

**EXCERPTS FROM THE HOUSING AND URBAN
DEVELOPMENT ACT OF 1968**

[Public Law 90–448; 82 Stat. 572; 42 U.S.C. 4001 et seq.]

[As Amended Through P.L. 117–328, Enacted December 29, 2022]

[Currency: This publication is a compilation of the text of Public Law 90–448. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>]

[Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).]

DECLARATION OF POLICY

SEC. 2. [12 U.S.C. 1701t] The Congress affirms the national goal, as set forth in section 2 of the Housing Act of 1949, of “a decent home and a suitable living environment for every American family.”.

The Congress finds that this goal has not been fully realized for many of the Nation’s lower income families; that this is a matter of grave national concern; and that there exist in the public and private sectors of the economy the resources and capabilities necessary to the full realization of this goal.

The Congress declares that in the administration of those housing programs authorized by this Act which are designed to assist families with incomes so low that they could not otherwise decently house themselves, and of other Government programs designed to assist in the provision of housing for such families, the highest priority and emphasis should be given to meeting the housing needs of those families for which the national goal has not become a reality; and in the carrying out of such programs there should be the fullest practicable utilization of the resources and capabilities of private enterprise and of individual self-help techniques.

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SEC. 3. [12 U.S.C. 1701u] ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS.

(a) **FINDINGS.**—The Congress finds that—

(1) Federal housing and community development programs provide State and local governments and other recipients of Federal financial assistance with substantial funds for projects and activities that produce significant employment and other economic opportunities;

(2) low- and very low-income persons, especially recipients of government assistance for housing, often have restricted access to employment and other economic opportunities;

(3) the employment and other economic opportunities generated by projects and activities that receive Federal housing and community development assistance offer an effective means of empowering low- and very low-income persons, particularly persons who are recipients of government assistance for housing; and

(4) prior Federal efforts to direct employment and other economic opportunities generated by Federal housing and community development programs to low- and very low-income persons have not been fully effective and should be intensified.

(b) **POLICY.**—It is the policy of the Congress and the purpose of this section to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing.

(c) **EMPLOYMENT.**—

(1) **PUBLIC AND INDIAN HOUSING PROGRAM.**—

(A) **IN GENERAL.**—The Secretary shall require that public and Indian housing agencies, and their contractors and subcontractors, make their best efforts, consistent with existing Federal, State, and local laws and regulations, to give to low- and very low-income persons the training and employment opportunities generated by development assistance provided pursuant to section 5 of the United States Housing Act of 1937, operating assistance provided pursuant to section 9 of that Act, and modernization grants provided pursuant to section 14 of that Act.

(B) **PRIORITY.**—The efforts required under subparagraph (A) shall be directed in the following order of priority:

(i) To residents of the housing developments for which the assistance is expended.

(ii) To residents of other developments managed by the public or Indian housing agency that is expending the assistance.

(iii) To participants in YouthBuild programs receiving assistance under section 171 of the Workforce Innovation and Opportunity Act.

(iv) To other low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(2) **OTHER PROGRAMS.**—

(A) **IN GENERAL.**—In other programs that provide housing and community development assistance, the Secretary shall ensure that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint

hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the project is located.

(B) PRIORITY.—Where feasible, priority should be given to low- and very low-income persons residing within the service area of the project or the neighborhood in which the project is located and to participants in YouthBuild programs receiving assistance under section 171 of the Workforce Innovation and Opportunity Act.

(d) CONTRACTING.—

(1) PUBLIC AND INDIAN HOUSING PROGRAM.—

(A) IN GENERAL.—The Secretary shall require that public and Indian housing agencies, and their contractors and subcontractors, make their best efforts, consistent with existing Federal, State, and local laws and regulations, to award contracts for work to be performed in connection with development assistance provided pursuant to section 5 of the United States Housing Act of 1937, operating assistance provided pursuant to section 9 of that Act, and modernization grants provided pursuant to section 14 of that Act, to business concerns that provide economic opportunities for low- and very low-income persons.

(B) PRIORITY.—The efforts required under subparagraph (A) shall be directed in the following order of priority:

(i) To business concerns that provide economic opportunities for residents of the housing development for which the assistance is provided.

(ii) To business concerns that provide economic opportunities for residents of other housing developments operated by the public and Indian housing agency that is providing the assistance.

(iii) To YouthBuild programs receiving assistance under section 171 of the Workforce Innovation and Opportunity Act.

(iv) To business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is provided.

(2) OTHER PROGRAMS.—

(A) IN GENERAL.—In providing housing and community development assistance pursuant to other programs, the Secretary shall ensure that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, contracts awarded for work to be performed in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(B) PRIORITY.—Where feasible, priority should be given to business concerns which provide economic opportunities for low- and very low-income persons residing within the service area of the project or the neighborhood in which the project is located and to YouthBuild programs receiving assistance under section 171 of the Workforce Innovation and Opportunity Act.

(e) DEFINITIONS.—For the purposes of this section the following definitions shall apply:

(1) LOW- AND VERY LOW-INCOME PERSONS.—The terms “low-income persons” and “very low-income persons” have the same meanings given the terms “low-income families” and “very low-income families”, respectively, in section 3(b)(2) of the United States Housing Act of 1937.

(2) BUSINESS CONCERN THAT PROVIDES ECONOMIC OPPORTUNITIES.—The term “a business concern that provides economic opportunities” means a business concern that—

(A) provides economic opportunities for a class of persons that has a majority controlling interest in the business;

(B) employs a substantial number of such persons; or

(C) meets such other criteria as the Secretary may establish.

(f) COORDINATION WITH OTHER FEDERAL AGENCIES.—The Secretary shall consult with the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Commerce, the Administrator of the Small Business Administration, and such other Federal agencies as the Secretary determines are necessary to carry out this section.

(g) REGULATIONS.—Not later than 180 days after the date of enactment of the National Affordable Housing Act Amendments of 1992,¹ the Secretary shall promulgate regulations to implement this section.

IMPROVED ARCHITECTURAL DESIGN IN GOVERNMENT HOUSING PROGRAMS

SEC. 4. [12 U.S.C. 1701v] The Congress finds that Federal aids to housing have not contributed fully to improvement in architectural standards. This objective has been contemplated in Federal housing legislation since the establishment of mortgage insurance through the Federal Housing Administration.

The Congress commends the Department of Housing and Urban Development for its recent efforts to improve architectural standards through competitive design awards and in other ways but at the same time recognizes that this important objective requires high priority if Federal aid is to make its full community-wide contribution toward improving our urban environment.

The Congress further finds that even within the necessary budget limitations on housing for low and moderate income families architectural design could be improved not only to make the

¹Probably intended to refer to the Housing and Community Development Act of 1992, Pub. L. 102-550, approved October 28, 1992.

housing more attractive, but to make it better suited to the needs of occupants.

The Congress declares that in the administration of housing programs which assist in the provision of housing for low and moderate income families, emphasis should be given to encouraging good design as an essential component of such housing and to developing housing which will be of such quality as to reflect its important relationship to the architectural standards of the neighborhood and community in which it is situated, consistent with prudent budgeting.

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TITLE I—LOWER INCOME HOUSING

HOMEOWNERSHIP FOR LOWER INCOME FAMILIES

SEC. 101. [12 U.S.C. 1701w] (a)

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(e) The Secretary of Housing and Urban Development is authorized to provide, or contract with public or private organizations to provide, such budget, debt management, and related counseling services to mortgagors whose mortgages are insured under section 235(i) or 235(j)(4) of the National Housing Act as he determines to be necessary to assist such mortgagors in meeting the responsibilities of homeownership. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subsection.

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TECHNICAL ASSISTANCE, COUNSELING TO TENANTS AND HOMEOWNERS, AND LOANS TO SPONSORS OF LOW- AND MODERATE-INCOME HOUSING

SEC. 106. [12 U.S.C. 1701x] (a)(1) The Secretary is authorized to provide, or contract with public or private organizations to provide, information, advice, and technical assistance, including but not limited to—

(i) the assembly, correlation, publication, and dissemination of information with respect to the construction, rehabilitation, and operation of low- and moderate-income housing;

(ii) the provision of advice and technical assistance to public bodies or to nonprofit or cooperative organizations with respect to the construction, rehabilitation, and operation of low- and moderate-income housing, including assistance with respect to self-help and mutual self-help programs;

(iii) counseling and advice to tenants and homeowners with respect to property maintenance, financial management, and such other matters as may be appropriate to assist them in improving their housing conditions and in meeting the responsibilities of tenancy or homeownership; and

(iv) the provision of technical assistance to communities, particularly smaller communities, to assist such communities in planning, developing, and administering Community Development

opment Programs pursuant to title I of the Housing and Community Development Act of 1974.

(2) The Secretary (A) shall provide the services described in clause (iii) of paragraph (1) for homeowners assisted under section 235 of the National Housing Act; (B) shall, in consultation with the Secretary of Agriculture, provide such services for borrowers who are first-time homebuyers with guaranteed loans under section 502(h) of the Housing Act of 1949; and (C) may provide such services for other owners of single family dwelling units insured under title II of the National Housing Act or guaranteed or insured under chapter 37 of title 38, United States Code. For purposes of this paragraph and clause (iii) of paragraph (1), the Secretary may provide the services described in such clause directly or may enter into contracts with, make grants to, and provide other types of assistance to private or public organizations with special competence and knowledge in counseling low- and moderate-income families to provide such services.

(3) There is authorized to be appropriated for the purposes of this subsection, without fiscal year limitation, such sums as may be necessary, except that for such purposes there are authorized to be appropriated \$6,025,000 for fiscal year 1993 and \$6,278,050 for fiscal year 1994. Of the amounts appropriated for each of fiscal years 1993 and 1994, up to \$500,000 shall be available for use for counseling and other activities in connection with the demonstration program under section 152 of the Housing and Community Development Act of 1992. Any amounts so appropriated shall remain available until expended.

(4) HOMEOWNERSHIP AND RENTAL COUNSELING ASSISTANCE.—

(A) IN GENERAL.—The Secretary shall make financial assistance available under this paragraph to HUD-approved housing counseling agencies and State housing finance agencies.

(B) QUALIFIED ENTITIES.—The Secretary shall establish standards and guidelines for eligibility of organizations (including governmental and nonprofit organizations) to receive assistance under this paragraph, in accordance with subparagraph (D).

(C) DISTRIBUTION.—Assistance made available under this paragraph shall be distributed in a manner that encourages efficient and successful counseling programs and that ensures adequate distribution of amounts for rural areas having traditionally low levels of access to such counseling services, including areas with insufficient access to the Internet. In distributing such assistance, the Secretary may give priority consideration to entities serving areas with the highest home foreclosure rates.

(D) LIMITATION ON DISTRIBUTION OF ASSISTANCE.—

(i) IN GENERAL.—None of the amounts made available under this paragraph shall be distributed to—

(I) any organization which has been convicted for a violation under Federal law relating to an election for Federal office; or

(II) any organization which employs applicable individuals.

(ii) DEFINITION OF APPLICABLE INDIVIDUALS.—In this subparagraph, the term “applicable individual” means an individual who—

(I) is—

(aa) employed by the organization in a permanent or temporary capacity;

(bb) contracted or retained by the organization; or

(cc) acting on behalf of, or with the express or apparent authority of, the organization; and

(II) has been convicted for a violation under Federal law relating to an election for Federal office.

(E) GRANTMAKING PROCESS.—In making assistance available under this paragraph, the Secretary shall consider appropriate ways of streamlining and improving the processes for grant application, review, approval, and award.

(F) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$45,000,000 for each of fiscal years 2009 through 2012 for—

(i) the operations of the Office of Housing Counseling of the Department of Housing and Urban Development;

(ii) the responsibilities of the Director of Housing Counseling under paragraphs (2) through (5) of subsection (g); and

(iii) assistance pursuant to this paragraph for entities providing homeownership and rental counseling.

(b)(1) The Secretary is authorized to make loans to nonprofit organizations or public housing agencies for the necessary expenses, prior to construction, in planning, and obtaining financing for, the rehabilitation or construction of housing for low- or moderate-income families under section 235 of the National Housing Act or any other federally assisted program. Such loans shall be made without interest and shall not exceed 80 per centum of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing prior to the availability of financing, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering and architectural fees, site acquisition, application, and mortgage commitment fees, and construction loan fees and discounts. The Secretary shall require repayment of loans made under this subsection, under such terms and conditions as he may require, upon completion of the project or sooner, and may cancel any part or all of a loan if he determines that it cannot be recovered from the proceeds of any permanent loan made to finance the rehabilitation or construction of the housing.

(2) The Secretary shall determine prior to the making of any loan that the nonprofit organization or public housing agency meets such requirements with respect to financial responsibility and stability as he may prescribe.

(3) There are authorized to be appropriated for the purposes of this subsection not to exceed \$7,500,000, for the fiscal year ending June 30, 1969, and not to exceed \$10,000,000 for the fiscal year ending June 30, 1970. Any amounts so appropriated shall remain available until expended, and any amounts authorized for any fis-

cal year under this paragraph but not appropriated may be appropriated for any succeeding fiscal year.

(4) All funds appropriated for the purposes of this subsection shall be deposited in a fund which shall be known as the Low and Moderate Income Sponsor Fund, and which shall be available without fiscal year limitation and be administered by the Secretary as a revolving fund for carrying out the purposes of this subsection. Sums received in repayment of loans made under this subsection shall be deposited in such fund.

(c) GRANTS FOR HOMEOWNERSHIP COUNSELING ORGANIZATIONS.—

(1) IN GENERAL.—The Secretary of Housing and Urban Development may make grants—

(A) to nonprofit organizations experienced in the provision of homeownership counseling to enable the organizations to provide homeownership counseling to eligible homeowners; and

(B) to assist in the establishment of nonprofit homeownership counseling organizations.

(2) PROGRAM REQUIREMENTS.—

(A) Applications for grants under this subsection shall be submitted in the form, and in accordance with the procedures, that the Secretary requires.

(B) The homeownership counseling organizations receiving assistance under this subsection shall use the assistance only to provide homeownership counseling to eligible homeowners.

(C) The homeownership counseling provided by homeownership counseling organizations receiving assistance under this subsection shall include counseling with respect to—

(i) financial management;

(ii) available community resources, including public assistance programs, mortgage assistance programs, home repair assistance programs, utility assistance programs, food programs, and social services; and

(iii) employment training and placement.

(3) AVAILABILITY OF HOMEOWNERSHIP COUNSELING.—The Secretary shall take any action that is necessary—

(A) to ensure the availability throughout the United States of homeownership counseling from homeownership counseling organizations receiving assistance under this subsection, with priority to areas that—

(i) are experiencing high rates of home foreclosure and any other indicators of homeowner distress determined by the Secretary to be appropriate;

(ii) are not already adequately served by homeownership counseling organizations; and

(iii) have a high incidence of mortgages involving principal obligations (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in excess of 97 percent of the appraised value of the properties that are insured pursuant to section 203 of the National Housing Act; and

(B) to inform the public of the availability of the homeownership counseling.

(4) ELIGIBILITY FOR COUNSELING.—A homeowner shall be eligible for homeownership counseling under this subsection if—

(A) the home loan is secured by property that is the principal residence (as defined by the Secretary) of the homeowner;

(B) the home loan is not assisted under title V of the Housing Act of 1949; and

(C) the homeowner is, or is expected to be, unable to make payments, correct a home loan delinquency within a reasonable time, or resume full home loan payments due to a reduction in the income of the homeowner because of—

(i) an involuntary loss of, or reduction in, the employment of the homeowner, the self-employment of the homeowner, or income from the pursuit of the occupation of the homeowner;

(ii) any similar loss or reduction experienced by any person who contributes to the income of the homeowner;

(iii) a significant reduction in the income of the household due to divorce or death; or

(iv) a significant increase in basic expenses of the homeowner or an immediate family member of the homeowner (including the spouse, child, or parent for whom the homeowner provides substantial care or financial assistance) due to—

(I) an unexpected or significant increase in medical expenses;

(II) a divorce;

(III) unexpected and significant damage to the property, the repair of which will not be covered by private or public insurance; or

(IV) a large property-tax increase; or

(D) the Secretary of Housing and Urban Development determines that the annual income of the homeowner is no greater than the annual income established by the Secretary as being of low- or moderate-income.

(5) NOTIFICATION OF AVAILABILITY OF HOMEOWNERSHIP COUNSELING.—

(A) NOTIFICATION OF AVAILABILITY OF HOMEOWNERSHIP COUNSELING.—

(i) REQUIREMENT.—Except as provided in subparagraph (C), the creditor of a loan (or proposed creditor) shall provide notice under clause (ii) to (I) any eligible homeowner who fails to pay any amount by the date the amount is due under a home loan, and (II) any applicant for a mortgage described in paragraph (4).

(ii) CONTENT.—Notification under this subparagraph shall—

(I) notify the homeowner or mortgage applicant of the availability of any homeownership

counseling offered by the creditor (or proposed creditor);

(II) if provided to an eligible mortgage applicant, state that completion of a counseling program is required for insurance pursuant to section 203 of the National Housing Act;

(III) notify the homeowner or mortgage applicant of the availability of homeownership counseling provided by nonprofit organizations approved by the Secretary and experienced in the provision of homeownership counseling, or provide the toll-free telephone number described in subparagraph (D)(i);

(IV) notify the homeowner by a statement or notice, written in plain English by the Secretary of Housing and Urban Development, in consultation with the Secretary of Defense and the Secretary of the Treasury, explaining the mortgage and foreclosure rights of servicemembers, and the dependents of such servicemembers, under the Servicemembers Civil Relief Act (50 U.S.C. App. 501 et seq.), including the toll-free military one source number to call if servicemembers, or the dependents of such servicemembers, require further assistance; and

(V) notify the housing or mortgage applicant of the availability of mortgage software systems provided pursuant to subsection (g)(3).

(B) DEADLINE FOR NOTIFICATION.—The notification required in subparagraph (A) shall be made—

(i) in a manner approved by the Secretary; and

(ii) before the expiration of the 45-day period beginning on the date on which the failure referred to in such subparagraph occurs.

(C) NOTIFICATION.—Notification under subparagraph (A) shall not be required with respect to any loan for which the eligible homeowner pays the amount overdue before the expiration of the 45-day period under subparagraph (B)(ii).

(D) ADMINISTRATION AND COMPLIANCE.—The Secretary shall, to the extent of amounts approved in appropriation Acts, enter into an agreement with an appropriate private entity under which the entity will—

(i) operate a toll-free telephone number through which any eligible homeowner can obtain a list of nonprofit organizations, which shall be updated annually, that—

(I) are approved by the Secretary and experienced in the provision of homeownership counseling; and

(II) serve the area in which the residential property of the homeowner is located;

(ii) monitor the compliance of creditors with the requirements of subparagraphs (A) and (B); and

(iii) report to the Secretary not less than annually regarding the extent of compliance of creditors with the requirements of subparagraphs (A) and (B).

(E) REPORT.—The Secretary shall submit a report to the Congress not less than annually regarding the extent of compliance of creditors with the requirements of subparagraphs (A) and (B) and the effectiveness of the entity monitoring such compliance. The Secretary shall also include in the report any recommendations for legislative action to increase the authority of the Secretary to penalize creditors who do not comply with such requirements.

(6) DEFINITIONS.—For purposes of this subsection:

(A) The term “creditor” means a person or entity that is servicing a home loan on behalf of itself or another person or entity.

(B) The term “eligible homeowner” means a homeowner eligible for counseling under paragraph (4).

(C) The term “home loan” means a loan secured by a mortgage or lien on residential property.

(D) The term “homeowner” means a person who is obligated under a home loan.

(E) The term “residential property” means a 1-family residence, including a 1-family unit in a condominium project, a membership interest and occupancy agreement in a cooperative housing project, and a manufactured home and the lot on which the home is situated.

(7) REGULATIONS.—The Secretary shall issue any regulations that are necessary to carry out this subsection.

(8) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section \$7,000,000 for fiscal year 1993 and \$7,294,000 for fiscal year 1994, of which amounts \$1,000,000 shall be available in each such fiscal year to carry out paragraph (5)(D). Any amount appropriated under this subsection shall remain available until expended.

(d) PREPURCHASE AND FORECLOSURE-PREVENTION COUNSELING DEMONSTRATION.—

(1) PURPOSES.—The purpose of this subsection is—

(A) to reduce defaults and foreclosures on mortgage loans insured under the Federal Housing Administration single family mortgage insurance program;

(B) to encourage responsible and prudent use of such federally insured home mortgages;

(C) to assist homeowners with such federally insured mortgages to retain the homes they have purchased pursuant to such mortgages; and

(D) to encourage the availability and expansion of housing opportunities in connection with such federally insured home mortgages.

(2) AUTHORITY.—The Secretary of Housing and Urban Development shall carry out a program to demonstrate the effectiveness of providing coordinated prepurchase counseling and foreclosure-prevention counseling to first-time homebuyers and homeowners in avoiding defaults and foreclosures on mort-

gages insured under the Federal Housing Administration single family home mortgage insurance program.

(3) GRANTS.—Under the demonstration program under this subsection, the Secretary shall make grants to qualified nonprofit organizations under paragraph (4) to enable the organizations to provide prepurchase counseling services to eligible homebuyers and foreclosure-prevention counseling services to eligible homeowners, in counseling target areas.

(4) QUALIFIED NONPROFIT ORGANIZATIONS.—The Secretary shall select nonprofit organizations to receive assistance under the demonstration program under this subsection based on the experience and ability of the organizations in providing homeownership counseling and their ability to provide community-based prepurchase and foreclosure-prevention counseling under paragraphs (5) and (6) in a counseling target area. To be eligible for selection under this paragraph, a nonprofit organization shall submit an application containing a proposal for providing counseling services in the form and manner required by the Secretary.

(5) PREPURCHASE COUNSELING.—

(A) MANDATORY PARTICIPATION.—Under the demonstration program, the Secretary shall require any eligible homebuyer who intends to purchase a home located in a counseling target area and who has applied for (as determined by the Secretary) a qualified mortgage (as such term is defined in paragraph (9)) on such home that involves a downpayment of less than 10 percent of the principal obligation of the mortgage, to receive counseling prior to signing of a contract to purchase the home. The counseling shall include counseling with respect to—

- (i) financial management and the responsibilities involved in homeownership;
- (ii) fair housing laws and requirements;
- (iii) the maximum mortgage amount that the homebuyer can afford; and
- (iv) options, programs, and actions available to the homebuyer in the event of actual or potential delinquency or default.

(B) ELIGIBILITY FOR COUNSELING.—A homebuyer shall be eligible for prepurchase counseling under this paragraph if—

- (i) the homebuyer has applied for a qualified mortgage;
- (ii) the homebuyer is a first-time homebuyer; and
- (iii) the home to be purchased under the qualified mortgage is located in a counseling target area.

(6) FORECLOSURE-PREVENTION COUNSELING.—

(A) AVAILABILITY.—Under the demonstration program, the Secretary shall make counseling available for eligible homeowners who are 60 or more days delinquent with respect to a payment under a qualified mortgage on a home located within a counseling target area. The counseling shall include counseling with respect to options, programs,

and actions available to the homeowner for resolving the delinquency or default.

