

# **Affordable Housing and Self-Sufficiency Improvement Act of 2012**

## **Section-by-Section Summary**

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### Section 1: Short title and table of contents

Affordable Housing and Self-Sufficiency Improvement Act of 2012.

## **TITLE I – REFORMS TO HOUSING ASSISTANCE PROGRAMS UNDER UNITED STATES HOUSING ACT OF 1937**

### Section 101: Inspection of dwelling units

The section amends the inspection requirements for the Section 8 Voucher Program and requires that a public housing agency (PHA) must inspect units every two years rather than annually to ensure compliance with housing quality standards. It also reduces the administrative burdens from the inspection process by allowing PHAs to use inspection certifications that were made under other federal or state housing assistance programs, including the Low-Income Housing Tax Credit program, if the standards are the same or more stringent than those of the Section 8 voucher program.

The general requirement that units must be inspected prior to initial payment is modified in two ways to facilitate speedier occupancy. First, the Affordable Housing Act gives PHAs discretion to make initial subsidy payments to owners when a unit does not pass the initial inspection, so long as the failure resulted from a “non-life threatening condition.” All such defects must be corrected within 30 days of initial occupancy. Second, a PHA may allow a family to occupy a unit in advance of inspection if in the previous 12 months the property has been determined to meet housing quality and safety standards under a federal housing program inspection standard that is at least as stringent as the voucher program’s Housing Quality Standards (HQS).

The section also adds protections for tenants living in units that fail inspection. It allows for withholding of assistance for a unit in noncompliance with inspection standards for up to 60 days, after the initial cure period of at least 30 days. This section authorizes PHAs to assist tenants with relocation should their current unit fail to meet housing standards, and allows PHAs to use withheld funds to pay a security deposit for a new unit.

### Section 102: Rent reform and income reviews

The section simplifies and streamlines many of the policies and procedures that apply to determination of tenant rent contributions in all programs under the U.S. Housing Act (public housing and project-based section 8 in addition to tenant based vouchers).

*Minimum rent contribution:* The section updates current statute to reflect the minimum rent contribution requirement, had the amount been indexed for inflation when it was last adjusted. The amount is changed from an amount to be determined by HUD between \$25 and \$50 to \$69.45, and indexes that number to inflation annually.

*Certification regarding hardship exemption to minimum monthly rent:* The section requires that no later than six months after the bill is made law, the Secretary shall certify for Congress that the hardship provisions currently in statute designed to protect affordable housing residents who are unable to meet the minimum rent contribution requirement are currently enforced and will continue to provide due consideration to the hardship circumstances of persons receiving housing assistance. The hardship provisions currently in statute are designed to prevent the minimum rent contribution or rent contributions as otherwise calculated from prohibiting families in need from receiving assistance.

*Income calculation:* The section increases the annual standard deduction for an elderly or disabled family from \$400 to \$550 and the dependent deduction (for families with children) from \$480 to \$525. Both standard deductions must be adjusted for inflation in future years. The section limits the deduction for medical, attendant care and auxiliary aid expenses to expenses exceeding 10 percent of income (rather than expenses above 3 percent of income under current law). The section includes an update to the calculation of income for veterans receiving deferred disability benefits or payments of pension for necessary aid and attendant costs. The child care deduction is limited to expenses exceeding 5 percent of income. The 24-month disregard of earnings for certain public housing tenants is eliminated.

*Income reviews:* Recertification of income is required at least every three years (rather than annually) for families on “fixed” incomes, and annually for other families. Fixed income is defined as at least 90 percent of income from Social Security, SSI, or similar sources. The section also reduces the frequency of interim re-certifications by creating a minimum threshold of a 10 percent change in adjusted income.

*Use of prior year income:* Agencies and owners must use income from the prior year when setting rents, except for purposes of the initial income determination when a family begins receiving housing assistance and interim re-certifications due to changes in income. This will prevent immediate rent adjustments when a tenant goes to work or gets a pay increase.

*Streamlined income verifications:* The section includes a safe harbor provision allowing PHAs and owners to rely on determinations of income made for other federal means-tested programs, thereby eliminating duplicative verification efforts by multiple agencies for the same family.

*Income from assets:* Actual income from assets is counted when determining rents, but calculated income is only counted to the extent that net family assets exceed \$50,000. (Under current law there is no minimum threshold.)

### Section 103: Eligibility for assistance based on assets and income

The section updates the existing statute to more accurately reflect the household income, assets controlled by the household, and eligibility criteria used for participation in housing assistance programs.

