

the Attorney General of the United States, who shall represent the Secretary in the litigation.

**(2) Procedure**

**(A) In general**

The Secretary shall file in the court a record of the proceeding on which the Secretary based the action, as provided in section 2112 of title 28.

**(B) Objections**

No objection to the action of the Secretary shall be considered by the court unless the Department has registered the objection before the Secretary.

**(3) Disposition**

**(A) Court proceedings**

**(i) Jurisdiction of court**

The court shall have jurisdiction to affirm or modify the action of the Secretary or to set the action aside in whole or in part.

**(ii) Findings of fact**

If supported by substantial evidence on the record considered as a whole, the findings of fact by the Secretary shall be conclusive.

**(iii) Addition**

The court may order evidence, in addition to the evidence submitted for review under this subsection, to be taken by the Secretary, and to be made part of the record.

**(B) Secretary**

**(i) In general**

The Secretary, by reason of the additional evidence referred to in subparagraph (A) and filed with the court—

(I) may—

- (aa) modify the findings of fact of the Secretary; or
- (bb) make new findings; and

(II) shall file—

- (aa) such modified or new findings; and
- (bb) the recommendation of the Secretary, if any, for the modification or setting aside of the original action of the Secretary.

**(ii) Findings**

The findings referred to in clause (i)(II)(bb) shall, with respect to a question of fact, be considered to be conclusive if those findings are—

- (I) supported by substantial evidence on the record; and
- (II) considered as a whole.

**(4) Finality**

**(A) In general**

Except as provided in subparagraph (B), upon the filing of the record under this subsection with the court—

- (i) the jurisdiction of the court shall be exclusive; and
- (ii) the judgment of the court shall be final.

**(B) Review by Supreme Court**

A judgment under subparagraph (A) shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification, as provided in section 1254 of title 28.

(Pub. L. 104-330, title VIII, §818, as added Pub. L. 106-568, title II, §203, Dec. 27, 2000, 114 Stat. 2891, and Pub. L. 106-569, title V, §513, Dec. 27, 2000, 114 Stat. 2985.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(1), was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

CODIFICATION

Pub. L. 106-568, §203, and Pub. L. 106-569, §513, enacted identical sections 818 of Pub. L. 104-330. This section is based on the text of section 818 of Pub. L. 104-330, as added by Pub. L. 106-569, §513.

**§ 4238. Monitoring of compliance**

**(a) Enforceable agreements**

**(1) In general**

The Director, through binding contractual agreements with owners or other authorized entities, shall ensure long-term compliance with the provisions of this subchapter.

**(2) Measures**

The measures referred to in paragraph (1) shall provide for—

- (A) to the extent allowable by Federal and State law, the enforcement of the provisions of this subchapter by the Department and the Secretary; and
- (B) remedies for breach of the provisions referred to in paragraph (1).

**(b) Periodic monitoring**

**(1) In general**

Not less frequently than annually, the Director shall review the activities conducted and housing assisted under this subchapter to assess compliance with the requirements of this subchapter.

**(2) Review**

Each review under paragraph (1) shall include onsite inspection of housing to determine compliance with applicable requirements.

**(3) Results**

The results of each review under paragraph (1) shall be—

- (A) included in a performance report of the Director submitted to the Secretary under section 4239 of this title; and
- (B) made available to the public.

**(c) Performance measures**

The Secretary shall establish such performance measures as may be necessary to assess compliance with the requirements of this subchapter.

(Pub. L. 104-330, title VIII, §819, as added Pub. L. 106-568, title II, §203, Dec. 27, 2000, 114 Stat. 2893,

and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2987.)

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted identical sections 819 of Pub. L. 104-330. This section is based on the text of section 819 of Pub. L. 104-330, as added by Pub. L. 106-569, § 513.

**§ 4239. Performance reports**

**(a) Requirement**

For each fiscal year, the Director shall—

(1) review the progress the Department has made during that fiscal year in carrying out the housing plan submitted by the Department under section 4223 of this title; and

(2) submit a report to the Secretary (in a form acceptable to the Secretary) describing the conclusions of the review.

**(b) Content**

Each report submitted under this section for a fiscal year shall—

(1) describe the use of grant amounts provided to the Department of Hawaiian Home Lands for that fiscal year;

(2) assess the relationship of the use referred to in paragraph (1) to the goals identified in the housing plan;

(3) indicate the programmatic accomplishments of the Department; and

(4) describe the manner in which the Department would change its housing plan submitted under section 4223 of this title as a result of its experiences.

**(c) Submissions**

The Secretary shall—

(1) establish a date for submission of each report under this section;

(2) review each such report; and

(3) with respect to each such report, make recommendations as the Secretary considers appropriate to carry out the purposes of this subchapter.

**(d) Public availability**

**(1) Comments by beneficiaries**

In preparing a report under this section, the Director shall make the report publicly available to the beneficiaries of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.) and give a sufficient amount of time to permit those beneficiaries to comment on that report before it is submitted to the Secretary (in such manner and at such time as the Director may determine).

**(2) Summary of comments**

The report shall include a summary of any comments received by the Director from beneficiaries under paragraph (1) regarding the program to carry out the housing plan.

(Pub. L. 104-330, title VIII, § 820, as added Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2893, and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2987.)

REFERENCES IN TEXT

The Hawaiian Homes Commission Act, 1920, referred to in subsec. (d)(1), is act July 9, 1921, ch. 42, 42 Stat. 108, as amended, which was classified generally to sec-

tions 691 to 718 of Title 48, Territories and Insular Possessions, and was omitted from the Code.

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted identical sections 820 of Pub. L. 104-330. This section is based on the text of section 820 of Pub. L. 104-330, as added by Pub. L. 106-569, § 513.

**§ 4240. Review and audit by Secretary**

**(a) Annual review**

**(1) In general**

The Secretary shall, not less frequently than on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether—

(A) the Director has—

(i) carried out eligible activities under this subchapter in a timely manner;

(ii) carried out and made certifications in accordance with the requirements and the primary objectives of this subchapter and with other applicable laws; and

(iii) a continuing capacity to carry out the eligible activities in a timely manner;

(B) the Director has complied with the housing plan submitted by the Director under section 4223 of this title; and

(C) the performance reports of the Department under section 4240<sup>1</sup> of this title are accurate.

**(2) Onsite visits**

Each review conducted under this section shall, to the extent practicable, include onsite visits by employees of the Department of Housing and Urban Development.

**(b) Report by Secretary**

The Secretary shall give the Department of Hawaiian Home Lands not less than 30 days to review and comment on a report under this subsection. After taking into consideration the comments of the Department, the Secretary may revise the report and shall make the comments of the Department and the report with any revisions, readily available to the public not later than 30 days after receipt of the comments of the Department.

**(c) Effect of reviews**

The Secretary may make appropriate adjustments in the amount of annual grants under this subchapter in accordance with the findings of the Secretary pursuant to reviews and audits under this section. The Secretary may adjust, reduce, or withdraw grant amounts, or take other action as appropriate in accordance with the reviews and audits of the Secretary under this section, except that grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided to the Department of Hawaiian Home Lands.

(Pub. L. 104-330, title VIII, § 821, as added Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2894, and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2988.)

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted identical sections 821 of Pub. L. 104-330. This section is

<sup>1</sup> So in original. Probably should be section "4239".