than 1,250 units, either petition for the appointment of a receiver pursuant to subparagraph (A)(ii), or take possession of the public housing agency (including all or part of any project or program of the agency) pursuant to subparagraph (A)(iv) and appoint, on a competitive or noncompetitive basis, an individual or entity as an administrative receiver to assume the responsibilities of the Secretary for the administration of all or part of the public housing agency (including all or part of any project or program of the agency).*

*This subparagraph shall not be construed to limit the courses of action available to the Secretary under subparagraph (A).*

*(IV) During the period between the date on which a petition is filed under subclause (III)(aa) and the date on which a receiver assumes responsibility for the management of the public housing agency under such subclause, the Secretary may take possession of the public housing agency (including all or part of any project or program of the agency) pursuant to*

subparagraph (A)(iv) and may appoint, on a competitive or noncompetitive basis, an individual or entity as an administrative receiver to assume the responsibilities of the Secretary for the administration of all or part of the public housing agency (including all or part of any project or program of the agency).

(C) If a receiver is appointed pursuant to subparagraph (A)(ii), in addition to the powers accorded by the court appointing the receiver, the receiver—

(i) may abrogate any contract to which the United States or an agency of the United States is not a party that, in the receiver's written determination (which shall include the basis for such determination), substantially impedes correction of the substantial default, but only after the receiver determines that reasonable efforts to renegotiate such contract have failed;

(ii) may demolish and dispose of all or part of the assets of the public housing agency (including all or part of any project of the agency) in accordance with section 18, including disposition by transfer of properties to resident-supported nonprofit entities;

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(iii) if determined to be appropriate by the Secretary, may seek the establishment, as permitted by applicable State and local law, of 1 or more new public housing agencies;

(iv) if determined to be appropriate by the Secretary, may seek consolidation of all or part of the agency (including all or part of any project or program of the agency), as permitted by applicable State and local laws, into other well-managed public housing agencies with the consent of such well-managed agencies; and

(v) shall not be required to comply with any State or local law relating to civil service requirements, employee rights (except civil rights), procurement, or financial or administrative controls that, in the receiver's written determination (which shall include the basis for such determination), substantially impedes correction of the substantial default.

(D)(i) If, pursuant to subparagraph (A)(iv), the Secretary takes possession of all or part of the public housing agency, including all or part of any project or program of the agency, the Secretary—

(I) may abrogate any contract to which the United States or an agency of the United States is not a party that, in the written determination of the Secretary (which shall include the basis for such determination), substantially impedes correction of the substantial default, but only after the Secretary determines that reasonable efforts to renegotiate such contract have failed;

(II) may demolish and dispose of all or part of the assets of the public housing agency (including all or part of any project of the agency) in accordance with section 18, including disposition by transfer of properties to resident-supported nonprofit entities;

(III) may seek the establishment, as permitted by applicable State and local law, of 1 or more new public housing agencies;

(IV) may seek consolidation of all or part of the agency (including all or part of

any project or program of the agency), as permitted by applicable State and local laws, into other well-managed public housing agencies with the consent of such well-managed agencies;

(V) shall not be required to comply with any State or local law relating to civil service requirements, employee rights (except civil rights), procurement, or financial or administrative controls that, in the Secretary's written determination (which shall include the basis for such determination), substantially impedes correction of the substantial default; and

(VI) shall, without any action by a district court of the United States, have such additional authority as a district court of the United States would have the authority to confer upon a receiver to achieve the purposes of the receivership.

(ii) If, pursuant to subparagraph (B)(ii)(III)(bb), the Secretary appoints an administrative receiver to assume the responsibilities of the Secretary for the administration of all or part of the

public housing agency (including all or part of any project or program of the agency), the

Secretary may delegate to the administrative receiver any or all of the powers given the Secretary by this subparagraph, as the Secretary determines to be appropriate and subject to

clause (iii)..

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(iii) An administrative receiver may not take an action described in subclause (III) or (IV) of clause (i) unless the Secretary first approves an application by the administrative receiver

to authorize such action.

(E) The Secretary may make available to receivers and other entities selected or appointed pursuant to this paragraph such assistance as the Secretary determines in the discretion of the Secretary is necessary and available to remedy the substantial deterioration of

living conditions in individual public housing projects or other related emergencies that endanger the health, safety, and welfare of public housing residents or families assisted under

section 8. A decision made by the Secretary under this paragraph shall not be subject to review

in any court of the United States, or in any court of any State, territory, or possession of the

United States.

(F) In any proceeding under subparagraph (A)(ii), upon a determination that a substantial default has occurred and without regard to the availability of alternative remedies,

the court shall appoint a receiver to conduct the affairs of all or part of the public housing

agency in a manner consistent with this Act and in accordance with such further terms and

conditions as the court may provide. The receiver appointed may be another public housing agency, a private management corporation, or any other person or appropriate entity. The court shall have power to grant appropriate temporary or preliminary relief pending final disposition of the petition by the Secretary.

(G) The appointment of a receiver pursuant to this paragraph may be terminated, upon the petition of any party, when the court determines that all defaults have been cured or the public housing agency is capable again of discharging its duties.