(B) NOTIFICATION OF DELINQUENCY.—Under the demonstration program, the Secretary shall require the creditor of any eligible homeowner who is delinquent (as described in subparagraph (A)) to send written notice by registered or certified mail within 5 days (excluding Saturdays, Sundays, and legal public holidays) after the occurrence of such delinquency—

(i) notifying the homeowner of the delinquency and the name, address, and phone number of the counseling organization for the counseling target area; and

(ii) notifying any counseling organization for the counseling target area of the delinquency and the name, address, and phone number of the delinquent homeowner.

(C) COORDINATION WITH EMERGENCY HOMEOWNERSHIP COUNSELING PROGRAM.—The Secretary may coordinate the provision of assistance under subsection (c) with the demonstration program under this subsection.

(D) ELIGIBILITY FOR COUNSELING.—A homeowner shall be eligible for foreclosure-prevention counseling under this paragraph if—

(i) the home owned by the homeowner is subject to a qualified mortgage; and

(ii) such home is located in a counseling target area.

(7) SCOPE OF DEMONSTRATION PROGRAM.—

(A) DESIGNATION OF COUNSELING TARGET AREAS.—The Secretary shall designate 3 counseling target areas (as provided in subparagraph (B)), which shall be located in not less than 2 separate metropolitan areas. The Secretary shall provide for counseling under the demonstration program under this subsection with respect to only such counseling target areas.

(B) COUNSELING TARGET AREAS.—Each counseling target area shall consist of a group of contiguous census tracts—

(i) the population of which is greater than 50,000;

(ii) which together constitute an identifiable neighborhood, area, borough, district, or region within a metropolitan area (except that this clause may not be construed to exclude a group of census tracts containing areas not wholly contained within a single town, city, or other political subdivision of a State);

(iii) in which the average age of existing housing is greater than 20 years; and

(iv) for which (I) the percentage of qualified mortgages on homes within the area that are foreclosed exceeds 5 percent for the calendar year preceding the year in which the area is selected as a counseling target area, or (II) the number of qualified mortgages originated on homes in such area in the calendar year

preceding the calendar year in which the area is selected as a counseling target area exceeds 20 percent of the total number of mortgages originated on residences in the area during such year.

(C) MORTGAGE CHARACTERISTICS.—In designating counseling target areas under subparagraph (A), the Secretary shall designate at least 1 such area that meets the requirements of subparagraph (B)(iv)(I) and at least 1 such area that meets the requirements of subparagraph (B)(iv)(II).

(D) EXPANSION OF TARGET AREAS.—The Secretary may expand any counseling target area during the term of the demonstration program, if the Secretary determines that counseling can be adequately provided within such expanded area and the purposes of this subsection will be furthered by such expansion. Any such expansion shall include only groups of census tracts that are contiguous to the counseling target area expanded and such census tract groups shall not be subject to the provisions of subparagraph (B).

(E) DESIGNATION OF CONTROL AREAS.—For purposes of determining the effectiveness of counseling under the demonstration program, the Secretary shall designate 3 control areas, each of which shall correspond to 1 of the counseling target areas designated under subparagraph (A). Each control area shall be located in the metropolitan area in which the corresponding counseling target area is located, shall meet the requirements of subparagraph (B), and shall be similar to such area with respect to size, age of housing stock, median income, and racial makeup of the population. Each control area shall also comply with the requirements of subclause (I) or (II) of subparagraph (B)(iv), according to the subclause with which the corresponding counseling target area complies.

(8) EVALUATION.—Each organization providing counseling under the demonstration program under this subsection shall maintain records with respect to each eligible homebuyer and eligible homeowner counseled and shall provide information with respect to such counseling as the Secretary or the Comptroller General may require.

(9) DEFINITIONS.—For purposes of this subsection:

(A) The term “control area” means an area designated by the Secretary under paragraph (7)(E).

(B) The term “counseling target area” means an area designated by the Secretary under paragraph (7)(A).

(C) The term “creditor” means a person or entity that is servicing a loan secured by a qualified mortgage on behalf of itself or another person or entity.

(D) The term “displaced homemaker” means an individual who—

(i) is an adult;

(ii) has not worked full-time, full-year in the labor force for a number of years, but has during such years,

worked primarily without remuneration to care for the home and family; and

(iii) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(E) The term “downpayment” means the amount of purchase price of home required to be paid at or before the time of purchase.

(F) The term “eligible homebuyer” means a homebuyer that meets the requirements under paragraph (5)(B).

(G) The term “eligible homeowner” means a homeowner that meets the requirements under paragraph (6)(D).

(H) The term “first-time homebuyer” means an individual who—

(i) (and whose spouse) has had no ownership in a principal residence during the 3-year period ending on the date of purchase of the home pursuant to which counseling is provided under this subsection;

(ii) is a displaced homemaker who, except for owning a residence with his or her spouse or residing in a residence owned by the spouse, meets the requirements of clause (i); or

(iii) is a single parent who, except for owning a residence with his or her spouse or residing in a residence owned by the spouse while married, meets the requirements of clause (i).

(I) The term “home” includes any dwelling or dwelling unit eligible for a qualified mortgage, and includes a unit in a condominium project, a membership interest and occupancy agreement in a cooperative housing project, and a manufactured home and the lot on which the home is situated.

(J) The term “metropolitan area” means a standard metropolitan statistical area as designated by the Director of the Office of Management and Budget.

(K) The term “qualified mortgage” means a mortgage on a 1- to 4-family home that is insured under title II of the National Housing Act.

(L) The term “Secretary” means the Secretary of Housing and Urban Development.

(M) The term “single parent” means an individual who—

(i) is unmarried or legally separated from a spouse; and

(ii)(I) has 1 or more minor children for whom the individual has custody or joint custody; or

(II) is pregnant.

(10) REGULATIONS.—The Secretary may issue any regulations necessary to carry out this subsection.

(11) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection \$365,000 for fiscal year 1993 and \$380,330 for fiscal year 1994.

(12) TERMINATION.—The demonstration program under this subsection shall terminate at the end of fiscal year 1994.

(e) CERTIFICATION.—

(1) REQUIREMENT FOR ASSISTANCE.—An organization may not receive assistance for counseling activities under subsection (a)(1)(iii), (a)(2), (a)(4), (c), or (d) of this section, or under section 101(e), unless the organization, or the individuals through which the organization provides such counseling, has been certified by the Secretary under this subsection as competent to provide such counseling.

(2) STANDARDS AND EXAMINATION.—The Secretary shall, by regulation, establish standards and procedures for testing and certifying counselors and for certifying organizations. Such standards and procedures shall require, for certification of an organization, that each individual through which the organization provides counseling shall demonstrate, and, for certification of an individual, that the individual shall demonstrate, by written examination (as provided under subsection (f)(4)), competence to provide counseling in each of the following areas:

- (A) Financial management.
- (B) Property maintenance.
- (C) Responsibilities of homeownership and tenancy.
- (D) Fair housing laws and requirements.
- (E) Housing affordability.
- (F) Avoidance of, and responses to, rental and mortgage delinquency and avoidance of eviction and mortgage default.

(3) REQUIREMENT UNDER HUD PROGRAMS.—Any homeownership counseling or rental housing counseling (as such terms are defined in subsection (g)(1)) required under, or provided in connection with, any program administered by the Department of Housing and Urban Development shall be provided only by organizations or counselors certified by the Secretary under this subsection as competent to provide such counseling.

(4) OUTREACH.—The Secretary shall take such actions as the Secretary considers appropriate to ensure that individuals and organizations providing homeownership or rental housing counseling are aware of the certification requirements and standards of this subsection and of the training and certification programs under subsection (f).

(5) ENCOURAGEMENT.—The Secretary shall encourage organizations engaged in providing homeownership and rental counseling that do not receive assistance under this section to employ organizations and individuals to provide such counseling who are certified under this subsection or meet the certification standards established under this subsection.

(f) HOMEOWNERSHIP AND RENTAL COUNSELOR TRAINING AND CERTIFICATION PROGRAMS.—

(1) ESTABLISHMENT.—To the extent amounts are provided in appropriations Acts under paragraph (7), the Secretary shall contract with an appropriate entity (which may be a nonprofit organization) to carry out a program under this subsection to train individuals to provide homeownership and rental coun-

seling and to administer the examination under subsection (e)(2) and certify individuals under such subsection.

(2) ELIGIBILITY AND SELECTION.—

(A) ELIGIBILITY.—To be eligible to provide the training and certification program under this subsection, an entity shall have demonstrated experience in training homeownership and rental counselors.

(B) SELECTION.—The Secretary shall provide for entities meeting the requirements of subparagraph (A) to submit applications to provide the training and certification program under this subsection. The Secretary shall select an application based on the ability of the entity to—

(i) establish the program as soon as possible on a national basis, but not later than the date under paragraph (6);

(ii) minimize the costs involved in establishing the program; and

(iii) effectively and efficiently carry out the program.

(3) TRAINING.—The Secretary shall require that training of counselors under the program under this subsection be designed and coordinated to prepare individuals for successful completion of the examination for certification under subsection (e)(2). The Secretary, in consultation with the entity selected under paragraph (2)(B), shall establish the curriculum and standards for training counselors under the program.

(4) CERTIFICATION.—The entity selected under paragraph (2)(B) shall administer the examination under subsection (e)(2) and, on behalf of the Secretary, certify individuals successfully completing the examination. The Secretary, in consultation with such entity, shall establish the content and format of the examination.

(5) FEES.—Subject to the approval of the Secretary, the entity selected under paragraph (2)(B) may establish and impose reasonable fees for participation in the training provided under the program and for examination and certification under subsection (e)(2), in an amount sufficient to cover any costs of such activities not covered with amounts provided under paragraph (7).

(6) TIMING.—The entity selected under paragraph (2)(B) to carry out the training and certification program shall establish the program as soon as possible after such selection, and shall make training and certification available under the program on a national basis not later than the expiration of the 1-year period beginning upon such selection.

(7) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection \$2,000,000 for fiscal year 1993 and \$2,084,000 for 1994.

(g) PROCEDURES AND ACTIVITIES.—

(1) COUNSELING PROCEDURES.—

(A) IN GENERAL.—The Secretary shall establish, coordinate, and monitor the administration by the Department of Housing and Urban Development of the counseling procedures for homeownership counseling and rental hous-

ing counseling provided in connection with any program of the Department, including all requirements, standards, and performance measures that relate to homeownership and rental housing counseling.

(B) HOMEOWNERSHIP COUNSELING.—For purposes of this subsection and as used in the provisions referred to in this subparagraph, the term “homeownership counseling” means counseling related to homeownership and residential mortgage loans. Such term includes counseling related to homeownership and residential mortgage loans that is provided pursuant to—

(i) section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20));

(ii) in the United States Housing Act of 1937—

(I) section 9(e) (42 U.S.C. 1437g(e));

(II) section 8(y)(1)(D) (42 U.S.C. 1437f(y)(1)(D));

(III) section 18(a)(4)(D) (42 U.S.C. 1437p(a)(4)(D));

(IV) section 23(c)(4) (42 U.S.C. 1437u(c)(4));

(V) section 32(e)(4) (42 U.S.C. 1437z–4(e)(4));

(VI) section 33(d)(2)(B) (42 U.S.C. 1437z–5(d)(2)(B));

(VII) sections 302(b)(6) and 303(b)(7) (42 U.S.C. 1437aaa–1(b)(6), 1437aaa–2(b)(7)); and

(VIII) section 304(c)(4) (42 U.S.C. 1437aaa–3(c)(4));

(iii) section 302(a)(4) of the American Homeownership and Economic Opportunity Act of 2000 (42 U.S.C. 1437f note);

(iv) sections 233(b)(2) and 258(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12773(b)(2), 12808(b));

(v) this section and section 101(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x, 1701w(e));

(vi) section 220(d)(2)(G) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4110(d)(2)(G));

(vii) sections 422(b)(6), 423(b)(7), 424(c)(4), 442(b)(6), and 443(b)(6) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12872(b)(6), 12873(b)(7), 12874(c)(4), 12892(b)(6), and 12893(b)(6));

(viii) section 491(b)(1)(F)(iii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11408(b)(1)(F)(iii));

(ix) sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));

(x) in the National Housing Act—

(I) in section 203 (12 U.S.C. 1709), the penultimate undesignated paragraph of paragraph (2) of subsection (b), subsection (c)(2)(A), and subsection (r)(4);

(II) subsections (a) and (c)(3) of section 237 (12 U.S.C. 1715z-2); and

(III) subsections (d)(2)(B) and (m)(1) of section 255 (12 U.S.C. 1715z-20);

(xi) section 502(h)(4)(B) of the Housing Act of 1949 (42 U.S.C. 1472(h)(4)(B));

(xii) section 508 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z-7); and

(xiii) section 106 of the Energy Policy Act of 1992 (42 U.S.C. 12712 note).

(C) RENTAL HOUSING COUNSELING.—For purposes of this subsection, the term “rental housing counseling” means counseling related to rental of residential property, which may include counseling regarding future homeownership opportunities and providing referrals for renters and prospective renters to entities providing counseling and shall include counseling related to such topics that is provided pursuant to—

(i) section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20));

(ii) in the United States Housing Act of 1937—

(I) section 9(e) (42 U.S.C. 1437g(e));

(II) section 18(a)(4)(D) (42 U.S.C. 1437p(a)(4)(D));

(III) section 23(c)(4) (42 U.S.C. 1437u(c)(4));

(IV) section 32(e)(4) (42 U.S.C. 1437z-4(e)(4));

(V) section 33(d)(2)(B) (42 U.S.C. 1437z-5(d)(2)(B)); and

(VI) section 302(b)(6) (42 U.S.C. 1437aaa-1(b)(6));

(iii) section 233(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12773(b)(2));

(iv) section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x);

(v) section 422(b)(6) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12872(b)(6));

(vi) section 491(b)(1)(F)(iii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11408(b)(1)(F)(iii));

(vii) sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A)); and

(viii) the rental assistance program under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(2) STANDARDS FOR MATERIALS.—The Secretary, in consultation with the advisory committee established under subsection (g)(4) of the Department of Housing and Urban Development Act, shall establish standards for materials and forms to be used, as appropriate, by organizations providing homeownership counseling services, including any recipients of assistance pursuant to subsection (a)(4).

(3) MORTGAGE SOFTWARE SYSTEMS.—

(A) CERTIFICATION.—The Secretary shall provide for the certification of various computer software programs for consumers to use in evaluating different residential mortgage loan proposals. The Secretary shall require, for such certification, that the mortgage software systems take into account—

(i) the consumer's financial situation and the cost of maintaining a home, including insurance, taxes, and utilities;

(ii) the amount of time the consumer expects to remain in the home or expected time to maturity of the loan; and

(iii) such other factors as the Secretary considers appropriate to assist the consumer in evaluating whether to pay points, to lock in an interest rate, to select an adjustable or fixed rate loan, to select a conventional or government-insured or guaranteed loan and to make other choices during the loan application process.

If the Secretary determines that available existing software is inadequate to assist consumers during the residential mortgage loan application process, the Secretary shall arrange for the development by private sector software companies of new mortgage software systems that meet the Secretary's specifications.

(B) USE AND INITIAL AVAILABILITY.—Such certified computer software programs shall be used to supplement, not replace, housing counseling. The Secretary shall provide that such programs are initially used only in connection with the assistance of housing counselors certified pursuant to subsection (e).

(C) AVAILABILITY.—After a period of initial availability under subparagraph (B) as the Secretary considers appropriate, the Secretary shall take reasonable steps to make mortgage software systems certified pursuant to this paragraph widely available through the Internet and at public locations, including public libraries, senior-citizen centers, public housing sites, offices of public housing agencies that administer rental housing assistance vouchers, and housing counseling centers.

(D) BUDGET COMPLIANCE.—This paragraph shall be effective only to the extent that amounts to carry out this paragraph are made available in advance in appropriations Acts.

(4) NATIONAL PUBLIC SERVICE MULTIMEDIA CAMPAIGNS TO PROMOTE HOUSING COUNSELING.—

(A) IN GENERAL.—The Director of Housing Counseling shall develop, implement, and conduct national public service multimedia campaigns designed to make persons facing mortgage foreclosure, persons considering a subprime mortgage loan to purchase a home, elderly persons, persons who face language barriers, low-income persons, minorities, and other potentially vulnerable consumers aware that it is advisable, before seeking or main-

taining a residential mortgage loan, to obtain homeownership counseling from an unbiased and reliable sources and that such homeownership counseling is available, including through programs sponsored by the Secretary of Housing and Urban Development.

(B) CONTACT INFORMATION.—Each segment of the multimedia campaign under subparagraph (A) shall publicize the toll-free telephone number and website of the Department of Housing and Urban Development through which persons seeking housing counseling can locate a housing counseling agency in their State that is certified by the Secretary of Housing and Urban Development and can provide advice on buying a home, renting, defaults, foreclosures, credit issues, and reverse mortgages.

(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, not to exceed \$3,000,000 for fiscal years 2009, 2010, and 2011, for the development, implementation, and conduct of national public service multimedia campaigns under this paragraph.

(D) FORECLOSURE RESCUE EDUCATION PROGRAMS.—

(i) IN GENERAL.—Ten percent of any funds appropriated pursuant to the authorization under subparagraph (C) shall be used by the Director of Housing Counseling to conduct an education program in areas that have a high density of foreclosure. Such program shall involve direct mailings to persons living in such areas describing—

- (I) tips on avoiding foreclosure rescue scams;
- (II) tips on avoiding predatory lending mortgage agreements;
- (III) tips on avoiding for-profit foreclosure counseling services; and
- (IV) local counseling resources that are approved by the Department of Housing and Urban Development.

(ii) PROGRAM EMPHASIS.—In conducting the education program described under clause (i), the Director of Housing Counseling shall also place an emphasis on serving communities that have a high percentage of retirement communities or a high percentage of low-income minority communities.

(iii) TERMS DEFINED.—For purposes of this subparagraph:

(I) HIGH DENSITY OF FORECLOSURES.—An area has a “high density of foreclosures” if such area is one of the metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest home foreclosure rates.

(II) HIGH PERCENTAGE OF RETIREMENT COMMUNITIES.—An area has a “high percentage of retirement communities” if such area is one of the metropolitan statistical areas (as that term is de-

fined by the Director of the Office of Management and Budget) with the highest percentage of residents aged 65 or older.

(III) HIGH PERCENTAGE OF LOW-INCOME MINORITY COMMUNITIES.—An area has a “high percentage of low-income minority communities” if such area contains a higher-than-normal percentage of residents who are both minorities and low-income, as defined by the Director of Housing Counseling.

(5) EDUCATION PROGRAMS.—The Secretary shall provide advice and technical assistance to States, units of general local government, and nonprofit organizations regarding the establishment and operation of, including assistance with the development of content and materials for, educational programs to inform and educate consumers, particularly those most vulnerable with respect to residential mortgage loans (such as elderly persons, persons facing language barriers, low-income persons, minorities, and other potentially vulnerable consumers), regarding home mortgages, mortgage refinancing, home equity loans, home repair loans, and where appropriate by region, any requirements and costs associated with obtaining flood or other disaster-specific insurance coverage.

(h) DEFINITIONS.—For purposes of this section:

(1) NONPROFIT ORGANIZATION.—The term “nonprofit organization” has the meaning given such term in section 104(5) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704(5)), except that subparagraph (D) of such section shall not apply for purposes of this section.

(2) STATE.—The term “State” means each of the several States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific, or any other possession of the United States.

(3) UNIT OF GENERAL LOCAL GOVERNMENT.—The term “unit of general local government” means any city, county, parish, town, township, borough, village, or other general purpose political subdivision of a State.

(4) HUD-APPROVED COUNSELING AGENCY.—The term “HUD-approved counseling agency” means a private or public nonprofit organization that is—

(A) exempt from taxation under section 501(c) of the Internal Revenue Code of 1986; and

(B) certified by the Secretary to provide housing counseling services.

(5) STATE HOUSING FINANCE AGENCY.—The term “State housing finance agency” means any public body, agency, or instrumentality specifically created under State statute that is authorized to finance activities designed to provide housing and related facilities throughout an entire State through land acquisition, construction, or rehabilitation.

(i) ACCOUNTABILITY FOR RECIPIENTS OF COVERED ASSISTANCE.—

(1) TRACKING OF FUNDS.—The Secretary shall—

(A) develop and maintain a system to ensure that any organization or entity that receives any covered assistance uses all amounts of covered assistance in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and

(B) require any organization or entity, as a condition of receipt of any covered assistance, to agree to comply with such requirements regarding covered assistance as the Secretary shall establish, which shall include—

(i) appropriate periodic financial and grant activity reporting, record retention, and audit requirements for the duration of the covered assistance to the organization or entity to ensure compliance with the limitations and requirements of this section, the regulations under this section, and any requirements or conditions under which such amounts were provided; and

(ii) any other requirements that the Secretary determines are necessary to ensure appropriate administration and compliance.

(2) MISUSE OF FUNDS.—If any organization or entity that receives any covered assistance is determined by the Secretary to have used any covered assistance in a manner that is materially in violation of this section, the regulations issued under this section, or any requirements or conditions under which such assistance was provided—

(A) the Secretary shall require that, within 12 months after the determination of such misuse, the organization or entity shall reimburse the Secretary for such misused amounts and return to the Secretary any such amounts that remain unused or uncommitted for use; and

(B) such organization or entity shall be ineligible, at any time after such determination, to apply for or receive any further covered assistance.

The remedies under this paragraph are in addition to any other remedies that may be available under law.

(3) COVERED ASSISTANCE.—For purposes of this subsection, the term “covered assistance” means any grant or other financial assistance provided under this section.

* * * * *

TITLE II—RENTAL HOUSING FOR LOWER INCOME FAMILIES

RENTAL AND COOPERATIVE HOUSING FOR LOWER INCOME FAMILIES

SEC. 201. (a) Title II of the National Housing Act is amended by adding after section 235 (as added by section 101 of this Act) the following new section:

* * * * *

(c) [12 U.S.C. 1715z–1 note] The Secretary of Housing and Urban Development is authorized, upon such terms and conditions as he may prescribe, to transfer to section 236(j) of the National

Housing Act the insurance of a mortgage which has not be² finally endorsed for insurance under section 221(d)(3) of such Act and which has been approved for the below-market interest rate prescribed in the proviso of section 221(d)(5) of such Act.

(d) [12 U.S.C. 1715z-1 note] The Secretary of Housing and Urban Development is authorized, upon such terms and conditions as he may prescribe, to insure under section 236(j) of the National Housing Act a mortgage meeting the requirements of such section which is given to refinance a mortgage loan made under section 202 of the Housing Act of 1959: *Provided*, That the application for such insurance is filed with the Secretary on or before the date of project completion, or within such reasonable time thereafter as the Secretary may permit.

* * * * *

HOMEOWNERSHIP FOR LOWER INCOME FAMILIES

SEC. 235.³ [12 U.S.C. 1715z] (a)(1) For the purpose of assisting lower-income families in acquiring homeownership or in acquiring membership in a cooperative association operating a housing project, the Secretary is authorized to make, and to contract to make, periodic assistance payments on behalf of such homeowners and cooperative members. The assistance shall be accomplished through payments to mortgagees holding mortgages meeting the special requirements specified in this section or which mortgages are assisted under a State or local program providing assistance through loans, loan insurance or tax abatement. In making such assistance available, the Secretary shall give preference to low-income families who, without such assistance, would be likely to be involuntarily displaced (including those who would be likely to be displaced from rental units which are to be converted into a condominium project or a cooperative project). Such assistance may include the acquisition of a condominium or a membership in a cooperative association.

