

### 1.2.2 Leased Public Housing—Section 23

Congress adopted the Section 23 leased housing program in 1965<sup>2</sup> and replaced it with the Section 8 housing program in 1974.<sup>3</sup> Section 23 projects were required to be converted to the Section 8 program.<sup>4</sup> Despite this requirement, a few Section 23 units remain.

The Section 23 leased housing program was created to increase PHAs' flexibility in providing public housing.<sup>5</sup> This was the first PHA-administered housing program to use privately owned housing. Under the Section 23 program, PHAs leased units from private owners and sublet them to eligible low-income families. PHAs retained tenant selection, rent collection and, occasionally, management and maintenance responsibilities.

The leased units either existed on the private market or were constructed or rehabilitated by private owners specifically for the Section 23 program. The leases for existing units tended to be short-term, with a statutory maximum that was first set at three years<sup>6</sup> and was later changed to ten years.<sup>7</sup> The leases for units specifically constructed or rehabilitated for the Section 23 program tended to be longer, usually with renewals at the option of private owners, up to a maximum of 20 years.

Section 23 tenants had to meet essentially the same eligibility requirements as tenants for the conventional Public Housing program and rents were set by the same formula.<sup>8</sup> HUD provided subsidies under an annual contributions contract to make up the difference between the income from the tenants' rents and the total of the rents paid by the PHA for the units and its administrative and operational expenses.

HUD was responsible for ensuring that the PHAs properly operated the Section 23 program. HUD originally imposed obligations on the local housing authority through the annual contributions contracts and a separate handbook on Section 23.<sup>9</sup> In 1974, HUD promulgated regulations for a new version of the Section 23 program, which remained until September 1995.<sup>10</sup> Not many units operated under these regulations, however, given that the Section 8 program replaced the Section 23 program upon its enactment in 1974.

Under the Section 23 program, when a PHA leased units from a private landlord and then subleased them to tenants, the tenants had most of the same substantive and procedural protections afforded to tenants in conventional public housing. For example, the HUD regulations on leases and grievance procedures applied to the Section 23 tenants.<sup>11</sup> In addition, under the leases with the private landlords, the PHAs usually assumed the responsibility for management and maintenance of the units, although the parties could agree that the private landlord would retain that responsibility. To analyze the rights of any tenants still residing in Section 23 units, advocates should review the material in the public housing

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<sup>1</sup> Note this excerpt from the last edition of NHLP's "green book" has not been updated since the 2012 edition.

<sup>2</sup>Housing and Urban Development Act of 1965, Pub. L. No. 89-117, Title I, § 103(a), 79 Stat. 451, 455 (Aug. 10, 1965) (reprinted in 1965 U.S. CODE CONG. & ADMIN. NEWS 500-503).

<sup>3</sup>See 42 U.S.C.A. § 1437f (West 2012). "Section 8" refers to Section 8 of the revised United States Housing Act of 1937.

<sup>4</sup>See HUD, LOW-RENT HOUSING: LEASED HOUSING HANDBOOK 7430.1, CHG-9, Ch. 5 (May 1982) (cancelled as a requirement, but retained).

<sup>5</sup>*Id.*

<sup>6</sup>Section 23(d) of the United States Housing Act of 1937, as added by Pub. L. No. 89-117, Title I, § 103(a), 79 Stat. 451, 455 (1965), (reprinted in 1965 U.S. CODE CONG. & ADMIN. NEWS 502).

<sup>7</sup>Housing and Urban Development Act of 1970, Pub. L. No. 91-609, Title II, § 204(b), 84 Stat. 1770, 1777 (Dec. 31, 1970) (reprinted in 1970 U.S. CODE CONG. & ADMIN. NEWS 2078).

<sup>8</sup>Pub. L. No. 89-117, § 103(a), 79 Stat. 451, 455 (1965).

<sup>9</sup>HUD, Annual Contributions Contract, Special Provisions for Leased Housing under Section 23 of the Act, HUD Form No. 53010L (Dec. 1968); HUD, LOW-RENT HOUSING: LEASED HOUSING HANDBOOK 7430.1 (Nov. 1969).

<sup>10</sup>Final Rule published at 60 Fed. Reg. 47,260, 47,263 (Sept. 11, 1995), removing former 24 C.F.R. pt. 900 (1995).

<sup>11</sup>24 C.F.R. § 966.1 (2012).

section of each chapter.