The section also establishes an asset limitation for programs under the U.S. Housing Act, and defines net family assets and specifies certain exclusions. It makes voucher applicants and current tenants or participants ineligible for rental assistance if they have more than \$100,000 in net assets or have a “present ownership interest” in a home that is a suitable residence for the family for which they have a legal right to reside and a legal authority to sell. Victims of domestic violence or individuals using housing assistance for homeownership opportunities are exempt from these limitations. PHAs may adopt policies modifying asset limitations for public housing tenants.

### Section 104: Targeting assistance to low-income working families

The section applies the current targeting requirements for the voucher program, public housing and project-based Section 8 based to a new statutory definition of “extremely low-income”. “Extremely low income” is defined in the section to include families that have income below the poverty line and families with incomes that do not exceed 30 percent of the median family income for the area. The applicable test in an area is the higher of the two measures. The updated definition of “Extremely Low Income” does not apply to Puerto Rico or other U.S. territories.

### Section 105: Use of voucher funds

The section modifies two provisions affecting voucher renewal funding. Renewal funding would be based on vouchers used in the prior year, including vouchers above the authorized level if funded from the prior year’s new allocations. This restores the policy of “maximized leasing” in effect under the U.S. Housing Act prior to 2003, and encourages PHAs to reduce the per-voucher cost in order to serve more families. The section would create a statutorily-permitted reserve level of at least 6 percent of annual renewal funding. Knowing how much reserves they will be able to retain will enable PHAs to better plan the use of funds.

### Section 106: PHA project-based assistance

The section modifies existing law so that the project-based voucher program percent limitation is based on authorized units, instead of the tenant-based funding level, which is much simpler for PHAs and HUD to track. It also allows PHAs to exceed the PBV 20% limitation up to an additional 5% (of authorized units) to provide project based voucher assistance for veterans, homeless populations, and disabled persons that require supportive services, and to provide project based voucher assistance for units located in areas where tenant-based vouchers are difficult to use.

The section simplifies the income mixing requirements for PBV developments by allowing PHAs to attach project-based voucher assistance to 100% of dwelling units for projects that serve elderly populations, persons that require supportive services and for projects that have 25 units or less, and allowing PHAs to attach project-based voucher assistance to 40% of a project's dwelling units in areas where tenant-based vouchers are difficult to use and to projects located in census tracts where the poverty rate is at or below 20 percent.

The section increases the initial and extension contract terms for PBV contracts from up to 15 years to up to 20 years. It also allows PHAs to establish guidelines and criteria for multifamily owners to establish site-based waiting lists for project-based voucher projects.

#### Section 107: Establishment of fair market rent.

The section modifies the public notice requirements for proposed Fair Market Rents (FMRs) by moving the notifications to the HUD-designated World Wide Web with notice of the availability of the data published in the Federal Register and eliminating publication in the Federal Register. HUD would continue to be required to publish in the Federal Register any proposed substantial methodological changes in advance and allow interested parties to request changes after final FMRs are published. Housing agencies are permitted to request exception payment standards subject to HUD established criteria. This section also provides that a public housing agency will not be required to reduce any payment standard for a unit based on the fair market rent determination if the family occupying the unit before the analysis continues to reside in the unit.

#### Section 108. Screening of applicants

The section clarifies the PHA and owner responsibilities pertaining to screening of applicants and the rights of terminated or denied applicants based on previous criminal history. When undertaking the screening process for voucher applicants, PHAs may deny eligibility based only on the applicant's ability to fulfill the obligations of an assisted lease and must consider mitigating factors and circumstances presented by the individual. PHAs must provide informal hearings to applicants or tenants either denied admission or facing termination. PHAs may not consider families shifted from other HUD rental assistance programs to the voucher program due to previous owner withdrawal from the program, prepayments or demolition/disposition of public housing to be new applicants subject to elective re-screening.

The section also modifies the general requirements prohibiting admission of illegal drug users and chronic alcohol abusers to HUD programs. Denials of admission may be based on evidence of current use or a pattern of past use of such substances. Misdemeanor charges will not be considered reasonable grounds for denial of admission unless the activity meets certain criteria including a pattern of activity, violence, or if the victim is a child. This section allows PHAs to deny applicants admission based on criminal activities, violent offenses, and drug-related activity during a reasonable period before the admission

date. Finally, this provision prohibits the admission and requires the termination of individuals who are subject to registration as a lifetime sex offender.