(2)(A) Notwithstanding any other provision of this section, the Secretary is authorized to make periodic assistance payments under this section on behalf of families whose incomes do not exceed the maximum income limits prescribed pursuant to subsection (h)(2) of this section for the purpose of assisting such families in acquiring ownership of a manufactured home consisting of two or

²So in law.

³Section 401(d) of the Housing and Community Development Act of 1987, Pub. L. 100-242, 12 U.S.C. 1715z note, provides as follows:

“(d) TERMINATION OF SECTION 235.—

“(1) IN GENERAL.—Effective on October 1, 1989, the program under section 235 of the National Housing Act shall terminate.

“(2) SAVINGS PROVISION.—The provisions of paragraph (1) shall not affect—

“(A) any mortgage insurance commitment issued; or

“(B) any assistance pursuant to a reservation of funds made; under section 235 of the National Housing Act prior to October 1, 1989.”.

But, section 125(d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, 12 U.S.C. 1715z note, provides as follows:

“(d) SAVINGS PROVISION.—Notwithstanding the termination of the program under section 235 pursuant to section 401(d) of the Housing and Community Development Act of 1987, the Secretary of Housing and Urban Development shall have authority to insure mortgages under section 235(r), to make assistance payments with respect to such insured mortgages, and to make any other payment or to take any other action related to the refinancing of mortgages insured under section 235.”.

more modules and a lot on which such manufactured home is or will be situated, except that periodic assistance payments pursuant to this paragraph shall not be made with respect to more than 20 per centum of the total number of units with respect to which assistance is approved under this section after January 1, 1976. Assistance payments under this section pursuant to this paragraph shall be accomplished through payments on behalf of an owner of lower income of a manufactured home as described in the preceding sentence to the financial institution which makes the loan, advance of credit, or purchase of an obligation representing the loan or advance of credit to finance the purchase of the manufactured home and the lot on which such manufactured home is or will be situated, but only if insurance under section 2 of this Act covering such loan, advance of credit, or obligation has been granted to such institution.

(B) Notwithstanding the provisions of subsection (c) of this section, assistance payments provided pursuant to this paragraph shall be in an amount not exceeding the lesser of—

(i) the balance of the monthly payment for principal, interest, real and personal property taxes, insurance, and insurance premium chargeable under section 2 of this Act due under the loan or advance of credit remaining unpaid after applying 20 per centum of the manufactured homeowner's income; or

(ii) the difference between the amount of the monthly payment for principal, interest, and insurance premium chargeable under section 2 of this Act which the manufactured homeowner is obligated to pay under the loan or advance of credit and the monthly payment of principal and interest which the owner would be obligated to pay if the loan or advance of credit were to bear interest at a rate derived by subtracting from the interest rate applicable to such loan or advance of credit the interest rate differential between the maximum interest rate plus mortgage insurance premium applicable to mortgages insured under subsection (i) of this section at the time such loan or advance of credit is made and the interest rate which such mortgages are presumed under regulations prescribed by the Secretary, to bear for purposes of subsection (c)(2) of this section.

(b) To qualify for assistance payments, the homeowner or the cooperative member shall be of lower income and satisfy eligibility requirements prescribed by the Secretary, and—

(1) the homeowner shall be a mortgagor under a mortgage which meets the requirements of and is insured under subsection (i) or (j)(4) of this section: *Provided*, That a mortgage meeting the requirements of subsection (i)(3)(A) of this section but insured under section 237 may qualify for assistance payments if such mortgage was executed by a mortgagor who is determined not to be an acceptable credit risk for mortgage insurance purposes (but otherwise eligible) under subsection (j)(4) of this section or under section 221(d)(2) or 234(c) and accepted as a reasonably satisfactory credit risk under section 237; or

(2) the cooperative association of which the family is a member shall operate (A) a housing project the construction or

substantial rehabilitation of which has been financed with a mortgage insured under section 213 or section 221(d)(3) and which has been completed within two years prior to the filing of the application for assistance payments and the dwelling unit has had no previous occupant other than the family: *Provided*, That if any cooperative member who has received assistance payments transfers his membership and occupancy rights to another person who satisfies the eligibility requirements prescribed by the Secretary and undertakes the obligation to pay occupancy charges, the new cooperative member may qualify for assistance payments upon the filing of an application with respect to the dwelling unit involved to be occupied by him: *Provided further*, That assistance payments may be made with respect to a dwelling unit in an existing cooperative project which meets such standards as the Secretary may prescribe, if the family qualifies as a displaced family as defined in section 221(f), or a family which includes five or more minor persons, or a family occupying low-rent public housing: *Provided further*, That the amount of the mortgage attributable to the dwelling unit shall involve a principal obligation not in excess of \$40,000 (\$47,500 in any geographical area where the Secretary authorizes an increase on the basis of a finding that cost levels so require), except that with respect to any family with five or more persons the foregoing limits shall be \$47,500 and \$55,000 respectively, or (B) a housing project which is financed under a State or local program providing assistance through loans, loan insurance, or tax abatements, and which prior to completion of construction or rehabilitation is approved for receiving the benefits of this section.

(c)(1) Subject to the second sentence of this paragraph, the assistance payments to a mortgagee by the Secretary on behalf of a mortgagor shall be made during such time as the mortgagor shall continue to occupy the property which secures the mortgage: *Provided*, That assistance payments may be made on behalf of a homeowner who assumes a mortgage insured under subsection (i) or (j)(4) with respect to which assistance payments have been made on behalf of the previous owner, if the homeowner is approved by the Secretary as eligible for receiving such assistance: *Provided further*, That the Secretary is authorized to continue making such assistance payments where the mortgage has been assigned to the Secretary. Assistance payments pursuant to any new contract, other than a contract in connection with a refinancing under subsection (r), entered into after September 30, 1983, that utilizes authority approved in appropriation Acts for any fiscal year beginning after such date may not be made for more than a 10-year period. The payments shall be in an amount not exceeding the lesser of—

(A) the balance of the monthly payment for principal, interest, taxes, insurance, and mortgage insurance premium due under the mortgage remaining unpaid after applying 20 per centum of the mortgagor's income; or

(B) the difference between the amount of the monthly payment for principal, interest, and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage and the monthly payment for principal and interest which the

mortgagor would be obligated to pay if the mortgage were to bear interest at the rate of 1 per centum per annum (4 per centum per annum in the case of a mortgage described in subsection (o)).

(2)(A) Upon disposition by the homeowner of any property assisted pursuant to this section or where the homeowner rents such a property (or the owner's unit in the case of a two- to four-family property) for a period longer than one year, the Secretary shall provide for the recapture of an amount equal to the lesser of (i) the amount of assistance actually received under this section, other than any amount provided under subsection (e), or (ii) an amount equal to at least 50 per centum of the net appreciation of the property, as determined by the Secretary. For the purpose of this paragraph, the term "net appreciation of the property" means any increase in the value of the property over the original purchase price, less the reasonable costs of sale, the reasonable costs of improvements made to the property, and any increase in the mortgage amount as of the time of sale over the original mortgage balance due to the mortgage being insured pursuant to section 245. Notwithstanding any other provision of law, any such assistance shall constitute a debt secured by the property to the extent that the Secretary may provide for such recapture.

(B) Subparagraph (A) does not apply to any property with respect to which there is assumption in accordance with paragraph (1) of this subsection or to any property which is subject to a mortgage, loan, or other advance of credit insured pursuant to subsection (q).

(3)(A) There hereby is established in the Treasury of the United States a fund, which, to the extent approved in appropriation Acts, may be used by the Secretary for purposes of carrying out subparagraph (B). There shall be deposited into such fund (i) any amount recaptured under paragraph (2); (ii) any authority to make assistance payments under subsection (a) that is committed for use in a contract but is unused because the mortgage, loan, or advance of credit involved is refinanced⁴ or because such assistance payments are terminated or suspended for other reasons before the original termination date of such contract; and (iii) any amount received under subparagraph (C).

(B) In the case of any homeowner whose assistance payments are terminated by reason of the 10-year limitation referred to in paragraph (1), and who is determined by the Secretary to be unable to assume the full payments due under the mortgage, loan, or advance of credit involved, the Secretary shall, to the extent of the availability of amounts in the fund established in subparagraph (A), contract to make, and make, continued assistance payments on behalf of such homeowner. Such continued assistance payments shall be made in an amount determined in accordance with the applicable provisions of paragraph (1) or subsection (a)(2)(B) and for such period as the Secretary determines to be appropriate.

⁴Section 125(c)(2) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, amended this paragraph by inserting "(except to the extent provided in subsection (r) for mortgages insured under such subsection)" after "refinanced." The amendment could not be executed.

(C) Any amounts in such fund determined by the Secretary to be in excess of the amounts currently required to carry out the provisions of subparagraph (B) shall be invested by the Secretary in obligations of, or obligations guaranteed as to both principal and interest by, the United States or any agency of the United States. Notwithstanding the preceding sentence, any amounts of budget authority or contract authority recaptured from assistance payments contracts relating to mortgages that are being refinanced that are not required for assistance payments contracts relating to mortgages insured under this subsection, shall be rescinded.

(d) Assistance payments to a mortgagee by the Secretary on behalf of a family holding membership in a cooperative association operating a housing project shall be made only during such time as the family is an occupant of such project and shall be in amounts computed on the basis of the formula set forth in subsection (c) applying the cooperative member's proportionate share of the obligations under the project mortgage to the items specified in the formula.

(e) The Secretary may include in the payment to the mortgagee such amount, in addition to the amount computed under subsection (a)(2)(B), (c), (d), (j)(7), or (r), as he deems appropriate to reimburse the mortgagee for its expenses in handling the mortgage.

(f) Procedures shall be adopted by the Secretary for recertifications of the mortgagor's (or cooperative member's) income at intervals of two years (or at shorter intervals where the Secretary deems it desirable) for the purpose of adjusting the amount of such assistance payments within the limits of the formula described in subsection (c).

(g) The Secretary shall prescribe such regulations as he deems necessary to assure that the sales price of, or other consideration paid in connection with, the purchase by a homeowner of the property with respect to which assistance payments are to be made is not increased above the appraised value on which the maximum mortgage which the Secretary will insure is computed.

(h)(1) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section, including such sums as may be necessary to make the assistance payments under contracts entered into under this section. The aggregate amount of outstanding contracts to make such payments shall not exceed amounts approved in appropriation Acts, and payments pursuant to such contracts shall not exceed \$75,000,000 per annum prior to July 1, 1969, which maximum dollar amount shall be increased by \$125,000,000 on July 1, 1969, by \$150,000,000 on July 1, 1970, by \$200,000,000 on July 1, 1971, by such sums as may be approved in appropriation Acts after June 30, 1974, and prior to July 1, 1976, and by such sums as may be approved in an appropriation Act on or after October 1, 1983 (from the additional authority to enter into contracts made available on such date under the first sentence of section 5(c)(1) of the United States Housing Act of 1937). The aggregate amount that may be obligated over the duration of the contracts entered into with the authority provided on or after October 1, 1983 (other than obligations in connection with mortgages insured under subsection (r)), may not exceed such sums of new budget authority as may be appropriated after the

date of enactment of this sentence.⁵ The Secretary shall begin issuing new commitments and reservations to provide mortgage insurance and assistance payments under this section before the expiration of the 30-day period following the approval in any appropriation Act of budget authority for this section after the date of the enactment of this sentence.⁵ Upon the expiration of one year following the date of enactment of the Housing and Community Development Act of 1974,⁶ the Secretary shall not enter into new contracts for assistance payments under this section utilizing authority approved in appropriation Acts prior to July 1, 1974. The Secretary shall not enter into new contracts for assistance payments under this section (except under subsection (r)) after May 20, 1983, utilizing amounts approved in appropriation Acts before the date of the enactment of the Housing and Urban-Rural Recovery Act of 1983,⁷ except (i) pursuant to a firm commitment issued on or before May 20, 1983, (ii) pursuant to other commitments issued by the Secretary prior to June 30, 1981, reserving funds for housing to be assisted under this section where such housing is included in a project pursuant to section 119 of the Housing and Community Development Act of 1974, or (iii) pursuant to other commitments issued on or before September 30, 1981, where housing under this section is to be developed on land which was municipally owned on September 30, 1981, and where a local government contributes at least \$1,000 per unit of funds obtained under title I of the Housing and Community Development Act of 1974 and at least \$2,000 per unit of additional funds to assist housing under this section. In no event may the Secretary enter into any new contract for assistance payments under this section (other than a contract in connection with a mortgage insured under subsection (r)) after September 30, 1989.

(2) Assistance payments under this section may be made only with respect to a family whose income at the time of initial occupancy does not exceed 95 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 95 per centum of the median for the area on the basis of his findings that such variations are necessary because of prevailing levels of construction costs, unusually high or low median family incomes, or other factors.

(3) Notwithstanding the provisions of subsections (b)(2) and (i)(3)(A) with respect to the prior construction of rehabilitation of a dwelling, or of the project in which there is a dwelling unit, for which assistance payments may be made, and notwithstanding the provisions of subsection (j)(1) authorizing the purchase of housing which is neither deteriorating nor substandard, not more than—

(A) 25 per centum of the total amount of contracts for assistance payments authorized by appropriation Acts to be made prior to July 1, 1969, and

(B) 30 per centum of the total additional amount of contracts for assistance payment authorized by appropriations Acts to be made on or after July 1, 1969,

⁵ November 30, 1983.

⁶ August 22, 1974.

⁷ November 30, 1983.

may be made with respect to existing dwellings, or dwelling units in existing projects. The preceding sentence shall not apply to contracts in connection with mortgages insured under subsection (r).

(4) At least 10 per centum of the total amount of contracts for assistance payments authorized by appropriation Acts to be made after June 30, 1971, shall be available for use only with respect to dwellings, or dwelling units in projects, which are approved by the Secretary prior to substantial rehabilitation.

(i)(1) The Secretary is authorized, upon application by the mortgagee, to insure, a mortgage (including advances with respect to property construction or rehabilitation pursuant to a self-help program) executed by a mortgagor who meets the eligibility requirements for assistance payments prescribed by the Secretary under subsection (b). Commitments for the insurance of such mortgages may be issued by the Secretary prior to the date of their execution or disbursement thereon, upon such terms and conditions as the Secretary may prescribe.

(2) To be eligible for insurance under this subsection, a mortgagee shall meet the requirements of section 221(d)(2) or 234(c), except as such requirements are modified by this subsection.

(3) A mortgage to be insured under this subsection shall—

(A) involve a single-family or a two-family dwelling which has been approved by the Secretary prior to the beginning of construction or substantial rehabilitation, or a three-family dwelling which is approved by the Secretary prior to the beginning of substantial rehabilitation, or a one-family unit in a condominium project (together with an undivided interest in the common areas and facilities serving the project) which is released from a multifamily project, the construction or substantial rehabilitation of which has been completed within two years prior to the filing of the application for assistance payments with respect to such family unit and the unit has had no previous occupant other than the mortgagor: *Provided*, That the mortgage may involve an existing dwelling or family unit in an existing condominium project which meets such standards as the Secretary may prescribe: *Provided further*, That the mortgage may involve an existing dwelling or a family unit in an existing condominium project if assistance payments have been made on behalf of the previous owner of the dwelling or family unit with respect to a mortgage insured under subsection (j)(4): *Provided further*, That the mortgage may involve a dwelling unit in an existing project covered by a mortgage insured under section 236 or in an existing project receiving the benefits of financial assistance under section 101 of the Housing and Urban Development Act of 1965;

(B) where it is to cover a one-family unit in a condominium project, have a principal obligation not exceeding \$40,000 (\$47,500 in any geographical area where the Secretary authorizes an increase on the basis of a finding that cost levels so require), except that with respect to any family with five or more persons the foregoing limits shall be \$47,500, and \$55,000, respectively;

(C) involve, in the case of a dwelling unit other than a condominium or cooperative unit, a principal obligation (including

such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed \$40,000 (\$47,500 in any geographical area where the Secretary authorizes an increase on the basis of a finding that cost levels so require), except that with respect to any family with five or more persons the foregoing limits shall be \$47,500 and \$55,000, respectively;

(D) involve, in the case of a two-family or three-family dwelling, a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed \$60,000 (\$66,250 in any geographical area where the Secretary authorizes an increase on the basis of a finding that cost levels so require);

(E) be executed by a mortgagor who shall have paid in cash or its equivalent, on account of the property, as least an amount equal to 3 per centum of the Secretary's estimate of the cost of acquisition (excluding the mortgage insurance premium paid at the time the mortgage is insured); and

(F) bear interest at a rate not to exceed such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary finds necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets.

(4) In insuring eligible mortgages under this subsection, the Secretary may not deny insurance on the basis that a mortgage involves a two- to three-family dwelling or is to be used to finance substantial rehabilitation rather than new construction.

(5) As a condition of insuring a mortgage on a two- to three-family dwelling, the Secretary shall require the mortgagor (A) not to discriminate against prospective tenants on the basis of their receipt of or eligibility for housing assistance under any Federal, State or local housing assistance program and (B) to agree that during the term of the mortgage each of the rental units shall be occupied by, or available for occupancy by, persons and families whose incomes do not exceed 100 per centum of the area median income.

(j)(1) In addition to mortgages insured under the provisions of subsection (i), the Secretary is authorized, upon application by the mortgagee, to insure a mortgage (including advances under such mortgage during rehabilitation) which is executed by a nonprofit organization or public body or agency to finance the purchase of housing, and the rehabilitation of such housing if it is deteriorating or substandard, for subsequent resale to lower income home purchasers who meet the eligibility requirements for assistance payments prescribed by the Secretary under subsection (b). Commitments for the insurance of such mortgages may be issued by the Secretary prior to the date of their execution or disbursement thereon, upon such terms and conditions as the Secretary may prescribe.

(2) To be eligible for insurance under paragraph (1) of this subsection, a mortgage shall—

(A) be executed by a private nonprofit organization or public body or agency, approved by the Secretary, for the purpose of financing the purchase (with the intention of subsequent re-

sale) and rehabilitation where the housing involved is deteriorating or substandard, of property comprising one or more tracts or parcels, whether or not contiguous, consisting of (i) four or more single-family dwellings of detached, semidetached, or row construction or (ii) four or more one-family units in a structure or structures for which a plan of family unit ownership approved by the Secretary is established; except that in a case not involving the rehabilitation of deteriorating or substandard housing the property purchased may consist of one or more such dwellings or units;

(B) be in a principal amount not exceeding the appraised value of the property at the time of its purchase under the mortgage plus the estimated cost of any rehabilitation;

(C) bear interest at a rate not to exceed such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary determines is necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets;

(D) provide for complete amortization (subject to paragraph (4)(E)) by periodic payments within such term as the Secretary may prescribe; and

(E) provide for the release of individual single-family dwellings from the lien of the mortgage upon their sale in accordance with paragraph (4).

(3) No mortgage shall be insured under paragraph (1) unless the mortgagor shall have demonstrated to the satisfaction of the Secretary that (A) the property involved is located in a neighborhood which is sufficiently stable and contains sufficient public facilities and amenities to support long-term values, or (B) the purchase or rehabilitation of such property plus the mortgagor's related activities and the activities of other owners of housing in the neighborhood, together with actions to be taken by public authorities, will be of such scope and quality as to give reasonable promise that a stable environment will be created in the neighborhood.

(4)(A)⁸ No mortgage shall be insured under paragraph (1) unless the mortgagor enters into an agreement, satisfactory to the Secretary, that it will offer to sell the dwellings involved, after purchase and upon completion of any rehabilitation, to lower income individuals or families meeting the eligibility requirements established by the Secretary under subsection (b).

(B) The Secretary is authorized to insure under this paragraph mortgages executed to finance the sale of individual dwellings to lower income purchases as provided in subparagraph (A). Any such mortgage shall—

(i) be in a principal amount not in excess of that portion of the unpaid principal balance of the blanket mortgage covering the property which is allocable to the individual dwelling involved;

⁸Section 101(c)(4) of the Housing and Urban Development Act of 1968, Pub. L. 90-448, approved August 1, 1968, 12 U.S.C. 1715z note, provides as follows:

“(4) The purchase of any individual dwelling, sold by a nonprofit organization pursuant to the provisions of section 221(h)(5) of the National Housing Act after the date of enactment of this section, may be financed with a mortgage insured under the provisions of section 235(j)(4) of such Act, but such mortgage shall bear interest at the rate provided in section 235(j)(2)(C) of such Act.”.

(ii) bear interest at the same rate as the blanket mortgage; and

(iii) provide for complete amortization by periodic payments within a term equal to the remaining term (determined without regard to subparagraph (E)) of such blanket mortgage.

(C) The price for which any individual dwelling is sold under this paragraph shall be in an amount equal to that portion of the unpaid principal balance of the blanket mortgage covering the property which is allocable to the dwelling plus such additional amount, not less than \$200 (which may be applied in whole or in part toward closing costs and may be paid in cash or its equivalent), as the Secretary may determine to be reasonable.

(D) Upon the sale under this paragraph of any individual dwelling, such dwelling shall be released from the lien of the blanket mortgage. Until all of the individual dwellings in the property covered by the blanket mortgage have been sold, the mortgagor shall hold and operate the dwellings remaining unsold at any given time, in such manner and under such terms as the Secretary may prescribe, as though they constituted rental units.

(E) Upon the sale under this paragraph of all the individual dwellings in the property covered by the blanket mortgage and the release of all individual dwellings from the lien of the blanket mortgage, the insurance of the blanket mortgage shall be terminated and no adjusted premium charge shall be charged by the Secretary upon such termination.

(5) Where the Secretary has approved a plan of family unit ownership the terms "single-family dwelling", "single-family dwellings", "individual dwelling", and "individual dwellings" shall mean a family unit or family units, together with the undivided interest (or interests) in the common areas and facilities.

(6) For purposes of this subsection, the terms "single-family dwelling" and "single-family dwellings" (except for purposes of paragraph (5)) shall include a two- to three-family dwelling which has been approved by the Secretary.

(7) In addition to the assistance payments authorized under subsection (b), the Secretary may make such payments to a mortgagee on behalf of a nonprofit organization or public body or agency which is a mortgagor under the provisions of paragraph (1) in an amount not exceeding the difference between the monthly payment for principal, interest, and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage and the monthly payment for principal and interest such mortgagor would be obligated to pay if the mortgage were to bear interest at the rate of 1 per centum per annum.

(8) A mortgage covering property which is not deteriorating or substandard may be insured under this subsection only if it is situated in an area in which mortgages may be insured under section 221(h).

(9) In insuring eligible mortgages under this subsection, the Secretary may not deny insurance on the basis that a mortgage involves a two- to three-family dwelling or is to be used to finance substantial rehabilitation rather than new construction.

(k) The Secretary shall from time to time allocate and transfer to the Secretary of Agriculture, for use (in accordance with the

terms and conditions of this section) in rural areas and small towns, a reasonable portion of the total authority to contract to make assistance payments as approved in appropriation Acts under subsection (h)(1).

(l) In determining the income of any person for the purposes of this section, there shall be deducted an amount equal to \$300 for each minor person who is a member of the immediate family of such person and living with such family, and the earnings of any such minor persons shall not be included in the income of such person or his family.