(H) If the Secretary (or an administrative receiver appointed by the Secretary) takes possession of a public housing agency (including all or part of any project or program of the agency), or if a receiver is appointed by a court, the Secretary or receiver shall be deemed to be acting not in the official capacity of that person or entity, but rather in the capacity of the public housing agency, and any liability incurred, regardless of whether the incident giving rise to that liability occurred while the Secretary or receiver was in possession of all or part of the public housing agency (including all or part of any project or program of the agency), shall be the liability of the public housing agency.

<sup>75</sup> (4) SANCTIONS FOR IMPROPER USE OF AMOUNTS.—

(A) IN GENERAL.—In addition to any other actions authorized under this Act, if the Secretary finds that a public housing agency receiving assistance amounts under section 9 for public housing has failed to comply substantially with any provision of this Act relating to the public housing program, the Secretary may—

- (i) terminate assistance payments under this section 9 to the agency;
- (ii) withhold from the agency amounts from the total allocations for the agency pursuant to section 9;
- (iii) reduce the amount of future assistance payments under section 9 to the agency by an amount equal to the amount of such payments that were not expended in accordance with this Act;
- (iv) limit the availability of assistance amounts provided to the agency under section 9 to programs, projects, or activities not affected by such failure to comply;

<sup>75</sup> Section 521(2) of the QHWRA added section 6(j)(4) to read as shown.

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(v) withhold from the agency amounts allocated for the agency under section 8; or

(vi) order other corrective action with respect to the agency.

(B) TERMINATION OF COMPLIANCE ACTION.—If the Secretary takes action under subparagraph (A) with respect to a public housing agency, the Secretary shall—

(i) in the case of action under subparagraph (A)(i), resume payments of assistance amounts under section 9 to the agency in the full amount of the total allocations under section 9 for the agency at the time that the Secretary first determines that the agency will comply with the provisions of this Act relating to the public housing program;

(ii) in the case of action under clause (ii) or (v) of subparagraph (A), make withheld amounts available as the Secretary considers appropriate to ensure that the agency complies with the provisions of this Act relating to such program;

(iii) in the case of action under subparagraph (A)(iv), release such restrictions at the time that the Secretary first determines that the agency will comply with the provisions of this Act relating to such program; or

(iv) in the case of action under subparagraph (vi), cease such action at the time that the Secretary first determines that the agency will comply with the provisions of this Act relating to such program.

<sup>76</sup> (4)(5) The Secretary shall submit to the Congress annually, as a part of the report of the Secretary under section 8 of the Department of Housing and Urban Development Act, a report that—

(A) identifies the public housing agencies that have been designated as troubled under paragraph (2);

(B) describes the grounds on which such public housing agencies were designated as troubled and continue to be so designated;

(C) describes the agreements that have been entered into with such agencies under such paragraph;

(D) describes the status of progress under such agreements;

(E) describes any action that has been taken in accordance with paragraph (3)<sup>77</sup>; and

(F) describes the status of any public housing agency designated as troubled with respect to the ~~<sup>78</sup> program under section 14 and specifies the amount of assistance the agency received under section 14 and any credits accumulated by the agency under section~~

~~14(k)(5)(D)~~ program for assistance from the Capital Fund under section 9(d) and specifies the amount of assistance the agency received under such program.

<sup>76</sup> Section 521(1) of the QHWRRA redesignated section 6(j)(4) as 6(j)(5).

<sup>77</sup> Section 113(d) of the Housing and Community Development Act of 1992, Pub. L. 102-550, provides as follows:

"(d) Annual Reports.—Section 6(j)(5)(E) of the United States Housing Act of 1937 (42 U.S.C. 1437d(j)(4)(E)), as so redesignated by subsection

(d)(1), is amended by inserting before the semicolon the following: `, including an accounting of the authorized funds that have been expended to support such actions'."

The amendment could not be executed. The subsection heading and the United States Code citation indicate that the amendment probably was intended to be made to this subparagraph.

<sup>78</sup> Section 564(3) of the QHWRRA amended section 6(j)(5)(F)..

<sup>79</sup> (6)(A) To the extent that the Secretary determines such action to be necessary in order to ensure the accuracy of any certification made under this section, the Secretary shall require

*an independent auditor to review documentation or other information maintained by a public*

*housing agency pursuant to this section to substantiate each certification submitted by the*

*agency or corporation relating to the performance of that agency or corporation.*

*(B) The Secretary may withhold, from assistance otherwise payable to the agency or corporation under section 9, amounts sufficient to pay for the reasonable costs of any review*

*under this paragraph.*

*(7) The Secretary shall apply the provisions of this subsection to resident management corporations in the same manner as applied to public housing agencies.*

(k) The Secretary shall by regulation require each public housing agency receiving assistance under this Act to establish and implement an administrative grievance procedure under

which tenants will—

(1) be advised of the specific grounds of any proposed adverse public housing agency action;

(2) have an opportunity for a hearing before an impartial party upon timely request within any period applicable under subsection (l);

(3) have an opportunity to examine any documents or records or regulations related to the proposed action;

(4) be entitled to be represented by another person of their choice at any hearing;

(5) be entitled to ask questions of witnesses and have others make statements on their behalf; and

(6) be entitled to receive a written decision by the public housing agency on the proposed action.