#### Section 109: Utility data

The section requires HUD to collect and publish utility consumption data to assist in establishment of tenant-paid utility allowances by public housing agencies. HUD will also establish guidelines for use of the data in a manner that avoids unnecessary administrative burdens. PHAs will remain responsible for establishing utility allowances.

#### Section 110: Flexibility of capital and operating fund amounts

The section allows housing authorities in good standing to blend their federally appropriated capital and operating funds. The allowable uses currently in statute for the two streams of funding remain in force.

*Background:* Both capital and operating funds are provided by HUD annually to housing authorities for the administration and upkeep of public housing. Operating funds are meant to fund the day-to-day operations of public housing (administration and staffing, utilities, routine maintenance, etc.). Capital funds are meant to help pay for modernization needs, such as replacing a roof or a heating and cooling system, or remodeling units. Both operating funds and capital funds are allocated to PHAs based on a formula.

#### Section 111: Study regarding occupancy of assisted housing by both elderly person and person with disabilities

The section requires a study by the Secretary to examine the impacts of blending assisted housing for elderly persons with disabled persons, specifically those recovering from drug or alcohol abuse. The study will determine whether co-mingling these two unique populations can promote environments more prone to predatory behavior, or otherwise present an undue risk to either served population.

#### Section 112: Housing Assistance Criteria Simplification

The section simplifies the criteria PHAs use to manage waitlists by allowing local preference policies, including work requirements, to apply to both public housing and all Section 8 assisted housing. A local preference is a tool that can be used to prioritize eligible households for placement on a housing authority's waiting list for both the Public Housing and Housing Choice Voucher programs.

## **TITLE II – RENTAL ASSISTANCE DEMONSTRATION AND CONTRACT CONVERSION**

#### Section 201: Demonstration to expand role of private capital in affordable housing

The section authorizes a rental assistance conversion demonstration program to develop, test, and evaluate new approaches to preserve affordable rental housing. This is a

limited program, intended to identify successful programmatic features that can later be applied more broadly. Participation is voluntary and open only to owners of properties currently assisted under the public housing and Section 8 Moderate Rehabilitation programs.

Participating properties will convert their assistance from the current form of rental assistance to a new, long-term rental assistance contract under either the project-based voucher program authorized by the U.S. Housing Act of 1937 (the Act) (42 U.S.C. 1437 et seq.) or under the project-based section 8 program, in which case the contract will be eligible for renewal under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) (MAHRAA).

The demonstration requires the Secretary to provide an opportunity for public comment on the eligibility and selection criteria to be employed for participating properties. The demonstration specifies that consultation with residents must be taken into account when a conversion is being considered.

The demonstration specifically provides that the new assistance contract will survive foreclosure or bankruptcy, ensuring the units redeveloped for affordable housing purposes remain affordable. Ownership or control by a public or not-for-profit entity is also required, except as determined to be necessary pursuant to a foreclosure, bankruptcy, or termination and transfer of assistance, when ownership or control is still prioritized first to a capable public entity, then a capable nonprofit entity, and finally to another capable entity.

The demonstration requires the Secretary to assess the impact of the demonstration on properties and residents, taking into account the costs and benefits of its various elements, including the amount of private funding leveraged. It also specifies that the findings of this assessment must be published.

*Authorization of appropriations:* The section authorizes the appropriation of funds to carry out the demonstration, including for the supplemental cost of the first year of assistance, for the costs of evaluation, for technical assistance to public housing agencies and legitimate tenant organizations, and for other appropriate purposes totaling \$150 million over 5 years.

#### Sec. 202: Rent Supplement and Rental Assistance Program contract conversions

The section authorizes the Secretary, at the request of owners of properties assisted under the Rent Supplement or Rental Assistance Program (RAP), to convert existing Rent Supplement and RAP contracts to project-based rental assistance contracts under section 8, subject to the terms of section 524 of MAHRAA, and to treat the resulting contracts as renewals.

*Authorization of appropriations:* The section authorizes, as may be necessary to complete such conversions of Rent Supplement and RAP expiring contracts, budget

authority for \$50 million over 5 years, to cover the incremental cost of transitioning the properties to project-based rental assistance.

### **TITLE III – FAMILY SELF-SUFFICIENCY PROGRAM**

#### **Section 301: Reforms to family self-sufficiency program**

The section expands the Family Self Sufficiency Program (FSS) by making participation mandatory for public housing authorities, subject to appropriations, and creates a funding structure for participating housing authorities. The section allows housing authorities to partner or collaborate with other authorities and outside groups to prevent duplicative work or improve efficiencies within the program.