(m) No mortgage (except a mortgage insured under subsection (r)) shall be insured under this section after September 30, 1989, except pursuant to a commitment to insure before that date.

(n) No mortgage may be insured under this section on a unit in a subdivision, after the effective date of enactment of this subsection, which, when added to any other mortgages insured under this section in that subdivision after such date, represents more than 40 per centum of the total number of units in the subdivision, except that the preceding limitation shall not apply with regard to any rehabilitated unit, or to any unit or subdivision located or to be located in an established urban neighborhood or area, where a sound proposal is involved and where an aggregation of subsidized units is essential to a community sponsored overall redevelopment plan, as determined by the Secretary or to a mortgage insured under subsection (r).

(o) The Secretary may insure a mortgage under this section involving a principal obligation which exceeds, by not more than 20 per centum, the maximum limits specified under subsection (b)(2) or (i)(3) of this section if the mortgage relates to a dwelling in an urban neighborhood where the Secretary determines that a community sponsored program of concentrated redevelopment or revitalization is being undertaken and the Secretary determines that such action is necessary to enable eligible families residing in the area who occupy substandard housing or are being involuntarily displaced to remain in the area in decent, safe, and sanitary housing.

(p) The Secretary may insure a mortgage under this section involving a principal obligation which exceeds, by not more than 10 per centum, the maximum limits specified under subsection (b)(2) or (i)(3) of this section, or, if applicable, the maximum principal obligation insurable pursuant to subsection (o) of this section, if the mortgage relates to a dwelling to be occupied by a physically handicapped person and the Secretary determines that such action is necessary to reflect the cost of making such dwelling accessible to and usable by such person.

(q)(1) Notwithstanding any other provision of this section, except subsection (n), if the Secretary determines that there is a substantial need for emergency stimulation of the housing market, the Secretary is authorized to make and enter into contracts to make periodic assistance payments to the extent of not to exceed 75 per centum of the authority available pursuant to subsection (h)(1), on behalf of homeowners, including owners of manufactured homes, to mortgagees or other lenders holding mortgages, loans, or advances of credit which meet the requirements of this subsection. The Secretary may establish such criteria, terms, and conditions relating

to homeowners and mortgages, loans, or advances of credit assisted under this subsection as the Secretary deems appropriate, consistent with the provisions of this subsection. The Secretary is authorized to insure a mortgage which meets the requirements of and is to be assisted under this subsection. The authority to enter into contracts to provide assistance payments and to insure mortgages under this subsection shall terminate on September 30, 1989, or at such earlier date as the Secretary may deem appropriate, upon a determination by the Secretary that the conditions which gave rise to the exercise of authority under this subsection are no longer present, except pursuant to a commitment entered into prior to such date.

(2) Payments under this subsection may be made only on behalf of a homeowner who satisfies such eligibility requirements as may be prescribed by the Secretary and who—

(A)(i) is a mortgagor under a mortgage which meets the requirements of and is insured under this subsection, or (ii) is the original owner of a new manufactured home consisting of two or more modules and a lot on which the manufactured home is situated, where insurance under section 2 of this Act covering the loan, advance of credit, or purchase of an obligation representing such loan or advance of credit to finance the purchase of such manufactured home and lot has been granted to the lender making such loan, advance of credit, or purchase of an obligation; and

(B) has a family income, at the time of initial occupancy, which does not exceed 130 per centum of the area median income for the area (with adjustments for smaller and larger families, unusually high or low median family income, or other factors), as determined by the Secretary.

(3) Assistance payments to a mortgagee or other lender by the Secretary on behalf of a homeowner shall be made only during such time as the homeowner shall continue to occupy the property which secures the mortgage, loan, or advance of credit. The Secretary may, where a mortgage insured under this subsection has been assigned to the Secretary, continue making such assistance payments.

(4) The amount of the assistance payments in the case of a mortgage shall not at any time exceed the lesser of—

(A) the balance of the monthly payment for principal, interest, taxes, insurance, and any mortgage insurance premium due under the mortgage remaining unpaid after applying a minimum of 25 per centum of the mortgagor's income, except that the Secretary may reduce such per centum of income to the extent he deems necessary, but not lower than 20 per centum of the mortgagor's income; or

(B) the difference between the amount of the monthly payment for principal, interest, and any mortgage insurance premium which would be required if the mortgage were a level payment mortgage bearing interest at a rate equal to the maximum interest rate which is applicable to level payment mortgages insured under section 203(b), other than mortgages subject to section 3(a)(2) of Public Law 90-301, and the monthly payment for principal and interest which the mortgagor would

be obligated to pay if the mortgage were a level payment mortgage bearing interest at the rate of at least 9½ per centum per annum.

(5) Assistance payments on behalf of the owner of a manufactured home shall not at any time exceed the lesser of—

(A) the balance of the monthly payment for principal, interest, real and personal property taxes, insurance, and insurance premium chargeable under section 2 of this Act due under the loan or advance of credit remaining unpaid after applying a minimum of 25 per centum of the manufactured homeowner's income, except that the Secretary may reduce such per centum of income to the extent he deems necessary, but not lower than 20 per centum of the mortgagor's income; or

(B) the difference between the amount of the monthly payment for principal, interest, and insurance premium chargeable under section 2 of this Act which the manufactured homeowner is obligated to pay under the loan or advance of credit and the monthly payment of principal and interest which the owner would be obligated to pay if the loan or advance of credit were to bear an interest rate determined by the Secretary which shall not be less than 12 per centum per annum.

(6) The Secretary may include in the payment to the mortgagee or other lender such amount, in addition to the amount computed under paragraph (4) or (5), as the Secretary deems appropriate to reimburse the mortgagee or other lender for its reasonable and necessary expenses in handling the mortgage, loan, or advance of credit.

(7) The Secretary shall prescribe such regulations as the Secretary deems necessary to assure that the sale price of, or other consideration paid in connection with, the purchase by a homeowner of the property with respect to which assistance payments are to be made is not greater than the appraised value as determined by the Secretary.

(8) Assistance payments pursuant to paragraph (5) shall not be made with respect to more than 20 per centum of the total number of units with respect to which assistance is approved under this subsection.

(9) The Secretary may, in addition to mortgages insured under subsection (i) or (j), insure, upon application by the mortgagee, a mortgage executed by a mortgagor who meets the eligibility requirements for assistance payments prescribed by the Secretary under paragraph (2). Commitments for the insurance of such mortgages may be issued by the Secretary prior to the date of their execution or disbursement thereon, upon such terms and conditions as the Secretary may prescribe.

(10) To be eligible for insurance under this subsection, a mortgage shall—

(A) be a first lien on real estate held in fee simple, or on a leasehold under a lease which meets terms and conditions established by the Secretary;

(B) have been made to, and be held by, a mortgagee approved by the Secretary as responsible and able to service the mortgage properly;

(C) involve a one- to four-family dwelling which has been approved by the Secretary prior to the beginning of construction, or if not so approved, has been completed within one year prior to the filing of the application for insurance and which has never been sold other than to the mortgagor;

(D) involve a principal residence the sales price of which does not exceed 82 per centum of the applicable maximum principal obligation of a mortgage which may be insured in the area pursuant to section 203(b)(2), determined without regard to the last sentence of such section;

(E) have maturity and amortization provisions satisfactory to the Secretary;

(F) bear interest (exclusive of premium charges for insurance, and service charges if any) at not to exceed the applicable maximum rate for mortgages insured pursuant to section 203(b);

(G) be executed by a mortgagor who shall have paid in cash or its equivalent, on account of the property, at least an amount equal to 3 per centum of the Secretary's estimate of the cost of acquisition; and

(H) contain such other terms and conditions as the Secretary may prescribe.

(11) The Secretary shall, to the extent practicable, insure mortgages under this subsection which are secured by properties which contribute to the conservation of land and energy resources.

(12) A mortgage to be assisted under this subsection shall, where the Secretary deems it appropriate, provide for graduated payments pursuant to section 245.

(13) The Secretary shall develop and utilize a system to allocate assistance under this subsection in a manner which assures a reasonable distribution of such assistance among the various regions of the country and which takes into consideration such factors as population, relative decline in building permits, the need for increased housing production, and other factors he deems appropriate. Assistance provided under this subsection shall not be subject to section 213 of the Housing and Community Development Act of 1974.

(14) Upon the disposition by the homeowner of any property assisted pursuant to this subsection, or where the homeowner rents the property (or the owner's unit in the case of a two- to four-family residence) for a period longer than one year, the Secretary shall provide for the recapture of an amount equal to the lesser of (A) the amount of assistance actually received under this subsection, other than any amount provided under paragraph (6), or (B) an amount at least equal to 50 per centum of the net appreciation of the property, as determined by the Secretary. For the purpose of this paragraph, the term "net appreciation of the property" means any increase in the value of the property over the original purchase price, less the reasonable costs of sale, the reasonable costs of improvements made to the property, and any increase in the mortgage balance as of the time of sale over the original mortgage balance due to the mortgage being insured pursuant to section 245. In providing for such recapture, the Secretary shall include incentives for the homeowner to maintain the property in a marketable

condition. Notwithstanding any other provision of law, any such assistance shall constitute a debt secured by the property to the extent that the Secretary may provide for such recapture.

(15) Procedures shall be adopted by the Secretary for recertification of the homeowner's income at intervals of two years (or at shorter intervals where the Secretary deems it desirable) for the purpose of adjusting the amount of such assistance payments within the limits of the formula described in paragraph (4) or (5).

(r)(1) The Secretary is authorized, upon application of a mortgagee, to insure under this subsection a mortgage the proceeds of which are used to refinance a mortgage insured under this section.

(2) To be eligible for insurance under this subsection, a mortgage must be executed by a mortgagor meeting the requirements of paragraph (3) and shall—

(A) be a first lien on real estate held in fee simple, or on a leasehold under a lease—

(i) for not less than 99 years which is renewable; or

(ii) having a period of not less than 10 years to run beyond the maturity date of the mortgage;

(B) have been made to, and held by, a mortgagee approved by the Secretary;

(C) be in an amount not exceeding the outstanding principal balance, including any unpaid interest, due on the mortgage being refinanced;

(D) have a maturity not exceeding the unexpired term of the mortgage being refinanced;

(E) bear an interest rate not exceeding such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary finds necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets; to the extent that the amounts described in paragraphs (4) (A) and (B) are not otherwise paid by the Secretary, the foregoing interest rate may be increased, in the discretion of the Secretary, to compensate the mortgagee for its payment to, or on behalf of, the mortgagor of such amounts; and

(F) meet the criteria for refinancing as determined by the Secretary.

(3) Notwithstanding the provisions of subsection (h)(2), assistance payments in connection with mortgages insured under paragraph (2) shall be made only with respect to a family who is eligible for, and receiving assistance payments with respect to, the insured mortgage being refinanced.

(4) The Secretary is authorized and, to the extent provided in appropriation Acts, may pay to the mortgagor (directly, through the mortgagee, or otherwise)—

(A) an amount, as approved by the Secretary, as an incentive to the mortgagor to refinance a mortgage insured under this section; and

(B) an amount as approved by the Secretary for costs incurred in connection with the refinancing, including but not limited to discounts, loan origination fees, and closing costs.

(5) Amounts of budget authority required for assistance payments contracts with respect to mortgages insured under this sub-

section shall be derived from amounts recaptured from assistance payments contracts relating to mortgages that are being refinanced. For purposes of subsection (c)(3)(A), the amount of recaptured budget authority that the Secretary commits for assistance payments contracts relating to mortgages insured under this subsection shall not be construed as “unused”.

(6) The Secretary is authorized to take any actions to identify and communicate with any mortgagor of a mortgage insured under this section to implement the refinancing of such mortgages with insurance under this subsection. The Secretary may take such actions directly, or under contract. Notwithstanding the restriction of section 552a(b) of title 5 of the United States Code, upon the request of an approved mortgagee, the Secretary may disclose to such mortgagee the name and address of any mortgagor of a mortgage insured under this section that meets the criteria for refinancing, pursuant to paragraph (2)(F), and the unpaid principal balance and interest rate on such mortgage.

(7) The Secretary shall implement the provisions of this subsection by a notice published in the Federal Register.

RENTAL AND COOPERATIVE HOUSING FOR LOWER INCOME FAMILIES

SEC. 236. [12 U.S.C. 1715z-1] (a) For the purpose of reducing rentals for lower income families, the Secretary is authorized to make, and to contract to make, periodic interest reduction payments on behalf of the owner of a rental housing project designed for occupancy by lower income families, which shall be accomplished through payments to mortgagees holding mortgages meeting the special requirements specified in this section.

(b) Interest reduction payments with respect to a project shall only be made during such time as the project is operated as a rental housing project and is subject to a mortgage which meets the requirements of, and is insured under, subsection (j) of this section: *Provided*, That the Secretary is authorized to continue making such interest reduction payments where the mortgage has been assigned to the Secretary: *Provided further*, That interest reduction payments may be made with respect to a mortgage or part thereof on a rental or cooperative housing project owned by a private nonprofit corporation or other private nonprofit entity, a limited dividend corporation or other limited dividend entity, public entity, or a cooperative housing corporation, which is financed under a State or local program providing assistance through loans, loan insurance, or tax abatements, and which may involve either new or existing construction and which is approved for receiving the benefits of this section. The term “mortgage insurance premiums,” when used in this section in relation to a project financed by a loan under a State or local program, means such fees and charges, approved by the Secretary, as are payable by the mortgagor to the State or local agency mortgagee to meet reserve requirements and administrative expenses of such agency.

(c) The interest reduction payments to a mortgagee by the Secretary on behalf of a project owner shall be in an amount not exceeding the difference between the monthly payments for principal, interest, and mortgage insurance premium which the project owner as a mortgagor is obliged to pay under the mortgage and the

monthly payment for principal and interest such project owner would be obligated to pay if the mortgage were to bear interest at the rate of 1 per centum per annum.

(d) The Secretary may include in the payment to the mortgagee such amount, in addition to the amount computed under subsection (c), as he deems appropriate to reimburse the mortgagee for its expenses in handling the mortgage.

(e)(1) As a condition for receiving the benefits of interest reduction payments, the project owner shall operate the project in accordance with such requirements with respect to tenant eligibility and rents as the Secretary may prescribe. Procedures shall be adopted by the Secretary for review of tenant incomes at intervals of one year (or at shorter intervals where the Secretary deems it desirable).

(2) A project for which interest reduction payments are made under this section and for which the mortgage on the project has been refinanced shall continue to receive the interest reduction payments under this section under the terms of the contract for such payments, but only if the project owner enters into such binding commitments as the Secretary may require (which shall be applicable to any subsequent owner) to ensure that the owner will continue to operate the project in accordance with all low-income affordability restrictions for the project in connection with the Federal assistance for the project for a period having a duration that is not less than the term for which such interest reduction payments are made plus an additional 5 years.

(f)(1)(A)(i) For each dwelling unit there shall be established, with the approval of the Secretary, a basic rental charge and fair market rental charge.

(ii) The basic rental charge shall be—

(I) the amount needed to operate the project with payments of principal and interest due under a mortgage bearing interest at the rate of 1 percent per annum; or

(II) an amount greater than that determined under clause (ii)(I), but not greater than the market rent for a comparable unassisted unit, reduced by the value of the interest reduction payments subsidy.

(iii) The fair market rental charge shall be—

(I) the amount needed to operate the project with payments of principal, interest, and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage covering the project; or

(II) an amount greater than that determined under clause (iii)(I), but not greater than the market rent for a comparable unassisted unit.

(iv) The Secretary may approve a basic rental charge and fair market rental charge for a unit that exceeds the minimum amounts permitted by this subparagraph for such charges only if—

(I) the approved basic rental charge and fair market rental charges each exceed the applicable minimum charge by the same amount; and

(II) the project owner agrees to restrictions on project use or mortgage prepayment that are acceptable to the Secretary.

(v) The Secretary may approve a basic rental charge and fair market rental charge under this paragraph for a unit with assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) that differs from the basic rental charge and fair market rental charge for a unit in the same project that is similar in size and amenities but without such assistance, as needed to ensure equitable treatment of tenants in units without such assistance.

(B)(i) The rental charge for each dwelling unit shall be at the basic rental charge or such greater amount, not exceeding the fair market rental charge determined pursuant to subparagraph (A), as represents 30 percent of the tenant's adjusted income, except as otherwise provided in this subparagraph.

(ii) In the case of a project which contains more than 5000 units, is subject to an interest reduction payments contract, and is financed under a State or local project, the Secretary may reduce the rental charge ceiling, but in no case shall the rental charge be below the basic rental charge set forth in subparagraph (A)(ii)(I).

(iii) For plans of action approved for capital grants under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 or the Emergency Low Income Housing Preservation Act of 1987, the rental charge for each dwelling unit shall be at the minimum basic rental charge set forth in subparagraph (A)(ii)(I) or such greater amount, not exceeding the lower of: (I) the fair market rental charge set forth in subparagraph (A)(iii)(I); or (II) the actual rent paid for a comparable unit in comparable unassisted housing in the market area in which the housing assisted under this section is located, as represents 30 percent of the tenant's adjusted income.

(C) With respect to those projects which the Secretary determines have separate utility metering paid by the tenants for some or all dwelling units, the Secretary may—

(i) permit the basic rental charge and the fair market rental charge to be determined on the basis of operating the project without the payment of the cost of utility services used by such dwelling units; and

(ii) permit the charging of a rental for such dwelling units at such an amount less than 30 percent of a tenant's adjusted income as the Secretary determines represents a proportionate decrease for the utility charges to be paid by such tenant, but in no case shall rental be lower than 25 percent of a tenant's adjusted income.

(2) With respect to 20 per centum of the dwelling units in any project made subject to a contract under this section after the date of enactment of the Housing and Community Development Act of 1974, the Secretary shall make, and contract to make, additional assistance payments to the project owner on behalf of tenants whose incomes are too low for them to afford the basic rentals (including the amount allowed for utilities in the case of a project with separate utility metering) with 30 per centum of this adjusted income. The additional assistance payments authorized by this paragraph with respect to any dwelling unit shall be the amount required to reduce the rental payment (including the amount allowed for utilities in the case of a project with separate utility me-

tering) by the tenant to the highest of the following amounts, rounded to the nearest dollar:

(A) 30 per centum of the tenant's monthly adjusted income;

(B) 10 per centum of the tenant's monthly income; or

(C) if the family is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated.

Notwithstanding the foregoing provisions of this paragraph, the Secretary may—

(A) reduce such 20 per centum requirements in the case of any project if he determines that such action is necessary to assure the economic viability of the project; or

(B) increase such 20 per centum requirement in the case of any project if he determines that such action is necessary and feasible in order to assure, insofar as is practicable, that there is in the project a reasonable range in the income levels of tenants, or that such action is to be taken to meet the housing needs of elderly or handicapped families.

(3) The Secretary shall utilize amounts credited to the fund described in subsection (g) for the sole purpose of carrying out the purposes of section 201 of the Housing and Community Development Amendments of 1978. No payments may be made from such fund unless approved in an appropriation Act. No amount may be so approved for any fiscal year beginning after September 30, 1994.

(4) To ensure that eligible tenants occupying that number of units with respect to which assistance was being provided under this subsection immediately prior to the date of enactment of this sentence⁹ receive the benefit of assistance contracted for under paragraph (2), the Secretary shall offer annually to amend contracts, entered into under this subsection with owners of projects assisted but not subject to mortgages insured under this section to provide sufficient payments to cover 100 percent of the necessary rent increases and changes in the incomes of eligible tenants, subject to the availability of authority for such purpose under section 5(c) of the United States Housing Act of 1937. The Secretary shall take such actions as may be necessary to ensure that payments, including payments that reflect necessary rent increases and changes in the incomes of tenants, are made on a timely basis for all units covered by contracts entered into under paragraph (2).

(5)(A) In order to induce advances by owners for capital improvements (excluding any owner contributions that may be required by the Secretary as a condition for assistance under section 201 of the Housing and Community Development Amendments of 1978) to benefit projects assisted under this section, in establishing basic rental charges and fair market rental charges under paragraph (1) the Secretary may include an amount that would permit a return of such advances with interest to the owner out of project

⁹ November 30, 1983.

income, on such terms and conditions as the Secretary may determine. Any resulting increase in rent contributions shall be—

(i) to a level not exceeding the lower of 30 percent of the adjusted income of the tenant or the published existing fair market rent for comparable housing established under section 8(c) of the United States Housing Act of 1937;

(ii) phased in equally over a period of not less than 3 years, if such increase is 30 percent or more; and

(iii) limited to not more than 10 percent per year if such increase is more than 10 percent but less than 30 percent.

(B) Assistance under section 8 of the United States Housing Act of 1937 shall be provided, to the extent available under appropriations Acts, if necessary to mitigate any adverse effects on income-eligible tenants.

(7)¹⁰ The Secretary shall determine whether and under what conditions the provisions of this subsection shall apply to mortgages sold by the Secretary on a negotiated basis.

(g)(1) The project owner shall, as required by the Secretary, accumulate, safeguard, and periodically pay the Secretary or such other entity as determined by the Secretary and upon such terms and conditions as the Secretary deems appropriate, all rental charges collected on a unit-by-unit basis in excess of the basic rental charges. Unless otherwise directed by the Secretary, such excess charges shall be credited to a reserve used by the Secretary to make additional assistance payments as provided in paragraph (3) of subsection (f).

(2) Notwithstanding any other requirements of this subsection, a project owner may retain some or all of such excess charges for project use if authorized by the Secretary.¹¹ Such excess charges shall be used for the project and upon terms and conditions established by the Secretary, unless the Secretary permits the owner to retain funds for non-project use after a determination that the project is well-maintained housing in good condition and that the owner has not engaged in material adverse financial or managerial

¹⁰ So in law. There is no paragraph (6).

¹¹ Section 861(b) of the American Homeownership and Economic Opportunity Act of 2000, Pub. L. 106-569, approved December 27, 2000, 12 U.S.C. 1715z-1 note, provides as follows:

“(b) TREATMENT OF EXCESS CHARGES PREVIOUSLY COLLECTED.—Any excess charges that a project owner may retain pursuant to the amendments made by subsections (b) and (c) of section 532 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (Public Law 106-74; 113 Stat. 1116) that have been collected by such owner since the date of the enactment of such appropriations Act and that such owner has not remitted to the Secretary of Housing and Urban Development may be retained by such owner unless such Secretary otherwise provides. To the extent that a project owner has remitted such excess charges to the Secretary since such date of the enactment, the Secretary may return to the relevant project owner any such excess charges remitted. Notwithstanding any other provision of law, amounts in the Rental Housing Assistance Fund, or heretofore or subsequently transferred from the Rental Housing Assistance Fund to the Flexible Subsidy Fund, shall be available to make such return of excess charges previously remitted to the Secretary, including the return of excess charges referred to in section 532(e) of such appropriations Act.”

Paragraphs (2) and (3) of this subsection were added by subsections (b) and (c) of section 532 of such Appropriations Act.