For any grievance concerning an eviction or termination of tenancy that involves any activity that

threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or

employees of the public housing agency or any <sup>80</sup> *violent or drug-related criminal activity* on or off

such premises, <sup>81</sup> *or any activity resulting in a felony conviction*, the agency may (A) establish an

expedited grievance procedure as the Secretary shall provide by rule under section 553 of title 5,

United States Code, or (B) exclude from its grievance procedure any such grievance, in any

jurisdiction which requires that prior to eviction, a tenant be given a hearing in court which the

Secretary determines provides the basic elements of due process (which the Secretary shall

establish by rule under section 553 of title 5, United States Code). Such elements of due process

shall not include a requirement that the tenant be provided an opportunity to examine relevant

documents within the possession of the public housing agency. The agency shall provide to the

tenant a reasonable opportunity, prior to hearing or trial, to examine any relevant documents,

records, or regulations directly related to the eviction or termination.

(l) Each public housing agency shall utilize leases which—

<sup>82</sup> (1) have a term of 12 months and shall be automatically renewed for all purposes except for noncompliance with the requirements under section 12(c) (relating to community service requirements); except that nothing in this title shall prevent a resident from seeking timely redress in court for failure to renew based on such noncompliance;

<sup>79</sup> Section 564(4) of the QHWRRA added section 6(j)(6) and (7).

<sup>80</sup> Section 575(a)(1) of the QHWRRA amended section 6(k).

<sup>81</sup> Section 575(a)(2) of the QHWRRA amended section 6(k).

<sup>82</sup> Section 512(b)(3) of the QHWRRA added section 6(l)(1)..

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<sup>83</sup> ~~(1)~~(2) do not contain unreasonable terms and conditions;

<sup>84</sup> ~~(2)~~(3) obligate the public housing agency to maintain the project in a decent, safe, and sanitary condition;

<sup>85</sup> ~~(3)~~(4) require the public housing agency to give adequate written notice of termination of the lease which shall not be less than—

<sup>86</sup> ~~(A) a reasonable time, but not to exceed 30 days, when the health or safety of other tenants or public housing agency employees is threatened;~~

(A) a reasonable period of time, but not to exceed 30 days—

(i) if the health or safety of other tenants, public housing agency employees, or persons residing in the immediate vicinity of the premises is threatened; or

(ii) in the event of any drug-related or violent criminal activity or any felony conviction;

(B) 14 days in the case of nonpayment of rent; and

(C) 30 days in any other case, <sup>87</sup> except that if a State or local law provides for a shorter period of time, such shorter period shall apply;

<sup>88</sup> ~~(4)~~(5) require that the public housing agency may not terminate the tenancy except for serious or repeated violation of the terms or conditions of the lease or for other good cause;

<sup>89</sup> ~~(5)~~(6) provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the

tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy;

<sup>90</sup> ~~(6)~~(7) specify that with respect to any notice of eviction or termination, notwithstanding any State law, a public housing tenant shall be informed of the opportunity, prior to any hearing or trial, to examine any relevant documents, records or regulations directly related to the eviction or termination; <sup>91</sup> and

<sup>92</sup> (7) provide that any occupancy in violation of section 576(b) of the Quality Housing and Work Responsibility Act of 1998 (relating to ineligibility of illegal drug users and alcohol abusers) or the furnishing of any false or misleading information

*pursuant to section 577 of such Act (relating to termination of tenancy and assistance for illegal drug users and alcohol abusers) shall be cause for termination of tenancy;*

<sup>93</sup> ~~(7)~~(9) provide that it shall be cause for immediate termination of the tenancy of a public housing tenant if such tenant—

(A) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime,

<sup>83</sup> Section 512(b)(1) of the QHWRA redesignated section 6(l)(1) as (2).

<sup>84</sup> Section 512(b)(1) of the QHWRA redesignated section 6(l)(2) as (3).

<sup>85</sup> Section 512(b)(1) of the QHWRA redesignated section 6(l)(3) as (4).

<sup>86</sup> Section 575(b)(1)(A) of the QHWRA amended section 6(l)(4)(A) to read as shown.

<sup>87</sup> Section 575(b)(1)(B) of the QHWRA amended section 6(l)(4)(C).

<sup>88</sup> Section 512(b)(1) of the QHWRA redesignated section 6(l)(4) as (5).

<sup>89</sup> Section 512(b)(1) of the QHWRA redesignated section 6(l)(5) as (6).

<sup>90</sup> Section 512(b)(1) of the QHWRA redesignated section 6(l)(6) as (7).

<sup>91</sup> Section 575(b)(2) of the QHWRA amended section 6(l)(7).

<sup>92</sup> Section 575(b)(4) of the QHWRA added this section, which should have probably been designated paragraph (8).

<sup>93</sup> Section 512(b)(2) of the QHWRA redesignated section 6(l)(7) as (9).