The section makes FSS available to all residents of assisted housing under section 8 & 9 of the Housing Act. The section also allows property owners and managers to administer FSS programs in cases where a local program option is not available.

The section places requirements on the uses of escrow accounts under the program for graduates who remain on some form of housing assistance, insisting that any money dispersed be used to advance the goal of household economic independence. The approved uses include formal job training, education opportunities, investing in a small business, credit rating repair, and education savings accounts.

#### **Section 302: Research demonstration to evaluate options for taking economic security initiatives to scale in subsidized housing**

The section creates a study to identify practices or strategies associated with FSS that best achieve the goals of the program. HUD is required to examine a menu of strategies such as flat rents, ceiling rents, conditional cash transfers, and work requirements. These strategies will be examined for a variety of assisted family scenarios, including those with and without high school diplomas, those residing in high cost and low cost markets, those who are currently employed, and those unemployed prior to participation in the program.

### **TITLE IV – REFORMS OF MOVING TO WORK PROGRAM**

#### **Section 401: Reform of Moving to Work Program**

The section designates Moving to Work (MTW) at HUD as a program, and strikes all references to “demonstration” in the statute. The section also amends the purposes of MTW to enhance the focus on economic independence promoting activities, flexibility and cost effectiveness, and housing choice.

The section creates an application and review process for PHAs to gain MTW status. The language directs the Secretary to consider applicants for admission based on a series of criteria including capacity to use MTW flexibilities toward the purposes of the program and the merits of their plan submission. The language directs the Secretary to reach

determinations for each applicant based on the merits of their proposal, and for no arbitrary cap to be placed on the number of PHAs to be considered or admitted for MTW status. The language also requires the MTW to provide assisted families with a grievance process prior to any removal of assistance.

New reporting requirements for MTW PHAs include an annual analysis of the efforts each PHA has undertaken to achieve the purposes of the program. The reports will include the number of families that achieve economic independence served by the agency annually, the number of new families the agency is able to assist from waiting lists for housing assistance, the percentage of change in per voucher cost for families receiving supportive services, and the percentage of the change in household income.

The section continues the practice of annual recertification for MTW PHAs at HUD, and directs HUD to analyze the impact of strategies or programs employed by the different agencies. The Secretary is provided the discretion to terminate MTW contracts in the event that PHAs are found to be in material default of the conditions and obligations of their agreement, are found to have misused or misappropriated funds without taking appropriate steps to address those misdeeds, or become negligent in their effort to advance the goals of MTW. PHAs shall not, however, be terminated without just cause, and MTW contracts will remain outstanding so long as the PHA continues to participate and HUD finds them in compliance.

The section provides specific protections for current MTW participants, allowing the contracts currently in force between those PHAs and HUD to remain so through their expiration unless the PHA opts out of said contract.

## **TITLE V – ACCESS TO HUD PROGRAMS AND MARK-TO-MARKET PROGRAM EXTENSION**

### Section 501: Access to HUD programs for individuals with limited English proficiency

The section shifts the responsibility of translating standard documents associated with HUD's affordable housing programs from local PHAs and private owners/managers to HUD. The section ensures the translated documents maintained by HUD are consistently updated by requiring a task force to meet twice yearly to identify documents that need to be translated to improve access to HUD services and products. The section further requires HUD to develop and implement a plan to establish a housing information resource center to provide translations of written materials, provide a toll-free 24 hour interpretation service, and conduct a study of best-practices models in order to relieve local PHAs and private owners/managers of the cost associated with these activities.

### Section 502: Extension of mark-to-market program

The section extends the Mark to Market Program under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) through October 1, 2015.

*Background:* At the end of a Section 8 contract, an owner has two options: renew the contract, or opt out of renewing the contract. Under the terms of MAHRA, as implemented by HUD, owners wishing to renew their Section 8 contracts face different renewal procedures depending on the circumstances of the property. Those circumstances include the original subsidy type, the type of property owner, the property's rents relative to market, and the financial state of the property. The owner generally has six options: renew at existing rents (if rents are at market), be referred for renewal through a full Mark-to-Market restructuring (if rents are above market), renew at higher rents (if rents are below market), renew subject to special rules (if exempted from restructuring), renew based on terms of earlier preservation initiatives, or opt-out of the program by not renewing.