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2008, enacted as Division K of the Consolidated Appropriations Act, 2008, Public Law 110-161, 121 Stat. 2425, 12 U.S.C. 1715z-1 note, provides that “[f]rom the Rental Housing Assistance Fund, all uncommitted balances of excess rental charges as of September 30, 2007, and any collections made during fiscal year 2008 and all subsequent fiscal years, shall be transferred to the Flexible Subsidy Fund, as authorized by section 236(g) of the National Housing Act, as amended”.

actions or omissions as described in section 516 of the Multifamily Assisted Housing Reform and Affordability Act of 1997. In connection with the retention of funds for non-project use, the Secretary may require the project owner to enter into a binding commitment (which shall be applicable to any subsequent owner) to ensure that the owner will continue to operate the project in accordance with all low-income affordability restrictions for the project in connection with the Federal assistance for the project for a period having a duration of not less than the term of the existing affordability restrictions plus an additional 5 years.

(3) The Secretary shall not withhold approval of the retention by the owner of such excess charges because of the existence of unpaid excess charges if such unpaid amount is being remitted to the Secretary over a period of time in accordance with a workout agreement with the Secretary, unless the Secretary determines that the owner is in violation of the workout agreement.

(h) In addition to establishing the requirements specified in subsection (e), the Secretary is authorized to make such rules and regulations, to enter into such agreements, and to adopt such procedures as he may deem necessary or desirable to carry out the provisions of this section.

(i)(1) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section, including such sums as may be necessary to make interest reduction payments under contracts entered into by the Secretary under this section. The aggregate amount of outstanding contracts to make such payments shall not exceed amounts approved in appropriation Acts, and payments pursuant to such contracts shall not exceed \$75,000,000 per annum prior to July 1, 1969, which maximum dollar amount shall be increased by \$125,000,000 on July 1, 1969, \$150,000,000 on July 1, 1970, by \$200,000,000 on July 1, 1971, and by \$75,000,000 on July 1, 1974. The Secretary shall utilize, to the extent necessary after September 30, 1984, any authority under this section that is recaptured either as the result of the conversion of housing projects covered by assistance under subsection (f)(2) to contracts for assistance under section 8 of the United States Housing Act of 1937 or otherwise for the purpose of making assistance payments, including amendments as provided in subsection (f)(4), with respect to housing projects assisted, but not subject to mortgages insured, under the section that remain covered by assistance under subsection (f)(2).

(2) Contracts for assistance payments under this section may be entered into only with respect to tenants whose incomes do not exceed 80 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of his findings that such variations are necessary because of prevailing levels of construction costs, unusually high or low family incomes, or other factors.

(3) Not less than 10 per centum of the total amount of contracts for assistance payments authorized by appropriation Acts to be made after June 30, 1974, shall be available for use only with

respect to dwellings, or dwelling units in projects, which are approved by the Secretary prior to rehabilitation.

(4) At least 20 per centum of the total amount of contracts for assistance payments authorized in appropriation Acts to be made after June 30, 1974, shall be available for use only with respect to projects which are planned in whole or in part for occupancy by elderly or handicapped families. As used in this paragraph the term "elderly families" means families which consist of two or more persons the head of which (or his spouse) is sixty-two years of age or over or is handicapped. Such term also means a single person who is sixty-two years of age or over or is handicapped. A person shall be considered handicapped if such person is determined pursuant to regulations issued by the Secretary to have an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions.

(j)(1) The Secretary is authorized, upon application by the mortgagee, to insure a mortgage (including advances on such mortgage during construction) which meets the requirements of this subsection.¹² Commitments for the insurance of such mortgages may be issued by the Secretary prior to the date of their execution or disbursement thereon, upon such terms and conditions as he may prescribe.

(2) As used in this subsection—

(A) the terms "family" and "families" shall have the same meaning as in section 221;

(B) the term "elderly or handicapped families" shall have the same meaning as in section 202 of the Housing Act of 1959; and

(C) the terms "mortgage", "mortgagee", and "mortgagor" shall have the same meaning as in section 201.

(3) To be eligible for insurance under this subsection, a mortgage shall meet the requirements specified in subsections (d)(1) and (d)(3) of section 221, except as such requirements are modified by this subsection. In the case of a project financed with a mortgage insured under this subsection which involves a mortgagor other than a cooperative or a private nonprofit corporation or association and which is sold to a cooperative or a nonprofit corporation or association, the Secretary is further authorized to insure under

¹² Subsections (c) and (d) of section 201 of the Housing and Urban Development Act of 1968, Pub. L. 90-448, approved August 1, 1968, 12 U.S.C. 1715z-1 note, provide as follows:

"(c) The Secretary of Housing and Urban Development is authorized, upon such terms and conditions as he may prescribe, to transfer to section 236(j) of the National Housing Act the insurance of a mortgage which has not been [sic] finally endorsed for insurance under section 221(d)(3) of such Act and which has been approved for the below-market interest rate prescribed in the proviso of section 221(d)(5) of such Act.

"(d) The Secretary of Housing and Urban Development is authorized, upon such terms and conditions as he may prescribe, to insure under section 236(j) of the National Housing Act a mortgage meeting the requirements of such section which is given to refinance a mortgage loan made under section 202 of the Housing Act of 1959: *Provided*, That the application for such insurance is filed with the Secretary on or before the date of project completion, or within such reasonable time thereafter as the Secretary may permit."

Section 201(e)(3) of the Housing and Urban Development Act of 1968 also amended section 101 of the Housing and Urban Development Act of 1965 to permit up to 20 percent of the units in any one project to be occupied by tenants receiving rent supplement benefits under section 101 of the 1965 Act.

this subsection a mortgage given by such purchaser in an amount not exceeding the appraised value of the property at the time of purchase, which value shall be based upon a mortgage amount on which the debt service can be met from the income of the property when operated on a nonprofit basis, after payment of all operating expenses, taxes and required reserves.

(4) A mortgage to be insured under this subsection shall—

(A) be executed by a mortgagor eligible under subsection (d)(3) or (e) of section 221;

(B) bear interest at a rate not to exceed such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary determines is necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets; and

(C) provide for complete amortization by periodic payments within such term as the Secretary may prescribe.

(5) The property or project shall—

(A) comply with such standards and conditions as the Secretary may prescribe to establish the acceptability of the property for mortgage insurance and may include such nondwelling facilities as the Secretary deems adequate and appropriate to serve the occupants and the surrounding neighborhood: *Provided*, That the project shall be predominantly residential and any nondwelling facility included in the mortgage shall be found by the Secretary to contribute to the economic feasibility of the project, and the Secretary shall give due consideration to the possible effect of the project on other business enterprises in the community: *Provided further*, That in the case of a project designed primarily for occupancy by elderly or handicapped families, the project may include related facilities for use by elderly or handicapped families, including cafeterias or dining halls, community rooms, workshops, infirmaries, or other inpatient or outpatient health facilities, and other essential service facilities;

(B) include five or more dwelling units, but such units, in the case of a project designed primarily for occupancy by displaced, elderly, or handicapped families, need not, with the approval of the Secretary, contain kitchen facilities; and

(C) be designed primarily for use as a rental project to be occupied by lower income families or by elderly or handicapped families: *Provided*, That lower income persons who are less than sixty-two years of age shall be eligible for occupancy in such a project.

In any case in which it is determined in accordance with regulations of the Secretary that facilities in existence or under construction on the date of enactment of the Housing and Urban Development Act of 1970 which could appropriately be used for classroom purposes are available in any such property or project and that public schools in the community are overcrowded due in part to the attendance at such schools of residents of the property or project, such facilities may be used for such purposes to the extent permitted in such regulations (without being subject to any of the requirements of the first proviso in subparagraph (A) except the requirement that the project be predominantly residential).

(6) With the approval of the Secretary, the mortgagor may sell the individual dwelling units to lower income or elderly or handicapped purchasers. The Secretary may consent to the release of the mortgagor from his liability under the mortgage and the credit instrument secured thereby, or consent to the release of parts of the mortgaged property from the lien of the mortgage, upon such terms and conditions as he may prescribe, and the mortgage may provide for such release.

(k) As used in this section the term "tenant" includes a member of a cooperative; the term "rental housing project" includes a cooperative housing project; and the terms "rental" and "rental charge" mean, with respect to members of a cooperative, the charges under the occupancy agreements between such members and the cooperative.

(l) The Secretary shall from time to time allocate and transfer to the Secretary of Agriculture, for use (in accordance with the terms and conditions of this section) in rural areas and small towns, a reasonable portion of the total authority to contract to make periodic interest reduction payments as approved in appropriation Acts under subsection (i).

(m) For the purpose of this section the term "income" means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary, except that any amounts not actually received by the family may not be considered as income under this subsection. In determining amounts to be excluded from income, the Secretary may, in the Secretary's discretion, take into account the number of minor children in the household and such other factors as the Secretary may determine are appropriate.

(n) No mortgage shall be insured under this section after November 30, 1983, except pursuant to a commitment to insure before that date. A mortgage may be insured under this section after the date in the preceding sentence in order to refinance a mortgage insured under this section or to finance pursuant to subsection (j)(3) the purchase, by a cooperative or nonprofit corporation or association, of a project assisted under this section.

(o) The Secretary is authorized to enter into agreements with any State or agency thereof under which such State or agency thereof contracts to make interest reduction payments, subject to all the terms and conditions specified in this section and in rules, regulations and procedures adopted by the Secretary under this section, with respect to all or a part of a project covered by a mortgage insured under this section. Any funds provided by a State or agency thereof for the purpose of making interest reduction payments shall be administered, disbursed and accounted for by the Secretary in accordance with the agreements entered into by the Secretary with the State or agency thereof and for such fees as shall be specified therein. Before entering into any agreements pursuant to this subsection the Secretary shall require assurances satisfactory to him that the State or agency thereof is able to provide sufficient funds for the making of interest reduction payments for the full period specified in the interest reduction contract.

(p) The Secretary is authorized to enter into contracts with State or local agencies approved by him to provide for the moni-

toring and supervision by such agencies of the management by private sponsors of projects assisted under this section. Such contracts shall require that such agencies promptly report to the Secretary any deficiencies in the management of such projects in order to enable the Secretary to take corrective action at the earliest practicable time.

(q) The Secretary may provide assistance under section 8 of the United States Housing Act of 1937 with respect to residents of units in a project assisted under this section. In entering into contracts under section 5(c) of such Act with respect to the additional authority provided on October 1, 1980, the Secretary shall not utilize more than \$20,000,000 of such additional authority to provide assistance for elderly or handicapped families which, at the time of applying for assistance under such section 8, are residents of a project assisted under this section and are expending more than 50 percent of their income on rental payments.

(r) The Secretary shall, not later than 45 days after receipt of an application by the mortgagee, provide interest reduction and rental assistance payments for the benefit of projects assisted under this section whose mortgages were made by State or local housing finance agencies or State or local government agencies for a term equal to the remaining mortgage term to maturity on projects assisted under this section to the extent of—

(1) unexpended balances of amounts of authority as set forth in certain letter agreements between the Department of Housing and Urban Development and such State or local housing finance agencies or State or local government agencies, and

(2) existing allocation under section 236 contracts on projects whose mortgages were made by State or local housing finance agencies or State or local government agencies which are not being funded, to the extent of such excess allocation, for any purposes permitted under the provisions of this section, including without limitation rent supplement and rental assistance payment unit increases and mortgage increases for any eligible purpose under this section, including without limitation operating deficit loans.

An application shall be eligible for assistance under the previous sentence only if the mortgagee submits the application within 548 days after the effective date of this subsection, along with a certification of the mortgagee that amounts hereunder are to be utilized only for the purpose of either (A) reducing rents or rent increases to tenants, or (B) making repairs or otherwise increasing the economic viability of a related project. Unexpended balances referred to in the first sentence of this subsection which remain after disposition of all such applications is favorably concluded shall be rescinded. The calculation of the amount of assistance to be provided under an interest reduction contract pursuant to this subsection shall be made on the basis of an assumed mortgage term equal to the lesser of a 40-year amortization period or the term of that part of the mortgage which relates to the additional assistance provided under this subsection, even though the additional assistance may be provided for a shorter period. The authority conferred by this subsection to provide interest reduction and rental assistance pay-

ments shall be available only to the extent approved in appropriation Acts.

(s) GRANTS AND LOANS FOR REHABILITATION OF MULTIFAMILY PROJECTS.—

(1) IN GENERAL.—The Secretary may make grants and loans for the capital costs of rehabilitation to owners of projects that meet the eligibility and other criteria set forth in, and in accordance with, this subsection.

(2) PROJECT ELIGIBILITY.—A project may be eligible for capital assistance under this subsection under a grant or loan only—

(A) if—

(i) the project is or was insured under any provision of title II of the National Housing Act;

(ii) the project was assisted under section 8 of the United States Housing Act of 1937 on the date of enactment of the Multifamily Assisted Housing Reform and Affordability Act of 1997; and

(iii) the project mortgage was not held by a State agency as of the date of enactment of the Multifamily Assisted Housing Reform and Affordability Act of 1997;

(B) if¹³ the project owner agrees to maintain the housing quality standards as required by the Secretary;

(C) the project owner enters into such binding commitments as the Secretary may require (which shall be applicable to any subsequent owner) to ensure that the owner will continue to operate the project in accordance with all low-income affordability restrictions for the project in connection with the Federal assistance for the project for a period having a duration that is not less than the period referred to in paragraph (5)(C);

(D)(i) if¹⁴ the Secretary determines that the owner or purchaser of the project has not engaged in material adverse financial or managerial actions or omissions with regard to such project; or

(ii) if¹⁴ the Secretary elects to make such determination, that the owner or purchaser of the project has not engaged in material adverse financial or managerial actions or omissions with regard to other projects of such owner or purchaser that are federally assisted or financed with a loan from, or mortgage insured or guaranteed by, an agency of the Federal Government;

(iii) material adverse financial or managerial actions or omissions, as the terms are used in this subparagraph, include—

(I) materially violating any Federal, State, or local law or regulation with regard to this project or any other federally assisted project, after receipt of notice and an opportunity to cure;

¹³ So in law.

¹⁴ So in law.

(II) materially breaching a contract for assistance under section 8 of the United States Housing Act of 1937, after receipt of notice and an opportunity to cure;

(III) materially violating any applicable regulatory or other agreement with the Secretary or a participating administrative entity, after receipt of notice and an opportunity to cure;

(IV) repeatedly failing to make mortgage payments at times when project income was sufficient to maintain and operate the property;

(V) materially failing to maintain the property according to housing quality standards after receipt of notice and a reasonable opportunity to cure; or

(VI) committing any act or omission that would warrant suspension or debarment by the Secretary; and

(iv) the term “owner” as used in this subparagraph, in addition to it having the same meaning as in section 8(f) of the United States Housing Act of 1937, also means an affiliate of the owner; the term “purchaser” as used in this subsection means any private person or entity, including a cooperative, an agency of the Federal Government, or a public housing agency, that, upon purchase of the project, would have the legal right to lease or sublease dwelling units in the project, and also means an affiliate of the purchaser; the terms “affiliate of the owner” and “affiliate of the purchaser” means any person or entity (including, but not limited to, a general partner or managing member, or an officer of either) that controls an owner or purchaser, is controlled by an owner or purchaser, or is under common control with the owner or purchaser; the term “control” means the direct or indirect power (under contract, equity ownership, the right to vote or determine a vote, or otherwise) to direct the financial, legal, beneficial or other interests of the owner or purchaser; and

(E) if¹⁴ the project owner demonstrates to the satisfaction of the Secretary—

(i) using information in a comprehensive needs assessment, that capital assistance under this subsection from a grant or loan (as appropriate) is needed for rehabilitation of the project; and

(ii) that project income is not sufficient to support such rehabilitation.

(3) ELIGIBLE USES.—Amounts from a grant or loan under this subsection may be used only for projects eligible under paragraph (2) for the purposes of—

(A) payment into project replacement reserves;

(B) debt service payments on non-Federal rehabilitation loans; and

(C) payment of nonrecurring maintenance and capital improvements, under such terms and conditions as are determined by the Secretary.

(4) GRANT AND LOAN AGREEMENTS.—

(A) IN GENERAL.—The Secretary shall provide in any grant or loan agreement under this subsection that the grant or loan shall be terminated if the project fails to meet housing quality standards, as applicable on the date of enactment of the Multifamily Assisted Housing Reform and Affordability Act of 1997, or any successor standards for the physical conditions of projects, as are determined by the Secretary.

(B) AFFORDABILITY AND USE CLAUSES.—The Secretary shall include in a grant or loan agreement under this subsection a requirement for the project owners to maintain such affordability and use restrictions as the Secretary determines to be appropriate and consistent with paragraph (2)(C).

(C) OTHER TERMS.—The Secretary may include in a grant or loan agreement under this subsection such other terms and conditions as the Secretary determines to be necessary.

(5) LOAN TERMS.—A loan under this subsection—

(A) shall provide amounts for the eligible uses under paragraph (3) in a single loan disbursement of loan principal;

(B) shall be repaid, as to principal and interest, on behalf of the borrower using amounts recaptured from contracts for interest reduction payments pursuant to clause (i) or (ii) of paragraph (7)(A);

(C) shall have a term to maturity of a duration not shorter than the remaining period for which the interest reduction payments for the insured mortgage or mortgages that fund repayment of the loan would have continued after extinguishment or writedown of the mortgage (in accordance with the terms of such mortgage in effect immediately before such extinguishment or writedown);

(D) shall bear interest at a rate, as determined by the Secretary of the Treasury, that is based upon the current market yields on outstanding marketable obligations of the United States having comparable maturities; and

(E) shall involve a principal obligation of an amount not exceeding the amount that can be repaid using amounts described in subparagraph (B) over the term determined in accordance with subparagraph (C), with interest at the rate determined under subparagraph (D).

(6) DELEGATION.—

(A) IN GENERAL.—In addition to the authorities set forth in subsection (p), the Secretary may delegate to State and local governments the responsibility for the administration of grants¹⁵ under this subsection. Any such government may carry out such delegated responsibilities directly or under contracts.

¹⁵ Section 535(a)(5) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000, Pub. L. 106-74, 113 Stat. 1119, provides that this paragraph is amended by inserting “or loan” after “grant” each place it appears. Because the term ‘grant’ does not appear in this paragraph, the amendment could not be executed.

(B) ADMINISTRATION COSTS.—In addition to other eligible purposes, amounts of grants¹⁵ under this subsection may be made available for costs of administration under subparagraph (A).

(7) FUNDING.—

(A) IN GENERAL.—For purposes of carrying out this subsection, the Secretary may make available amounts that are unobligated amounts for contracts for interest reduction payments—

(i) that were previously obligated for contracts for interest reduction payments under this section until the insured mortgage under this section was extinguished;

(ii) that become available as a result of the outstanding principal balance of a mortgage having been written down;

(iii) that are uncommitted balances within the limitation on maximum payments that may have been, before the date of enactment of the Multifamily Assisted Housing Reform and Affordability Act of 1997, permitted in any fiscal year; or

(iv) that become available from any other source.

(B) LIQUIDATION AUTHORITY.—The Secretary may liquidate obligations entered into under this subsection under section 1305(10) of title 31, United States Code.

(C) CAPITAL GRANTS.—In making capital grants under the terms of this subsection, using the amounts that the Secretary has recaptured from contracts for interest reduction payments, the Secretary shall ensure that the rates and amounts of outlays do not at any time exceed the rates and amounts of outlays that would have been experienced if the insured mortgage had not been extinguished or the principal amount had not been written down, and the interest reduction payments that the Secretary has recaptured had continued in accordance with the terms in effect immediately prior to such extinguishment or write-down.

(D) LOANS.—In making loans under this subsection using the amounts that the Secretary has recaptured from contracts for interest reduction payments pursuant to clause (i) or (ii) of paragraph (7)(A)—

(i) the Secretary may use such recaptured amounts for costs (as such term is defined in section 502 of the Congressional Budget Act of 1974) of such loans; and

(ii) the Secretary may make loans in any fiscal year only to the extent or in such amounts that amounts are used under clause (i) to cover costs of such loans.

* * * * *

TITLE VIII—SECONDARY MORTGAGE MARKET

PURPOSES

SEC. 801. [12 U.S.C. 1716b] The purposes of this title include the partition of the Federal National Mortgage Association as heretofore existing into two separate and distinct corporations, each of which shall have continuity and corporate succession as a separated portion of the previously existing corporation. One of such corporations, to be known as Federal National Mortgage Association, will be a Government-sponsored private corporation, will retain the assets and liabilities of the previously existing corporation accounted for under section 304 of the Federal National Mortgage Association Charter Act, and will continue to operate the secondary market operations authorized by such section 304. The other to be known as Government National Mortgage Association, will remain in the Government, will retain the assets and liabilities of the previously existing corporation accounted for under sections 305 and 306 of such Act, and will continue to operate the special assistance functions and management and liquidating functions authorized by such sections 305 and 306.

* * * * *

EFFECTIVE DATE

SEC. 808. [12 U.S.C. 1716b note] The amendments made by this title shall be effective from and after a date, no more than one hundred and twenty days following the date of enactment of this Act, as established by the Secretary of Housing and Urban Development.¹⁶ Notice of the establishment of such effective date shall be published in the Federal Register at least thirty days prior thereto.

SAVINGS PROVISIONS

SEC. 809. [12 U.S.C. 1716b note] (a) No cause of action by or against the Federal National Mortgage Association existing prior to the effective date established pursuant to section 808 shall abate by reason of the enactment of this title. Any such cause of action may thereafter be asserted by or against the appropriate corporate body named in section 302(a)(2) of the National Housing Act.

(b) No suit, action, or other proceeding commenced by or against the Federal National Mortgage Association, or any officer thereof in his official capacity, prior to the effective date established pursuant to section 808 shall abate by reason of the enactment of this title. A court may at any time thereafter during the pendency of any such litigation, on its own motion or that of any party, order that the litigation may be maintained by or against the appropriate corporate body named in section 302(a)(2) of the National Housing Act or the appropriate corresponding officer thereof.

¹⁶September 1, 1968, was established as the effective date.

TRANSITIONAL PROVISIONS

SEC. 810. [12 U.S.C. 1716b note] (a) On the effective date established pursuant to section 808 of this Act, each share of outstanding nonvoting common stock, with a par value of \$100 per share, of the Federal National Mortgage Association shall be changed into and shall become one share of voting common stock, without par value, of such corporation. For the purposes of the Internal Revenue Code of 1954, no gain or loss is recognized by the holders of such stock on such change, and the basis and holder period of such stock in the hands of the stockholders immediately after such change are the same as the basis and holding period of such stock in their hands immediately prior to such change.

[(b) [Repealed.]]

[(c) [Repealed.]]

(d) Those persons who are the officers and employees of the Federal National Mortgage Association immediately prior to the effective date established pursuant to section 808 shall become the officers and employees of the Government National Mortgage Association on such date. The Federal National Mortgage Association and the Government National Mortgage Association shall provide by contract for the conditions and methods under which and by which the Federal National Mortgage Association during the transitional period may employ those individuals who are employees of the Government National Mortgage Association on such effective date; and may provide by contract for the operation by either of such corporations of any of the functions of the other. The Secretary of Housing and Urban Development shall make every reasonable effort to place in other comparable Federal positions any individuals who are career or career-conditional employees of the Government National Mortgage Association on such effective date and who are subsequently during the transitional period neither employed by the Federal National Mortgage Association nor retained by the Government National Mortgage Association.

