

under this subsection or under section 1437l of this title (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998) shall be maintained and operated under the terms and conditions applicable to public housing during the 20-year period that begins on the latest date on which modernization is completed.

(C) Applicability of latest expiration date

Public housing subject to this paragraph or to any other provision of law mandating the operation of the housing as public housing or under the terms and conditions applicable to public housing for a specified length of time, shall be maintained and operated as required until the latest such expiration date.

(e) Operating Fund

(1) In general

The Secretary shall establish an Operating Fund for the purpose of making assistance available to public housing agencies for the operation and management of public housing, including—

(A) procedures and systems to maintain and ensure the efficient management and operation of public housing units (including amounts sufficient to pay for the reasonable costs of review by an independent auditor of the documentation or other information maintained pursuant to section 1437d(j)(6) of this title by a public housing agency or resident management corporation to substantiate the performance of that agency or corporation);

(B) activities to ensure a program of routine preventative maintenance;

(C) anticrime and antidrug activities, including the costs of providing adequate security for public housing residents, including above-baseline police service agreements;

(D) activities related to the provision of services, including service coordinators for elderly persons or persons with disabilities;

(E) activities to provide for management and participation in the management and policymaking of public housing by public housing residents;

(F) the costs of insurance;

(G) the energy costs associated with public housing units, with an emphasis on energy conservation;

(H) the costs of administering a public housing work program under section 1437j of this title, including the costs of any related insurance needs;

(I) the costs of repaying, together with rent contributions, debt incurred to finance the rehabilitation and development of public housing units, which shall be subject to such reasonable requirements as the Secretary may establish;

(J) the costs associated with the operation and management of mixed finance projects, to the extent appropriate; and

(K) the costs of operating computer centers in public housing through a Neighborhood Networks initiative described in sub-

section (d)(1)(E) of this section, and of activities related to that initiative.

(2) Formula

(A) In general

The Secretary shall establish a formula for determining the amount of assistance provided to public housing agencies from the Operating Fund for a fiscal year. The formula may take into account—

(i) standards for the costs of operating and reasonable projections of income, taking into account the characteristics and locations of the public housing projects and characteristics of the families served and to be served (including the incomes of the families), or the costs of providing comparable services as determined in accordance with criteria or a formula representing the operations of a prototype well-managed public housing project;

(ii) the number of public housing dwelling units owned, assisted, or operated by the public housing agency;

(iii) the number of public housing dwelling units owned, assisted, or operated by the public housing agency that are chronically vacant and the amount of assistance appropriate for those units;

(iv) to the extent quantifiable, the extent to which the public housing agency provides programs and activities designed to promote the economic self-sufficiency and management skills of public housing residents;

(v) the need of the public housing agency to carry out anti-crime and anti-drug activities, including providing adequate security for public housing residents;

(vi) the amount of public housing rental income foregone by the public housing agency as a result of escrow savings accounts under section 1437u(d)(2) of this title for families participating in a family self-sufficiency program of the agency under such section 1437u of this title; and

(vii) any other factors that the Secretary determines to be appropriate.

(B) Incentive to increase certain rental income

The formula shall provide an incentive to encourage public housing agencies to facilitate increases in earned income by families in occupancy. Any such incentive shall provide that the agency shall benefit from increases in such rental income and that such amounts accruing to the agency pursuant to such benefit may be used only for low-income housing or to benefit the residents of the public housing agency.

(C) Treatment of savings

(i) In general

The treatment of utility and waste management costs under the formula shall provide that a public housing agency shall receive the full financial benefit from any reduction in the cost of utilities or waste management resulting from any contract with a third party to undertake energy

conservation improvements in one or more of its public housing projects.

(ii) Third party contracts

Contracts described in clause (i) may include contracts for equipment conversions to less costly utility sources, projects with resident-paid utilities, and adjustments to frozen base year consumption, including systems repaired to meet applicable building and safety codes and adjustments for occupancy rates increased by rehabilitation.

(iii) Term of contract

The total term of a contract described in clause (i) shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating system replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.

(iv) Existing contracts

The term of a contract described in clause (i) that, as of December 26, 2007, is in repayment and has a term of not more than 12 years, may be extended to a term of not more than 20 years to permit additional energy conservation improvements without requiring the procurement of energy performance contractors.

(3) Condition on use

No portion of any public housing project operated using amounts provided under this subsection, or under this section as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, may be disposed of before the expiration of the 10-year period beginning upon the conclusion of the fiscal year for which such amounts were provided, except as otherwise provided in this chapter.

(f) Negotiated rulemaking procedure

The formulas under subsections (d)(2) and (e)(2) of this section shall be developed according to procedures for issuance of regulations under the negotiated rulemaking procedure under subchapter III of chapter 5 of title 5.

(g) Limitations on use of funds

(1) Flexibility for Capital Fund amounts

Of any amounts appropriated for fiscal year 2000 or any fiscal year thereafter that are allocated for fiscal year 2000 or any fiscal year thereafter from the Capital Fund for any public housing agency, the agency may use not more than 20 percent for activities that are eligible under subsection (e) of this section for assistance with amounts from the Operating Fund, but only if the public housing agency plan for the agency provides for such use.

(2) Full flexibility for small PHAs

Of any amounts allocated for any fiscal year for any public housing agency that owns or operates less than 250 public housing dwelling units, is not designated pursuant to section 1437d(j)(2) of this title as a troubled public housing agency, and (in the determination of

the Secretary) is operating and maintaining its public housing in a safe, clean, and healthy condition, the agency may use any such amounts for any eligible activities under subsections (d)(1) and (e)(1) of this section, regardless of the fund from which the amounts were allocated and provided. This subsection shall take effect on October 21, 1998.

(3) Limitation on new construction

(A) In general

Except as provided in subparagraphs (B) and (C), a public housing agency may not use any of the amounts allocated for the agency from the Capital Fund or Operating Fund for the purpose of constructing any public housing unit, if such construction would result in a net increase from the number of public housing units owned, assisted, or operated by the public housing agency on October 1, 1999, including any public housing units demolished as part of any revitalization effort.

(B) Exception regarding use of assistance

A public housing agency may use amounts allocated for the agency from the Capital Fund or Operating Fund for the construction and operation of housing units that are available and affordable to low-income families in excess of the limitations on new construction set forth in subparagraph (A), but the formulas established under subsections (d)(2) and (e)(2) of this section shall not provide additional funding for the specific purpose of allowing construction and operation of housing in excess of those limitations (except to the extent provided in subparagraph (C)).

(C) Exception regarding formulas

Subject to reasonable limitations set by the Secretary, the formulas established under subsections (d)(2) and (e)(2) of this section may provide additional funding for the operation and modernization costs (but not the initial development costs) of housing in excess of amounts otherwise permitted under this paragraph, and such amounts may be so used, if—

(i) such units are part of a mixed-finance project or otherwise leverage significant additional private or public investment; and

(ii) the estimated cost of the useful life of the project is less than the estimated cost of providing tenant-based assistance under section 1437f(o) of this title for the same period of time.

(h) Technical assistance

To the extent amounts are provided in advance in appropriations Acts, the Secretary may make grants or enter into contracts or cooperative agreements in accordance with this subsection for purposes of providing, either directly or indirectly—

(1) technical assistance to public housing agencies, resident councils, resident organizations, and resident management corporations, including assistance relating to monitoring and inspections;

(2) training for public housing agency employees and residents;