TITLE IX—NATIONAL HOUSING PARTNERSHIPS

STATEMENT OF PURPOSE

SEC. 901. [42 U.S.C. 3931] The Congress finds that the volume of housing being produced for families and individuals of low or moderate income must be increased to meet the national goal of a decent home and a suitable living environment for every American family, and declare that it is the policy of the United States to encourage the widest possible participation by private enterprise in the provision of housing for low or moderate income families. The Congress has therefore determined that one or more private organizations should be created to encourage maximum participation by private investors in programs and projects to provide low and moderate income housing.

CREATION OF CORPORATIONS

SEC. 902. [42 U.S.C. 3932] (a) There is hereby authorized to be created a private corporation for profit (hereinafter in this title referred to as the "corporation"). The corporation will not be an

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agency or establishment of the United States Government. The corporation shall be subject to the provisions of this title and, to the extent consistent with this title, to the District of Columbia Business Corporation Act (D.C. Code, sec. 29–901 et seq.).

(b) Whenever the President finds it in the national interest to do so, he may cause the creation of an additional corporation or additional corporations to carry out the purposes of this title. All the provisions of this title shall thereupon become applicable to each such corporation, and to the limited partnership formed by it pursuant to section 907.

(c) Nothing in this title shall be construed to preclude private persons from creating other corporations and organizing other partnerships, joint ventures, or associations for the purposes set forth in this title as the purposes of the corporation and the partnership described in section 907.

PROCESS OF ORGANIZATION

SEC. 903. [42 U.S.C. 3933] (a) The President of the United States shall appoint, by and with the advice and consent of the Senate, incorporators of the corporation, one of whom shall be designated by the President to serve as chairman. The incorporators shall serve as the initial board of directors until the first annual meeting of stockholders or until their successors are elected and have qualified.

(b) The incorporators shall take whatever actions are necessary or appropriate to establish the corporation, including the filing of articles of incorporation as approved by the President.

(c) The incorporators shall arrange for an initial offering of shares of stock in the corporation and of interests in the partnership described in section 907 of this title. If the incorporators deem it advisable in order to carry out the purposes of this title, the initial offering may be made upon terms which require the purchase of other securities of the corporation or of interests in such partnership.

DIRECTORS

SEC. 904. [42 U.S.C. 3934] The corporation shall have a board of directors (hereinafter in this section referred to as the “board”), consisting of fifteen members. Three members of the board shall be appointed by the President of the United States, by and with the advice and consent of the Senate, effective on the date on which the other members are elected, and for terms of three years or until their successors have been appointed and have qualified, except that the first three members of the board so appointed shall continue in office for terms of one, two, and three years, respectively, and any member so appointed to fill a vacancy shall be appointed only for the unexpired term of the director whom he succeeds. Twelve members of the board shall be elected by the stockholders.

FINANCING THE CORPORATION

SEC. 905. [42 U.S.C. 3935] The corporation shall have the power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more

classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, voting powers, and special or relative rights and such limitations, restrictions, or qualifications thereof as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting power of the shares of any class.

PURPOSES AND POWERS OF THE CORPORATION

SEC. 906. [42 U.S.C. 3936] (a) In order to achieve the objectives and carry out the purposes of this title, the corporation is authorized to—

(1) plan, initiate, and carry out, pursuant to Federal programs or otherwise, the building, rehabilitation, acquisition, and financing of housing and related facilities primarily for the benefit of families and individuals of low or moderate income;

(2) buy, own, manage, lease, or otherwise acquire or dispose of property in connection with the developments, projects, or undertakings referred to in paragraph (1);

(3) provide such funds as may be necessary to accomplish the developments, projects, or undertakings referred to in paragraph (1); and

(4) for the purpose of generating income to support the building or rehabilitation of housing primarily for the benefit of families and individuals of low or moderate income (A) design, develop, manufacture and sell products and services for use in the construction, sale, or financing of housing, and (B) design and develop commercial, industrial, or retail facilities, that are not directly related to housing, except that the development and preservation of housing for families and individuals of low or moderate income shall be the primary activity of the corporation.

(b) Included in the activities authorized to the corporation for the accomplishment of the purposes indicated in subsection (a) of this section are, among others not specifically named—

(1) to enter into partnerships, limited partnerships, joint ventures, and other associations with individuals, corporations, and private and governmental agencies, organizations, and institutions;

(2) to act as manager or general partner of any such partnership, venture, or association;

(3) to conduct or contract for research and studies related to the development, demonstration, and evaluation of improved techniques and methods of constructing, rehabilitating, and maintaining housing;

(4) to provide technical assistance to nonprofit corporations, limited dividend corporations, and others with respect to the planning, financing, construction, rehabilitation, maintenance, and management of housing for low and moderate income families and individuals;

(5) to make loans or grants including grants of interests in housing and related facilities, to nonprofit corporations, limited dividend corporations, and others, in carrying out its activities under subsection (a) of this section; and

(6) to hire or accept the voluntary services of consultants, experts, advisory boards, and panels to aid the corporation in carrying out the purposes of this title.

(c) To carry out the foregoing purposes and engage in the foregoing activities, the corporation shall have the usual powers conferred upon a stock corporation by the District of Columbia Business Corporation Act.

(d) Nothing in this title shall have the effect of waiving or otherwise affecting the applicability of the provisions of the Davis-Bacon Act (40 U.S.C. 267a—276a-5), or any other law requiring compliance with labor standards, in the case of any construction to which such provisions would otherwise apply.

(e) The combined outstanding equity commitment of the corporation and the partnership with respect to activities undertaken under subsection (a)(4) may not exceed (1) 7 percent of their total combined equity commitment outstanding during the first 12-month period following the date of enactment of this subsection;¹⁷ (2) 14 percent of their total combined equity commitment outstanding during the second 12-month period following the date of enactment of this subsection; or (3) 20 percent of their total combined equity commitment outstanding at any time thereafter.

NATIONAL HOUSING PARTNERSHIP

SEC. 907. [42 U.S.C. 3937] (a) The corporation is authorized to arrange for the formation, as a separate organization, of a limited partnership (hereinafter in this title referred to as the “partnership”) under the District of Columbia Uniform Limited Partnership Act (D.C. Code, sec. 41–401 et seq.) for the purpose of engaging in any of the activities authorized for the corporation under section 906 of this title, and to enter into a partnership agreement governing the affairs of such limited partnership.

(b) The partnership shall be subject to the provisions, to the extent consistent with this title, of (1) the District of Columbia Uniform Limited Partnership Act and (2) those provisions of the District of Columbia Uniform Partnership Act (D.C. Code, sec. 41–301 et seq.) made applicable by section 6(2) of that Act (D.C. Code, sec. 41–305(2)). Notwithstanding any inconsistency between the provisions of such Acts, or of any other law, and the provisions of this section, the partnership organized pursuant to this section shall be deemed to have the legal status of a limited partnership.

(c) The partnership is authorized to enter into partnerships, limited partnerships, or joint ventures organized under applicable State or local law for the purpose of engaging in low and moderate income housing developments, projects, or undertakings in particular localities.

(d) The corporation shall be the general partner in the partnership. The capital of the partnership and the contributions of the partners shall be in such amounts and at such times as are set forth in or pursuant to the partnership agreement.

(e) The partnership agreement shall include provisions designed to assure that (1) the partnership shall participate in low and moderate income housing developments, projects, or under-

¹⁷The date of enactment was October 17, 1984.

takings in a manner designed to encourage the participation therein of local interests, and (2) in any such development, project, or undertaking the partnership shall not subscribe to more than 25 per centum (including equity investments made in services or property) of the aggregate initial equity investment unless, in the judgment of the corporation as general partner, the balance of the required equity investment is not readily obtainable from other responsible investors residing or doing business in the local community.

(f) The partnership agreement may without limitation (1) permit each of the stockholders of the corporation to become a member of the partnership as a limited partner, (2) authorize the inclusion of other limited partners in addition to the stockholders of the corporation, (3) provide that the assignee of the partnership interest of a limited partner of the partnership who is also a stockholder of the corporation may not become a substituted limited partner unless he also acquires the assignor's stock of the corporation, and (4) include provisions requiring that the corporation as a general partner approve the substitution or addition of a member of the partnership.

(g) A corporation which is a limited partner in the partnership shall not become liable as a general partner by reason of the fact that (1) such corporation is a holder of shares of voting stock of the corporation constituting not more than 5 per centum of the total number of outstanding shares of such stock and exercises any of the rights (including voting rights) of a holder of such shares, and/or (2) a person who is an officer or director of such corporation (or of another corporation which controls or is subject to the control of or is under common control with, such corporation) is a director of the corporation and performs the duties of that office. The interest of a limited partner in the partnership shall not be treated as a stock interest in the corporation, notwithstanding that such interest of a limited partner may be proportionate to his stock interest in the corporation.

(h) The certificate of the partnership and any amendment thereof required by the District of Columbia Uniform Limited Partnership Act shall be executed and acknowledged by the corporation as member and by each other member of the partnership or his attorney-in-fact duly authorized by power of attorney in writing. The corporation may execute and acknowledge the certificate and any amendment thereof as attorney-in-fact for any member, member to be substituted or added, or assigning member, by whom the certificate or amendment is required to be executed and acknowledged and who has appointed the corporation as such attorney.

REPORT TO CONGRESS AND RECORDS

SEC. 908. [42 U.S.C. 3938] (a)(1) The corporation shall submit an annual report to the President for transmittal to the Congress within six months after the end of its fiscal year. The report shall include a comprehensive and detailed report of the operations, activities, and financial condition of the corporation and the partnership under this title.

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(2) The report shall contain a description of the activities undertaken under section 906(a)(4), and shall specify, as a percentage of equity and in dollars, the extent of the corporation's and the partnership's investment in housing for the benefit of families and individuals of low or moderate income, the extent of the corporation's and the partnership's investment in other housing, and the extent of the corporation's and the partnership's activities which are undertaken under section 906(a)(4).

(b) The accounts of the corporation and of the partnership shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States.

ANTITRUST LAWS

SEC. 909. [42 U.S.C. 3939] Nothing contained herein shall affect the applicability of the Federal antitrust laws to the activities of the corporation and the partnership created under this title and of the persons participating therein or in partnerships, limited partnership, or joint ventures with either of them.

RIGHT TO REPEAL, ALTER, OR AMEND

SEC. 910. [42 U.S.C. 3940] The right to repeal, alter, or amend this title at any time is expressly reserved.

* * * * * *

STATE REGULATION

SEC. 912. [42 U.S.C. 3941] Nothing contained in this title shall preclude a State or other local jurisdiction from imposing, in accordance with the laws of such State or other local jurisdiction, any valid nondiscriminatory tax, obligation, or regulation on the partnership as a taxable and/or legal entity, but no limited partner of the partnership not otherwise subject to taxation or regulation by or judicial process of a State or other local jurisdiction shall be subject to taxation or regulation by or subject to or denied access to judicial process of such State or other local jurisdiction, or be so subject or denied access to any greater extent, because of activities of the corporation or partnership within such State or local jurisdiction.

* * * * * *

**TITLE XI—URBAN PROPERTY PROTECTION AND
REINSURANCE**

SHORT TITLE

SEC. 1101. This title may be cited as the “Urban Property Protection and Reinsurance Act of 1968.”

FINDINGS AND DECLARATION OF PURPOSE

SEC. 1102. [12 U.S.C. 1749bbb note] (a) The Congress finds that (1) the vitality of many American cities is being threatened by the deterioration of their inner city areas; responsible owners of well-maintained residential, business, and other properties in many of these areas are unable to obtain adequate property insurance coverage against fire, crime, and other perils; the lack of such insurance coverage accelerates the deterioration of these areas by discouraging private investment and restricting the availability of credit to repair and improve property therein; and this deterioration poses a serious threat to the national economy; (2) recent riots and other civil commotion in many American cities have brought about abnormally high losses to the private property insurance industry for which adequate reinsurance cannot be obtained at reasonable cost, and the risk of such losses will make most lines of property insurance even more difficult to obtain; (3) the capacity of the private property insurance industry to provide adequate insurance is threatened, and the continuity of such property insurance protection is essential to the extension of credit in these areas; and (4) the national interest demands urgent action by the Congress to assure that essential lines of property insurance, including lines providing protection against riot and civil commotion damage will be available to property owners at reasonable cost.

(b) The purposes of this title are, therefore, to (1) encourage and assist the various State insurance authorities and the property insurance industry to develop and carry out statewide programs which will make necessary property insurance coverage against the fire, crime, and other perils more readily available for residential, business, and other properties meeting reasonable underwriting standards; (2) provide a Federal program of reinsurance against abnormally high property insurance losses resulting from riots and other civil commotion, placing appropriate financial responsibility upon the States to share in such losses; and (3) provide direct insurance through the facilities of the Federal Government in the case of properties for which statewide programs and the Federal reinsurance program either do not make crime insurance available or offer such insurance to property owners only at prohibitive cost.

AMENDMENT OF THE NATIONAL HOUSING ACT

SEC. 1103. The National Housing Act is amended by adding at the end thereof the following new title:

“TITLE XII—NATIONAL INSURANCE DEVELOPMENT
PROGRAM¹⁸

* * * * *

FINANCING

SEC. 1104. Section 520(b) of the National Housing Act is amended * * *

¹⁸This title is set forth in its entirety, *post*, in this compilation.”

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FEDERAL INSURANCE ADMINISTRATOR

SEC. 1105. [42 U.S.C. 4129] (a) There is hereby established in the Federal Emergency Management Agency the position of Federal Insurance Administrator.

(b) Section 5315 of title 5, United States Code, is amended
* * *

CLARIFYING AMENDMENTS TO ACTS REFERRING TO DISASTERS

SEC. 1106. [5 U.S.C. 7313 note] (a) Section 7(b) of the Small Business Act is amended * * *

(b) Section 101(c)(2)(E) of the Housing and Urban Development Act of 1965 is amended * * *

(c) Section 111 of the Housing Act of 1949 is amended * * *

(d) Section 203(h) of the National Housing Act is amended
* * *

(e) No person who has been convicted of committing a felony during and in connection with a riot or civil disorder shall be permitted for a period of one year after the date of his conviction, to receive any benefit under any law of the United States providing relief for disaster victims.

* * * * *

TITLE XIII—NATIONAL FLOOD INSURANCE

SHORT TITLE

SEC. 1301. [42 U.S.C. 4001 note] This title may be cited as the “National Flood Insurance Act of 1968”.

FINDINGS AND DECLARATION OF PURPOSE

SEC. 1302. [42 U.S.C. 4001] (a) The Congress finds that (1) from time to time flood disasters have created personal hardships and economic distress which have required unforeseen disaster relief measures and have placed an increasing burden on the Nation’s resources; (2) despite the installation of preventive and protective works and the adoption of other public programs designed to reduce losses caused by flood damage, these methods have not been sufficient to protect adequately against growing exposure to future flood losses; (3) as a matter of national policy, a reasonable method of sharing the risk of flood losses is through a program a flood insurance which can complement and encourage preventive and protective measures; and (4) if such a program is initiated and carried out gradually, it can be expanded as knowledge is gained and experience is appraised, thus eventually making flood insurance coverage available on reasonable terms and conditions to persons who have need for such protection.

(b) The Congress also finds that (1) many factors have made it uneconomic for the private insurance industry alone to make flood insurance available to those in need of such protection on reasonable terms and conditions; but (2) a program of flood insurance with large-scale participation of the Federal Government and carried out to the maximum extent practicable by the private insurance industry is feasible and can be initiated.

(c) The Congress further finds that (1) a program of flood insurance can promote the public interest by providing appropriate protection against the perils of flood losses and encouraging sound land use by minimizing exposure of property to flood losses; and (2) the objectives of a flood insurance program should be integrally related to a unified national program for flood plain management and, to this end, it is the sense of Congress that within two years following the effective date of this title the President should transmit to the Congress for its consideration any further proposals necessary for such a unified program, including proposals for the allocation of costs among beneficiaries of flood protection.

(d) It is therefore the purpose of this title to (1) authorize a flood insurance program by means of which flood insurance, over a period of time, can be made available on a nationwide basis through the cooperative efforts of the Federal Government and the private insurance industry, and (2) provide flexibility in the program so that such flood insurance may be based on workable methods of pooling risks, minimizing costs, and distributing burdens equitably among those who will be protected by flood insurance and the general public.

(e) It is the further purpose of this title to (1) encourage State and local governments to make appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses, (2) guide the development of proposed future construction, where practicable, away from locations which are threatened by flood hazards, (3) encourage lending and credit institutions, as a matter of national policy, to assist in furthering the objectives of the flood insurance program, (4) assure that any Federal assistance provided under the program will be related closely to all flood-related programs and activities of the Federal Government, and (5) authorize continuing studies of flood hazards in order to provide for a constant reappraisal of the flood insurance and its effect on land use requirements.

(f) The Congress also finds that (1) the damage and loss which results from mudslides is related in cause and similar in effect to that which results directly from storms, deluges, overflowing waters, and other forms of flooding, and (2) the problems involved in providing protection against this damage and loss, and the possibilities for making such protection available through a Federal or federally sponsored program, are similar to those which exist in connection with efforts to provide protection against damage and loss caused by such other forms of flooding. It is therefore the further purpose of this title to make available, by means of the methods, procedures, and instrumentalities which are otherwise established or available under this title for purposes of the flood insurance program, protection against damage and loss resulting from mudslides that are caused by accumulations of water on or under the ground.

AMENDMENTS TO THE FEDERAL FLOOD INSURANCE ACT OF 1956

SEC. 1303. (a) The second sentence of section 15(e) of the Federal Flood Insurance Act of 1956 (79 Stat. 1078) is amended—

* * * * *

CHAPTER I—THE NATIONAL FLOOD INSURANCE PROGRAM

BASIC AUTHORITY

SEC. 1304. [42 U.S.C. 4011] (a) To carry out the purposes of this title, the Administrator of the Federal Emergency Management Agency is authorized to establish and carry out a national flood insurance program which will enable interested persons to purchase insurance against loss resulting from physical damage to or loss of real property or personal property related thereto arising from any flood occurring in the United States.

(b) ADDITIONAL COVERAGE FOR COMPLIANCE WITH LAND USE AND CONTROL MEASURES.—The national flood insurance program established pursuant to subsection (a) shall enable the purchase of insurance to cover the cost of implementing measures that are consistent with land use and control measures established by the community under section 1361 for—

- (1) properties that are repetitive loss structures;
- (2) properties that are substantially damaged structures;
- (3) properties that have sustained flood damage on multiple occasions, if the Administrator determines that it is cost-effective and in the best interests of the National Flood Insurance Fund to require compliance with the land use and control measures.¹⁹

(4) properties for which an offer of mitigation assistance is made under—

(A) section 1366 (Flood Mitigation Assistance Program);

(B) the Hazard Mitigation Grant Program authorized under section 404 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5170c);

(C) the Predisaster Hazard Mitigation Program under section 203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5133); and

(D) any programs authorized or for which funds are appropriated to address any unmet needs or for which supplemental funds are made available.

The Administrator shall impose a surcharge on each insured of not more than \$75 per policy to provide cost of compliance coverage in accordance with the provisions of this subsection.

(c) In carrying out the flood insurance program the Administrator shall, to the maximum extent practicable, encourage and arrange for—

- (1) appropriate financial participation and risk sharing in the program by insurance companies and other insurers, and
- (2) other appropriate participation on other than a risk-sharing basis, by insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations, in accordance with the provisions of chapter II.

¹⁹ Section 105(a)(3) of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (Pub. L. 108–264; 118 Stat. 723) provides that this paragraph is amended “by striking “compliance with land use and control measures.” and inserting “the implementation of such measures; and” “. The amendment could not be executed because the matter to be struck does not appear.

SCOPE OF PROGRAM AND PRIORITIES

SEC. 1305. [42 U.S.C. 4012] (a) In carrying out the flood insurance program the Administrator shall afford a priority to making flood insurance available to cover residential properties which are designed for the occupancy of from one to four families, church properties, and business properties which are owned or leased and operated by small business concerns.

(b) If on the basis of—

(1) studies and investigations undertaken and carried out and information received or exchanged under section 1307, and

(2) such other information as may be necessary, the Administrator determines that it would be feasible to extend the flood insurance program to cover other properties, he may take such action under this title as from time to time may be necessary in order to make flood insurance available to cover, on such basis as may be feasible, any types and classes of—

(A) other residential properties not described in subsection (a) or (d)²⁰,

(B) other business properties,

(C) agricultural properties,

(D) properties occupied by private nonprofit organizations, and

(E) properties owned by State and local governments and agencies thereof,

and any such extensions of the program to any types and classes of these properties shall from time to time be prescribed in regulations.

(c) The Administrator shall make flood insurance available in only those States or areas (or subdivisions thereof) which he has determined have—

(1) evidenced a positive interest in securing flood insurance coverage under the flood insurance program, and

(2) given satisfactory assurance that by December 31, 1971, adequate land use and control measures will have been adopted for the State or area (or subdivision) which are consistent with the comprehensive criteria for land management and use developed under section 1361, and that the application and enforcement of such measures will commence as soon as technical information on floodways and on controlling flood elevations is available.

(d) AVAILABILITY OF INSURANCE FOR MULTIFAMILY PROPERTIES.—

(1) IN GENERAL.—The Administrator shall make flood insurance available to cover residential properties of 5 or more residences. Notwithstanding any other provision of law, the maximum coverage amount that the Administrator may make available under this subsection to such residential properties shall be equal to the coverage amount made available to commercial properties.

²⁰ Section 100204 of Public Law 112-141 inserts language after “properties” in “subsection (b)(2)(A)”. Subparagraph (A) is not a subdivision of paragraph (2), but was carried out to subsection (b)(A) to reflect the probable intent of Congress.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the ability of individuals residing in residential properties of 5 or more residences to obtain insurance for the contents and personal articles located in such residences.

NATURE AND LIMITATION OF INSURANCE COVERAGE

SEC. 1306. [42 U.S.C. 4013] (a) The Administrator shall from time to time, after consultation with the advisory committee authorized under section 1318, appropriate representatives of the pool formed or otherwise created under section 1331, and appropriate representatives of the insurance authorities of the respective States, provide by regulation for general terms and conditions of insurability which shall be applicable to properties eligible for flood insurance coverage under section 1305, including—

(1) the types, classes, and locations of any such properties which shall be eligible for flood insurance;

(2) the nature and limits of loss or damage in any areas (or subdivisions thereof) which may be covered by such insurance;

(3) the classification, limitation, and rejection of any risks which may be advisable;

(4) appropriate minimum premiums;

(5) appropriate loss-deductibles; and

(6) any other terms and conditions relating to insurance coverage or exclusion which may be necessary to carry out the purposes of this title.

(b) In addition to any other terms and conditions under subsection (a), such regulations shall provide that—

(1) any flood insurance coverage based on chargeable premium rates under section 1308 which are less than the estimated premium rates under section 1307(a)(1) shall not exceed—

(A) in the case of residential properties—

(i) \$35,000 aggregate liability for any single-family dwelling, and \$100,000 for any residential structure containing more than one dwelling unit,

(ii) \$10,000 aggregate liability per dwelling unit for any contents related to such unit, and

(iii) in the States of Alaska and Hawaii, and in the Virgin Islands and Guam, the limits provided in clause (i) of this sentence shall be: \$50,000 aggregate liability for any single-family dwelling, and \$150,000 for any residential structure containing more than one dwelling unit;

(B) in the case of business properties which are owned or leased and operated by small business concerns, an aggregate liability with respect to any single structure, including any contents thereof related to premises of small business occupants (as term is defined by the Administrator), which shall be equal to (i) \$100,000 plus (ii) \$100,000 multiplied by the number of such occupants and shall be allocated among such occupants (or among the oc-

cupant or occupants and the owner) under regulations prescribed by the Administrator; except that the aggregate liability for the structure itself may in no case exceed \$100,000; and

(C) in the case of church properties which may become eligible for flood insurance under section 1305—

(i) \$100,000 aggregate liability for any single structure, and

(ii) \$100,000 aggregate liability per unit for any contents related to such unit; and

(2) in the case of any residential building designed for the occupancy of from 1 to 4 families for which the risk premium rate is determined in accordance with the provisions of section 1307(a)(1), additional flood insurance in excess of the limits specified in clause (i) of subparagraph (A) of paragraph (1) shall be made available, with respect to any single such building, up to an aggregate liability (including such limits specified in paragraph (1)(A)(i)) of \$250,000;

(3) in the case of any residential property for which the risk premium rate is determined in accordance with the provisions of section 1307(a)(1), additional flood insurance in excess of the limits specified in clause (ii) of subparagraph (A) of paragraph (1) shall be made available to every insured upon renewal and every applicant for insurance so as to enable any such insured or applicant to receive coverage up to a total amount (including such limits specified in paragraph (1)(A)(ii)) of \$100,000;

(4) in the case of any nonresidential building, including a church, for which the risk premium rate is determined in accordance with the provisions of section 1307(a)(1), additional flood insurance in excess of the limits specified in subparagraphs (B) and (C) of paragraph (1) shall be made available with respect to any single such building, up to an aggregate liability (including such limits specified in subparagraph (B) or (C) of paragraph (1), as applicable) of \$500,000, and coverage shall be made available up to a total of \$500,000 aggregate liability for contents owned by the building owner and \$500,000 aggregate liability for each unit within the building for contents owned by the tenant; and

(5) any flood insurance coverage which may be made available in excess of the limits specified in subparagraph (A), (B), or (C) of paragraph (1), shall be based only on chargeable premium rates under section 1308 which are not less than the estimated premium rates under section 1307(a)(1), and the amount of such excess coverage shall not in any case exceed an amount equal to the applicable limit so specified (or allocated) under paragraph (1)(C), (2), (3), or (4), as applicable.

(c)²¹ EFFECTIVE DATE OF POLICIES.—

²¹ Section 552(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325, approved September 23, 1994, repealed this subsection, as previously in effect. Section 579(a) of such Act then added this subsection as it appears in this compilation. As in effect before such Act, this subsection authorized the Director to pay claims under flood insurance contracts for demolition and relocation of properties that were subject to imminent flood collapse or subsidence because of erosion. Such section 552 provides as follows:

(1) WAITING PERIOD.—Except as provided in paragraph (2), coverage under a new contract for flood insurance coverage under this title entered into after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994,²² and any modification to coverage under an existing flood insurance contract made after such date, shall become effective upon the expiration of the 30-day period beginning on the date that all obligations for such coverage (including completion of the application and payment of any initial premiums owed) are satisfactorily completed.

(2) EXCEPTION.—The provisions of paragraph (1) shall not apply to—

(A) the initial purchase of flood insurance coverage under this title when the purchase of insurance is in connection with the making, increasing, extension, or renewal of a loan;

(B) the initial purchase of flood insurance coverage pursuant to a revision or updating of floodplain areas or flood-risk zones under section 1360(f), if such purchase occurs during the 1-year period beginning upon publication of notice of the revision or updating under section 1360(h); or

(C) the initial purchase of flood insurance coverage for private property if—

(i) the Administrator determines that the property is affected by flooding on Federal land that is a result of, or is exacerbated by, post-wildfire conditions, after consultation with an authorized employee of the Federal agency that has jurisdiction of the land on which the wildfire that caused the post-wildfire conditions occurred; and

(ii) the flood insurance coverage was purchased not later than 60 days after the fire containment date, as determined by the appropriate Federal employee, relating to the wildfire that caused the post-wildfire conditions described in clause (i).

(d) OPTIONAL HIGH-Deductible POLICIES FOR RESIDENTIAL PROPERTIES.—

(1) AVAILABILITY.—In the case of residential properties, the Administrator shall make flood insurance coverage available, at the option of the insured, that provides for a loss-deductible

“SEC. 552. TERMINATION OF EROSION-THREATENED STRUCTURES PROGRAM.

“(a) IN GENERAL.—Section 1306 of the National Flood Insurance Act of 1968 (42 U.S.C. 4013) is amended by striking subsection (c).

“(b) TRANSITION PHASE.—Notwithstanding subsection (a), during the 1-year period beginning on the date of enactment of this Act, the Director of the Federal Emergency Management Agency may pay amounts under flood insurance contracts for demolition or relocation of structures as provided in section 1306(c) of the National Flood Insurance Act of 1968 (as in effect immediately before the enactment of this Act).

“(c) SAVINGS PROVISION.—Notwithstanding subsection (a), the Director shall take any action necessary to make payments under flood insurance contracts pursuant to any commitments made before the expiration of the period referred to in subsection (b) pursuant to the authority under section 1306(c) of the National Flood Insurance Act of 1968 or subsection (b).

“(d) REPEAL OF FINDINGS PROVISION.—Section 1302 of the National Flood Insurance Act of 1968 (42 U.S.C. 4001) is amended by striking subsection (g).”.

²²September 23, 1994.

for damage to the covered property in various amounts, up to and including \$10,000.

(2) DISCLOSURE.—

(A) FORM.—The Administrator shall provide the information described in subparagraph (B) clearly and conspicuously on the application form for flood insurance coverage or on a separate form, segregated from all unrelated information and other required disclosures.

(B) INFORMATION.—The information described in this subparagraph is—

(i) information sufficient to inform the applicant of the availability of the coverage option required by paragraph (1) to applicants for flood insurance coverage; and

(ii) a statement explaining the effect of a loss-deductible and that, in the event of an insured loss, the insured is responsible out-of-pocket for losses to the extent of the deductible selected.

ESTIMATES OF PREMIUM RATES

SEC. 1307. [42 U.S.C. 4014] (a) The Administrator is authorized to undertake and carry out such studies and investigations and receive or exchange such information as may be necessary to estimate, and shall from time to time estimate, on an area, subdivision, or other appropriate basis—

(1) the risk premium rates for flood insurance which—

(A) based on consideration of—

(i) the risk involved and accepted actuarial principles; and

(ii) the flood mitigation activities that an owner or lessee has undertaken on a property, including differences in the risk involved due to land use measures, floodproofing, flood forecasting, and similar measures, and

(B) including—

(i) the applicable operating costs and allowances set forth in the schedules prescribed under section 1311 and reflected in such rates,

(ii) any administrative expenses (or portion of such expenses) of carrying out the flood insurance program which, in his discretion, should properly be reflected in such rates,

(iii) any remaining administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360) not included under clause (ii), which shall be recovered by a fee charged to policyholders and such fee shall not be subject to any agents' commissions, company expense allowances, or State or local premium taxes,²³ and

²³The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2003 (Division K of the Consolidated Appropriations Resolution, 2003; Pub. L. 108-7; 117 Stat. 517) provides "[t]hat beginning in fiscal year 2003 and

(iv) all costs, as prescribed by principles and standards of practice in ratemaking adopted by the American Academy of Actuaries and the Casualty Actuarial Society, including—

(I) an estimate of the expected value of future costs,

(II) all costs associated with the transfer of risk, and

(III) the costs associated with an individual risk transfer with respect to risk classes, as defined by the Administrator,

would be required in order to make such insurance available on an actuarial basis for any types and classes of properties for which insurance coverage is available under section 1305(a) (or is recommended to the Congress under section 1305(b));

(2) the rates, if less than the rates estimated under paragraph (1), which would be reasonable, would encourage prospective insureds to purchase flood insurance, and would be consistent with the purposes of this title, and which, together with a fee charged to policyholders that shall not be not subject to any agents' commission, company expenses allowances, or State or local premium taxes, shall include any administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360), except that the Administrator shall not estimate rates under this paragraph for—

(A) any residential property which is not the primary residence of an individual;

(B) any severe repetitive loss property;

(C) any property that has incurred flood-related damage in which the cumulative amounts of payments under this title equaled or exceeded the fair market value of such property;

(D) any business property; or

(E) any property which on or after the date of enactment of the Biggert-Waters Flood Insurance Reform Act of 2012 has experienced or sustained—

(i) substantial damage exceeding 50 percent of the fair market value of such property; or

(ii) substantial improvement exceeding 50 percent of the fair market value of such property; and

(3) the extent, if any, to which federally assisted or other flood protection measures initiated after the date of the enactment of this title²⁴ affect such rates.

(b) In carrying out subsection (a), the Administrator shall, to the maximum extent feasible and on a reimbursable basis, utilize the services of the Department of the Army, the Department of the Interior, The Department of Agriculture, the Department of Commerce, and the Tennessee Valley Authority, and, as appropriate, other Federal departments or agencies, and for such purposes may

thereafter, fees authorized in 42 U.S.C. 4014(a)(1)(B)(iii) shall be collected only if provided in advance in appropriation acts".

²⁴ August 1, 1968.

enter into agreements or other appropriate arrangements with any persons.

(c) The Administrator shall give priority to conducting studies and investigations and making estimates under this section in those States or areas (or subdivisions thereof) which he has determined have evidenced a positive interest in securing flood insurance coverage under the flood insurance program.

(d) Notwithstanding any other provision of law, any structure existing on the date of enactment of the Flood Disaster Protection Act of 1973²⁵ and located within Avoyelles, Evangeline, Rapides, or Saint Landry Parish in the State of Louisiana, which the Administrator determines is subject to additional flood hazards as a result of the construction or operation of the Atchafalaya Basin Levee System, shall be eligible for flood insurance under this title (if and to the extent it is eligible for such insurance under the other provisions of this title) at premium rates that shall not exceed those which would be applicable if such additional hazards did not exist.

(e) Notwithstanding any other provision of law, any community that has made adequate progress, acceptable to the Administrator, on the construction or reconstruction of a flood protection system which will afford flood protection for the one-hundred-year frequency flood as determined by the Administrator, shall be eligible for flood insurance under this title (if and to the extent it is eligible for such insurance under the other provisions of this title) at premium rates not exceeding those which would be applicable under this section if such flood protection system had been completed. The Administrator shall find that adequate progress on the construction or reconstruction of a flood protection system, based on the present value of the completed flood protection system, has been made only if: (1) 100 percent of the cost of the system has been authorized; (2) at least 60 percent of the cost of the system has been appropriated; (3) at least 50 percent of the cost of the system has been expended; and (4) the system is at least 50 percent completed. Notwithstanding any other provision of law, in determining whether a community has made adequate progress on the construction, reconstruction, or improvement of a flood protection system, the Administrator shall consider all sources of funding, including Federal, State, and local funds.

(f) Notwithstanding any other provision of law, this subsection shall apply to riverine and coastal levees that are located in a community which has been determined by the Administrator of the Federal Emergency Management Agency to be in the process of restoring flood protection afforded by a flood protection system that had been previously accredited on a Flood Insurance Rate Map as providing 100-year frequency flood protection but no longer does so, and shall apply without regard to the level of Federal funding of or participation in the construction, reconstruction, or improvement of the flood protection system. Except as provided in this subsection, in such a community, flood insurance shall be made available to those properties impacted by the disaccreditation of the flood protection system at premium rates that do not exceed those which would be applicable to any property located in an area of

²⁵ December 31, 1973.

special flood hazard, the construction of which was started prior to the effective date of the initial Flood Insurance Rate Map published by the Administrator for the community in which such property is located. A revised Flood Insurance Rate Map shall be prepared for the community to delineate as Zone AR the areas of special flood hazard that result from the disaccreditation of the flood protection system. A community will be considered to be in the process of restoration if—

(1) the flood protection system has been deemed restorable by a Federal agency in consultation with the local project sponsor;

(2) a minimum level of flood protection is still provided to the community by the discredited system; and

(3) restoration of the flood protection system is scheduled to occur within a designated time period and in accordance with a progress plan negotiated between the community and the Federal Emergency Management Agency.

Communities that the Administrator of the Federal Emergency Management Agency determines to meet the criteria set forth in paragraphs (1) and (2) as of January 1, 1992, shall not be subject to revised Flood Insurance Rate Maps that contravene the intent of this subsection. Such communities shall remain eligible for C zone rates for properties located in zone AR for any policy written prior to promulgation of final regulations for this section. Floodplain management criteria for such communities shall not require the elevation of improvements to existing structures and shall not exceed 3 feet above existing grade for new construction, provided the base flood elevation based on the discredited flood control system does not exceed five feet above existing grade, or the remaining new construction in such communities is limited to infill sites, rehabilitation of existing structures, or redevelopment of previously developed areas.

The Administrator of the Federal Emergency Management Agency shall develop and promulgate regulations to implement this subsection, including minimum floodplain management criteria, within 24 months after the date of enactment of this subsection.²⁶

(g) NO EXTENSION OF SUBSIDY TO NEW POLICIES OR LAPSED POLICIES.—The Administrator shall not provide flood insurance to prospective insureds at rates less than those estimated under subsection (a)(1), as required by paragraph (2) of that subsection, for—

(1) any policy under the flood insurance program that has lapsed in coverage,²⁷ unless the decision of the policy holder to permit a lapse in flood insurance coverage was as a result of the property covered by the policy no longer being required to retain such coverage; or

(2) any prospective insured who refuses to accept any offer for mitigation assistance by the Administrator (including an offer to relocate), including an offer of mitigation assistance—

(A) following a major disaster, as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122); or

²⁶The date of enactment was October 28, 1992.

²⁷Two commas so in law. See amendment made by section 3(a)(1)(B) of Public Law 113–89.

- (B) in connection with—
 - (i) a repetitive loss property; or
 - (ii) a severe repetitive loss property.
- (h) DEFINITION.—In this section, the term “severe repetitive loss property” has the following meaning:
 - (1) SINGLE-FAMILY PROPERTIES.—In the case of a property consisting of 1 to 4 residences, such term means a property that—
 - (A) is covered under a contract for flood insurance made available under this title; and
 - (B) has incurred flood-related damage—
 - (i) for which 4 or more separate claims payments have been made under flood insurance coverage under this chapter, with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or
 - (ii) for which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the value of the property.
 - (2) MULTIFAMILY PROPERTIES.—In the case of a property consisting of 5 or more residences, such term shall have such meaning as the Director²⁸ shall by regulation provide.

ESTABLISHMENT OF CHARGEABLE PREMIUM RATES

SEC. 1308. [42 U.S.C. 4015] (a) On the basis of estimates made under section 1307 and such other information as may be necessary, the Administrator shall from time to time prescribe, after providing notice—

- (1) chargeable premium rates for any types and classes of properties for which insurance coverage shall be available under section 1305 (at less than the estimated risk premium rates under section 1307(a)(1), where necessary), and
- (2) the terms and conditions under which, and the areas (including subdivisions thereof) within which such rates shall apply.
- (b) Such rates shall, insofar as practicable, be—
 - (1) based on a consideration of the respective risks involved, including differences in risks due to land use measures, flood-proofing, flood forecasting, and similar measures;
 - (2) adequate, on the basis of accepted actuarial principles, to provide reserves for anticipated losses, or if less than such amount consistent with the objective of making flood insurance available where necessary at reasonable rates so as to encourage prospective insureds to purchase such insurance and with the purposes of this title;
 - (3) adequate, together with the fee under paragraph (1)(B)(iii) or (2) of section 1307(a), to provide for any administrative expenses of the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360);

²⁸So in law. Probably should read “Administrator”. See amendments made by sections 100205(b)(1)(B) and 100238(b)(1) of Public Law 112-141.

(4) stated so as to reflect the basis for such rates, including the differences (if any) between the estimated risk premium rates under section 1307(a)(1) and the estimated rates under section 1307(a)(2); and

(5) adequate, on the basis of accepted actuarial principles, to cover the average historical loss year obligations incurred by the National Flood Insurance Fund.

(c) ACTUARIAL RATE PROPERTIES.—Subject only to the limitations provided under paragraphs (1) and (2), the chargeable rate shall not be less than the applicable estimated risk premium rate for such area (or subdivision thereof) under section 1307(a)(1) with respect to the following properties:

(1) POST-FIRM PROPERTIES.—Any property the construction or substantial improvement of which the Administrator determines has been started after December 31, 1974, or started after the effective date of the initial rate map published by the Administrator under paragraph (2) of section 1360 for the area in which such property is located, whichever is later, except that the chargeable rate for properties under this paragraph shall be subject to the limitation under subsection (e).

(2) CERTAIN LEASED COASTAL AND RIVER PROPERTIES.—Any property leased from the Federal Government (including residential and nonresidential properties) that the Administrator determines is located on the river-facing side of any dike, levee, or other riverine flood control structure, or seaward of any seawall or other coastal flood control structure.

(d) With respect to any chargeable premium rate prescribed under this section, a sum equal to the portion of the rate that covers any administrative expenses of carrying out the flood insurance and floodplain management programs which have been estimated under paragraphs (1)(B)(ii) and (1)(B)(iii) of section 1307(a) or paragraph (2) of such section (including the fees under such paragraphs), shall be paid to the Administrator. The Administrator shall deposit the sum in the National Flood Insurance Fund established under section 1310.

(e) ANNUAL LIMITATION ON PREMIUM INCREASES.—Except with respect to properties described under paragraph (2) of subsection (c), and notwithstanding any other provision of this title—

(1) the chargeable risk premium rate for flood insurance under this title for any property may not be increased by more than 18 percent each year, except—

(A) as provided in paragraph (4);

(B) in the case of property identified under section 1307(g); or

(C) in the case of a property that—

(i) is located in a community that has experienced a rating downgrade under the community rating system program carried out under section 1315(b);

(ii) is covered by a policy with respect to which the policyholder has—

(I) decreased the amount of the deductible; or

(II) increased the amount of coverage; or

(iii) was misrated;

(2) the chargeable risk premium rates for flood insurance under this title for any properties initially rated under section 1307(a)(2) within any single risk classification, excluding properties for which the chargeable risk premium rate is not less than the applicable estimated risk premium rate under section 1307(a)(1), shall be increased by an amount that results in an average of such rate increases for properties within the risk classification during any 12-month period of not less than 5 percent of the average of the risk premium rates for such properties within the risk classification upon the commencement of such 12-month period;

(3) the chargeable risk premium rates for flood insurance under this title for any properties within any single risk classification may not be increased by an amount that would result in the average of such rate increases for properties within the risk classification during any 12-month period exceeding 15 percent of the average of the risk premium rates for properties within the risk classification upon the commencement of such 12-month period; and

(4) the chargeable risk premium rates for flood insurance under this title for any properties described in subparagraphs (A) through (E) of section 1307(a)(2) shall be increased by 25 percent each year, until the average risk premium rate for such properties is equal to the average of the risk premium rates for properties described under paragraph (3).

(f) ADJUSTMENT OF PREMIUM.—Notwithstanding any other provision of law, if the Administrator determines that the holder of a flood insurance policy issued under this Act is paying a lower premium than is required under this section due to an error in the flood plain determination, the Administrator may only prospectively charge the higher premium rate.

(g) FREQUENCY OF PREMIUM COLLECTION.—With respect to any chargeable premium rate prescribed under this section, the Administrator shall provide policyholders that are not required to escrow their premiums and fees for flood insurance as set forth under section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) with the option of paying their premiums annually or monthly.

(h) RULE OF CONSTRUCTION.—For purposes of this section, the calculation of an “average historical loss year”—

(1) includes catastrophic loss years; and

(2) shall be computed in accordance with generally accepted actuarial principles.

(i) RATES FOR PROPERTIES NEWLY MAPPED INTO AREAS WITH SPECIAL FLOOD HAZARDS.—Notwithstanding subsection (f), the premium rate for flood insurance under this title that is purchased on or after the date of the enactment of this subsection—

(1) on a property located in an area not previously designated as having special flood hazards and that, pursuant to any issuance, revision, updating, or other change in a flood insurance map, becomes designated as such an area; and

(2) where such flood insurance premium rate is calculated under subsection (a)(1) of section 1307 (42 U.S.C. 4014(a)(1)),

shall for the first policy year be the preferred risk premium for the property and upon renewal shall be calculated in accordance with subsection (e) of this section until the rate reaches the rate calculated under subsection (a)(1) of section 1307.

(j) PREMIUMS AND REPORTS.—In setting premium risk rates, in addition to striving to achieve the objectives of this title the Administrator shall also strive to minimize the number of policies with annual premiums that exceed one percent of the total coverage provided by the policy. For any policies premiums that exceed this one percent threshold, the Administrator shall report such exceptions to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(k) CONSIDERATION OF MITIGATION METHODS.—In calculating the risk premium rate charged for flood insurance for a property under this section, the Administrator shall take into account the implementation of any mitigation method identified by the Administrator in the guidance issued under section 1361(d) (42 U.S.C. 4102(d)).

(l) CLEAR COMMUNICATIONS.—The Administrator shall clearly communicate full flood risk determinations to individual property owners regardless of whether their premium rates are full actuarial rates.

(m) PROTECTION OF SMALL BUSINESSES, NON-PROFITS, HOUSES OF WORSHIP, AND RESIDENCES.—

(1) REPORT.—Not later than 18 months after the date of the enactment of this section and semiannually thereafter, the Administrator shall monitor and report to Committee on Financial Services of the House Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, the Administrator's assessment of the impact, if any, of the rate increases required under subparagraphs (A) and (D) of section 1307(a)(2) and the surcharges required under section 1308A on the affordability of flood insurance for—

- (A) small businesses with less than 100 employees;
- (B) non-profit entities;
- (C) houses of worship; and

(D) residences with a value equal to or less than 25 percent of the median home value of properties in the State in which the property is located.

(2) RECOMMENDATIONS.—If the Administrator determines that the rate increases or surcharges described in paragraph (1) are having a detrimental effect on affordability, including resulting in lapsed policies, late payments, or other criteria related to affordability as identified by the Administrator, for any of the properties identified in subparagraphs (A) through (D) of such paragraph, the Administrator shall, not later than 3 months after making such a determination, make such recommendations as the Administrator considers appropriate to improve affordability to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

SEC. 1308A. [42 U.S.C. 4015a] PREMIUM SURCHARGE.

(a) IMPOSITION AND COLLECTION.—The Administrator shall impose and collect an annual surcharge, in the amount provided in subsection (b), on all policies for flood insurance coverage under the National Flood Insurance Program that are newly issued or renewed after the date of the enactment of this section. Such surcharge shall be in addition to the surcharge under section 1304(b) and any other assessments and surcharges applied to such coverage.

(b) AMOUNT.—The amount of the surcharge under subsection (a) shall be—

- (1) \$25, except as provided in paragraph (2); and
- (2) \$250, in the case of a policy for any property that is—
 - (A) a non-residential property; or
 - (B) a residential property that is not the primary residence of an individual.

(c) TERMINATION.—Subsections (a) and (b) shall cease to apply on the date on which the chargeable risk premium rate for flood insurance under this title for each property covered by flood insurance under this title, other than properties for which premiums are calculated under subsection (e) or (f) of section 1307 or section 1336 of this Act (42 U.S.C. 4014, 4056) or under section 100230 of the Biggert-Waters Flood Insurance Reform Act of 2012 (42 U.S.C. 4014 note), is not less than the applicable estimated risk premium rate under section 1307(a)(1) for such property.

FINANCING

SEC. 1309. [42 U.S.C. 4016] (a) All authority which was vested in the Housing and Home Finance Administrator by virtue of section 15(e) of the Federal Flood Insurance Act of 1956²⁹ (70 Stat. 1084) (pertaining to the issue of notes or other obligations or the Secretary of the Treasury), as amended by subsections (a) and (b) of section 1303 of this Act, shall be available to the Administrator for the purpose of carrying out the flood insurance program under this title; except that the total amount of notes and obligations which may be issued by the Administrator pursuant to such authority (1) without the approval of the President, may not exceed \$500,000,000, and (2) with the approval of the President, may not exceed \$1,500,000,000 through the date specified in section 1319, and \$1,000,000,000 thereafter; except that, through September 30, 2023, clause (2) of this sentence shall be applied by substituting “\$30,425,000,000” for “\$1,500,000,000”. The Administrator shall report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at any time when he requests the approval of the President in accordance with the preceding sentence.

(b) Any funds borrowed by the Administrator under this authority shall, from time to time, be deposited in the National Flood Insurance Fund established under section 1310.

²⁹ Such section is set forth, *post*, in this compilation.

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(c) Upon the exercise of the authority established under subsection (a), the Administrator shall transmit a schedule for repayment of such amounts to—

- (1) the Secretary of the Treasury;
- (2) the Committee on Banking, Housing, and Urban Affairs of the Senate; and
- (3) the Committee on Financial Services of the House of Representatives.

(d) In connection with any funds borrowed by the Administrator under the authority established in subsection (a), the Administrator, beginning 6 months after the date on which such funds are borrowed, and continuing every 6 months thereafter until such borrowed funds are fully repaid, shall submit a report on the progress of such repayment to—

- (1) the Secretary of the Treasury;
- (2) the Committee on Banking, Housing, and Urban Affairs of the Senate; and
- (3) the Committee on Financial Services of the House of Representatives.

NATIONAL FLOOD INSURANCE FUND

SEC. 1310. [42 U.S.C. 4017] (a) To carry out the flood insurance program authorized by this title, the Administrator shall establish in the Treasury of the United States a National Flood Insurance Fund (hereinafter referred to as the “fund”) which shall be an account separate from any other accounts or funds available to the Administrator and shall be available as described in subsection (f), without fiscal year limitation (except as otherwise provided in this section)—

- (1) for making such payments as may, from time to time, be required under section 1334;
- (2) to pay reinsurance claims under the excess loss reinsurance coverage provided under section 1335;
- (3) to repay to the Secretary of the Treasury such sums as may be borrowed from him (together with interest) in accordance with the authority provided in section 1309;
- (4) to the extent approved in appropriations Acts, to pay any administrative expenses of the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360);
- (5) for the purposes specified in subsection (d) under the conditions provided therein;
- (6) for carrying out the program under section 1315(b);
- (7) for transfers to the National Flood Mitigation Fund, but only to the extent provided in section 1367(b)(1); and
- (8) for carrying out section 1363(f).

(b) The fund shall be credited with—

- (1) such funds borrowed in accordance with the authority provided in section 1309 as may from time to time be deposited in the fund;
- (2) premiums, fees, or other charges which may be paid or collected in connection with the excess loss reinsurance coverage provided under section 1335;

(3) such amounts as may be advanced to the fund from appropriations in order to maintain the fund in an operative condition adequate to meet its liabilities;

(4) interest which may be earned on investments of the fund pursuant to subsection (c);

(5) such sums as are required to be paid to the Administrator under section 1308(d); and

(6) receipts from any other operations under this title (including premiums under the conditions specified in subsection (d), and salvage proceeds, if any, resulting from reinsurance coverage).

(c) If, after—

(1) all outstanding obligations of the fund have been liquidated, and

(2) any outstanding amounts which may have been advanced to the fund from appropriations authorized under section 1376(a)(2)(B) have been credited to the appropriation from which advanced, with interest accrued at the rate, prescribed under section 15(e) of the Federal Flood Insurance Act of 1956, as in effect immediately prior to the enactment of this title, the Administrator determines that the moneys of the fund are in excess of current needs, he may request the investment of such amounts as he deems advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States.

(d) In the event the Administrator makes a determination in accordance with the provisions of section 1340 that operation of the flood insurance program, in whole or in part, should be carried out through the facilities of the Federal Government, the fund shall be available for all purposes incident thereto, including—

(1) cost incurred in the adjustment and payment of any claims for losses, and

(2) payment of applicable operating costs set forth in the schedules prescribed under section 1311,

for so long as the program is so carried out, and in such event any premiums paid shall be deposited by the Administrator to the credit of the fund.

(e) An annual business-type budget for the fund shall be prepared, transmitted to the Congress, considered, and enacted in the manner prescribed by sections 9103 and 9104 of title 31, United States Code, for wholly-owned Government corporations.

(f) The Fund shall be available, with respect to any fiscal year beginning on or after October 1, 1981, only to the extent approved in appropriation Acts; except that the fund shall be available for the purpose described in subsection (d)(1) without such approval.

SEC. 1310A. [42 U.S.C. 4017A] RESERVE FUND.

(a) ESTABLISHMENT OF RESERVE FUND.—In carrying out the flood insurance program authorized by this chapter, the Administrator shall establish in the Treasury of the United States a National Flood Insurance Reserve Fund (in this section referred to as the “Reserve Fund”) which shall—

(1) be an account separate from any other accounts or funds available to the Administrator; and

(2) be available for meeting the expected future obligations of the flood insurance program, including—

- (A) the payment of claims;
- (B) claims adjustment expenses; and
- (C) the repayment of amounts outstanding under any note or other obligation issued by the Administrator under section 1309(a).

(b) RESERVE RATIO.—Subject to the phase-in requirements under subsection (d), the Reserve Fund shall maintain a balance equal to—

(1) 1 percent of the sum of the total potential loss exposure of all outstanding flood insurance policies in force in the prior fiscal year; or

(2) such higher percentage as the Administrator determines to be appropriate, taking into consideration any circumstance that may raise a significant risk of substantial future losses to the Reserve Fund.

(c) MAINTENANCE OF RESERVE RATIO.—

(1) IN GENERAL.—The Administrator shall have the authority to establish, increase, or decrease the amount of aggregate annual insurance premiums to be collected for any fiscal year necessary—

(A) to maintain the reserve ratio required under subsection (b); and

(B) to achieve such reserve ratio, if the actual balance of such reserve is below the amount required under subsection (b).

(2) CONSIDERATIONS.—In exercising the authority granted under paragraph (1), the Administrator shall consider—

(A) the expected operating expenses of the Reserve Fund;

(B) the insurance loss expenditures under the flood insurance program;

(C) any investment income generated under the flood insurance program; and

(D) any other factor that the Administrator determines appropriate.

(3) LIMITATIONS.—

(A) RATES.—In exercising the authority granted under paragraph (1), the Administrator shall be subject to all other provisions of this Act, including any provisions relating to chargeable premium rates or annual increases of such rates.

(B) USE OF ADDITIONAL ANNUAL INSURANCE PREMIUMS.—Notwithstanding any other provision of law or any agreement entered into by the Administrator, the Administrator shall ensure that all amounts attributable to the establishment or increase of annual insurance premiums under paragraph (1) are transferred to the Administrator for deposit into the Reserve Fund, to be available for meeting the expected future obligations of the flood insurance program as described in subsection (a)(2).

(4) DEPOSIT OF PREMIUM SURCHARGES.—The Administrator shall deposit in the Reserve Fund any surcharges collected pursuant to section 1308A.

(d) PHASE-IN REQUIREMENTS.—The phase-in requirements under this subsection are as follows:

(1) IN GENERAL.—Beginning in fiscal year 2013 and not ending until the fiscal year in which the ratio required under subsection (b) is achieved, in each such fiscal year the Administrator shall place in the Reserve Fund an amount equal to not less than 7.5 percent of the reserve ratio required under subsection (b).

(2) AMOUNT SATISFIED.—As soon as the ratio required under subsection (b) is achieved, and except as provided in paragraph (3), the Administrator shall not be required to set aside any amounts for the Reserve Fund.

(3) EXCEPTION.—If at any time after the ratio required under subsection (b) is achieved, the Reserve Fund falls below the required ratio under subsection (b), the Administrator shall place in the Reserve Fund for that fiscal year an amount equal to not less than 7.5 percent of the reserve ratio required under subsection (b).

(e) LIMITATION ON RESERVE RATIO.—In any given fiscal year, if the Administrator determines that the reserve ratio required under subsection (b) cannot be achieved, the Administrator shall submit, on a calendar quarterly basis, a report to Congress that—

(1) describes and details the specific concerns of the Administrator regarding the consequences of the reserve ratio not being achieved;

(2) demonstrates how such consequences would harm the long-term financial soundness of the flood insurance program; and

(3) indicates the maximum attainable reserve ratio for that particular fiscal year.

(f) INVESTMENT.—The Secretary of the Treasury shall invest such amounts of the Reserve Fund as the Secretary determines advisable in obligations issued or guaranteed by the United States.

OPERATING COSTS AND ALLOWANCES

SEC. 1311. [42 U.S.C. 4018] (a) The Administrator shall from time to time negotiate with appropriate representatives of the insurance industry for the purpose of establishing—

(1) a current schedule of operating costs applicable both to risk-sharing insurance companies and other insurers and to insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations participating on other than a risk-sharing basis, and

(2) a current schedule of operating allowances applicable to risk-sharing insurance companies and other insurers, which may be payable in accordance with the provisions of chapter II, and such schedules shall from time to time be prescribed in regulations.

(b) For purposes of subsection (a)—

(1) the term “operating costs” shall (without limiting such term) include—

(A) expense reimbursements covering the direct, actual and necessary expenses incurred in connection with selling and servicing flood insurance coverage;

(B) reasonable compensation payable for selling and servicing flood insurance coverage, or commissions or service fees paid to producers;

(C) loss adjustment expenses; and

(D) other direct, actual, and necessary expenses which the Administrator finds are incurred in connection with selling or servicing flood insurance coverage; and

(2) the term “operating allowances” shall (without limiting such term) include amounts for profit and contingencies which the Administrator finds reasonable and necessary to carry out the purposes of this title.

PAYMENT OF CLAIMS

SEC. 1312. [42 U.S.C. 4019] (a) IN GENERAL.—The Administrator is authorized to prescribe regulations establishing the general method or methods by which proved and approved claims for losses may be adjusted and paid for any damage to or loss of property which is covered by flood insurance made available under the provisions of this title.

(b) MINIMUM ANNUAL DEDUCTIBLE.—

(1) PRE-FIRM PROPERTIES.—For any structure which is covered by flood insurance under this title, and on which construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of an initial flood insurance rate map published by the Administrator under section 1360 for the area in which such structure is located, the minimum annual deductible for damage to such structure shall be—

(A) \$1,500, if the flood insurance coverage for such structure covers loss of, or physical damage to, such structure in an amount equal to or less than \$100,000; and

(B) \$2,000, if the flood insurance coverage for such structure covers loss of, or physical damage to, such structure in an amount greater than \$100,000.

(2) POST-FIRM PROPERTIES.—For any structure which is covered by flood insurance under this title, and on which construction or substantial improvement occurred after December 31, 1974, or after the effective date of an initial flood insurance rate map published by the Administrator under section 1360 for the area in which such structure is located, the minimum annual deductible for damage to such structure shall be—

(A) \$1,000, if the flood insurance coverage for such structure covers loss of, or physical damage to, such structure in an amount equal to or less than \$100,000; and

(B) \$1,250, if the flood insurance coverage for such structure covers loss of, or physical damage to, such structure in an amount greater than \$100,000.

(c) **PAYMENT OF CLAIMS TO CONDOMINIUM OWNERS.**—The Administrator may not deny payment for any damage to or loss of property which is covered by flood insurance to condominium owners who purchased such flood insurance separate and apart from the flood insurance purchased by the condominium association in which such owner is a member, based solely, or in any part, on the flood insurance coverage of the condominium association or others on the overall property owned by the condominium association.

DISSEMINATION OF FLOOD INSURANCE INFORMATION

SEC. 1313. [42 U.S.C. 4020] The Administrator shall from time to time take such action as may be necessary in order to make information and data available to the public, and to any State or local agency or official, with regard to—

(1) the flood insurance program, its coverage and objectives, and

(2) estimated and chargeable flood insurance premium rates, including the basis for and differences between such rates in accordance with the provisions of section 1308.

SEC. 1314. [42 U.S.C. 4021] **PARTICIPATION IN STATE DISASTER CLAIMS MEDIATION PROGRAMS.**

(a) **REQUIREMENT TO PARTICIPATE.**—In the case of the occurrence of a major disaster, as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), that may have resulted in flood damage covered under the national flood insurance program established under this title and other personal lines residential property insurance coverage offered by a State regulated insurer, upon a request made by the insurance commissioner of a State (or such other official responsible for regulating the business of insurance in the State) for the participation of representatives of the Administrator in a program sponsored by such State for nonbinding mediation of insurance claims resulting from a major disaster, the Administrator shall cause representatives of the national flood insurance program to participate in such a State program where claims under the national flood insurance program are involved to expedite settlement of flood damage claims resulting from such disaster.

(b) **EXTENT OF PARTICIPATION.**—In satisfying the requirements of subsection (a), the Administrator shall require that each representative of the Administrator—

(1) be certified for purposes of the national flood insurance program to settle claims against such program resulting from such disaster in amounts up to the limits of policies under such program;

(2) attend State-sponsored mediation meetings regarding flood insurance claims resulting from such disaster at such times and places as may be arranged by the State;

(3) participate in good-faith negotiations toward the settlement of such claims with policyholders of coverage made available under the national flood insurance program; and

(4) finalize the settlement of such claims on behalf of the national flood insurance program with such policyholders.

(c) COORDINATION.—Representatives of the Administrator shall at all times coordinate their activities with insurance officials of the State and representatives of insurers for the purposes of consolidating and expediting settlement of claims under the national flood insurance program resulting from such disaster.

(d) QUALIFICATIONS OF MEDIATORS.—Each State mediator participating in State-sponsored mediation under this section shall be—

(1)(A) a member in good standing of the State bar in the State in which the mediation is to occur with at least 2 years of practical experience; and

(B) an active member of such bar for at least 1 year prior to the year in which such mediator's participation is sought; or

(2) a retired trial judge from any United States jurisdiction who was a member in good standing of the bar in the State in which the judge presided for at least 5 years prior to the year in which such mediator's participation is sought.

(e) MEDIATION PROCEEDINGS AND DOCUMENTS PRIVILEGED.—As a condition of participation, all statements made and documents produced pursuant to State-sponsored mediation involving representatives of the Administrator shall be deemed privileged and confidential settlement negotiations made in anticipation of litigation.

(f) LIABILITY, RIGHTS, OR OBLIGATIONS NOT AFFECTED.—Participation in State-sponsored mediation, as described in this section does not—

(1) affect or expand the liability of any party in contract or in tort; or

(2) affect the rights or obligations of the parties, as established—

(A) in any regulation issued by the Administrator, including any regulation relating to a standard flood insurance policy;

(B) under this title; and

(C) under any other provision of Federal law.

(g) EXCLUSIVE FEDERAL JURISDICTION.—Participation in State-sponsored mediation shall not alter, change, or modify the original exclusive jurisdiction of United States courts, as set forth in this title.

(h) COST LIMITATION.—Nothing in this section shall be construed to require the Administrator or a representative of the Administrator to pay additional mediation fees relating to flood insurance claims associated with a State-sponsored mediation program in which such representative of the Administrator participates.

(i) EXCEPTION.—In the case of the occurrence of a major disaster that results in flood damage claims under the national flood insurance program and that does not result in any loss covered by a personal lines residential property insurance policy—

(1) this section shall not apply; and

(2) the provisions of the standard flood insurance policy under the national flood insurance program and the appeals process established under section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (42 U.S.C.

4011 note) and the regulations issued pursuant to such section shall apply exclusively.

(j) REPRESENTATIVES OF THE ADMINISTRATOR.—For purposes of this section, the term “representatives of the Administrator” means representatives of the national flood insurance program who participate in the appeals process established under section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (42 U.S.C. 4011 note).

STATE AND LOCAL LAND USE CONTROLS

SEC. 1315. [42 U.S.C. 4022] (a) REQUIREMENT FOR PARTICIPATION IN FLOOD INSURANCE PROGRAM.—

(1) IN GENERAL.—After December 31, 1971, no new flood insurance coverage shall be provided under this title in any area (or subdivision thereof) unless an appropriate public body shall have adopted adequate land use and control measures (with effective enforcement provisions) which the Administrator finds are consistent with the comprehensive criteria for land management and use under section 1361.

(2) AGRICULTURAL STRUCTURES.—

(A) ACTIVITY RESTRICTIONS.—Notwithstanding any other provision of law, the adequate land use and control measures required to be adopted in an area (or subdivision thereof) pursuant to paragraph (1) may provide, at the discretion of the appropriate State or local authority, for the repair and restoration to predamaged conditions of an agricultural structure that—

(i) is a repetitive loss structure; or

(ii) has incurred flood-related damage to the extent that the cost of restoring the structure to its predamaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

(B) PREMIUM RATES AND COVERAGE.—To the extent applicable, an agricultural structure repaired or restored pursuant to subparagraph (A) shall pay chargeable premium rates established under section 1308 at the estimated risk premium rates under section 1307(a)(1). If resources are available, the Administrator shall provide technical assistance and counseling, upon request of the owner of the structure, regarding wet flood-proofing and other flood damage reduction measures for agricultural structures. The Administrator shall not be required to make flood insurance coverage available for such an agricultural structure unless the structure is wet flood-proofed through permanent or contingent measures applied to the structure or its contents that prevent or provide resistance to damage from flooding by allowing flood waters to pass through the structure, as determined by the Administrator.

(C) PROHIBITION ON DISASTER RELIEF.—Notwithstanding any other provision of law, any agricultural structure repaired or restored pursuant to subparagraph (A) shall not be eligible for disaster relief assistance under any

program administered by the Administrator or any other Federal agency.

(D) DEFINITIONS.—For purposes of this paragraph—

(i) the term “agricultural structure” means any structure used exclusively in connection with the production, harvesting, storage, raising, or drying of agricultural commodities; and

(ii) the term “agricultural commodities” means agricultural commodities and livestock.

(b) COMMUNITY RATING SYSTEM AND INCENTIVES FOR COMMUNITY FLOODPLAIN MANAGEMENT.—

(1) AUTHORITY AND GOALS.—The Administrator shall carry out a community rating system program, under which communities participate voluntarily—

(A) to provide incentives for measures that reduce the risk of flood or erosion damage that exceed the criteria set forth in section 1361 and evaluate such measures;

(B) to encourage adoption of more effective measures that protect natural and beneficial floodplain functions;

(C) to encourage floodplain and erosion management; and

(D) to promote the reduction of Federal flood insurance losses.

(2) INCENTIVES.—The program shall provide incentives in the form of credits on premium rates for flood insurance coverage in communities that the Administrator determines have adopted and enforced measures that reduce the risk of flood and erosion damage that exceed the criteria set forth in section 1361. In providing incentives under this paragraph, the Administrator may provide for credits to flood insurance premium rates in communities that the Administrator determines have implemented measures that protect natural and beneficial floodplain functions.

(3) CREDITS.—The credits on premium rates for flood insurance coverage shall be based on the estimated reduction in flood and erosion damage risks resulting from the measures adopted by the community under this program. If a community has received mitigation assistance under section 1366, the credits shall be phased in a manner, determined by the Administrator, to recover the amount of such assistance provided for the community.

(4) REPORTS.—Not later than 2 years after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994³⁰ and not less than every 2 years thereafter, the Administrator shall submit a report to the Congress regarding the program under this subsection. Each report shall include an analysis of the cost-effectiveness of the program, any other accomplishments or shortcomings of the program, and any recommendations of the Administrator for legislation regarding the program.

³⁰The date of enactment was September 23, 1994.

PROPERTIES IN VIOLATION OF STATE AND LOCAL LAW

SEC. 1316. [42 U.S.C. 4023] No new flood insurance coverage shall be provided under this title for any property which the Administrator finds has been declared by a duly constituted State or local zoning authority, or other authorized public body, to be in violation of State or local laws, regulations or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

COORDINATION WITH OTHER PROGRAMS

SEC. 1317. [42 U.S.C. 4024] In carrying out this title, the Administrator shall consult with other departments and agencies of the Federal Government, and with interstate, State, and local agencies having responsibilities for flood control, flood forecasting, or flood damage prevention, in order to assure that the programs of such agencies and the flood insurance program authorized under this title are mutually consistent.

ADVISORY COMMITTEE

SEC. 1318. [42 U.S.C. 4025] (a) The Administrator shall appoint a flood insurance advisory committee without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and such committee shall advise the Administrator in the preparation of any regulations prescribed in accordance with this title and with respect to policy matters arising in the administration of this title, and shall perform such other responsibilities as the Administrator may, from time to time, assign to such committee.

(b) Such committee shall consist of not more than fifteen persons and such persons shall be selected from among representatives of—

- (1) the insurance industry,
- (2) State and local governments,
- (3) lending institutions,
- (4) the homebuilding industry, and
- (5) the general public.

(c) Members of the committee shall, while attending conferences or meetings thereof, be entitled to receive compensation at a rate fixed by the Administrator but not exceeding \$100 per day, including traveltime, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as is authorized under section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

PROGRAM EXPIRATION

SEC. 1319. [42 U.S.C. 4026] No new contract for flood insurance under this title shall be entered into after September 30, 2023.

REPORT TO THE PRESIDENT

SEC. 1320. [42 U.S.C. 4027] (a) IN GENERAL.—The Administrator shall biennially submit a report of operations under this title to the President for submission to the Congress.

(b) EFFECTS OF FLOOD INSURANCE PROGRAM.—The Administrator shall include, as part of the biennial report submitted under subsection (a), a chapter reporting on the effects on the flood insurance program observed through implementation of requirements under the Riegle Community Development and Regulatory Improvement Act of 1994.

JOHN H. CHAFEE COASTAL BARRIER RESOURCES SYSTEM

SEC. 1321. [42 U.S.C. 4028] (a) No new flood insurance coverage may be provided under this title on or after October 1, 1983, for any new construction or substantial improvements of structures located on any coastal barrier within the John H. Chafee Coastal Barrier Resources System established by section 4 of the John H. Chafee Coastal Barrier Resources Act. A federally insured financial institution may make loans secured by structures which are not eligible for flood insurance by reason of this section.

(b) No new flood insurance coverage may be provided under this title after the expiration of the 1-year period beginning on the date of the enactment of the Coastal Barrier Improvement Act of 1990³¹ for any new construction or substantial improvements of structures located in any area identified and depicted on the maps referred to in section 4(a) of the Coastal Barrier Resources Act as an area that is (1) not within the John H. Chafee Coastal Barrier Resources System and (2) is in an otherwise protected area. Notwithstanding the preceding sentence, new flood insurance coverage may be provided for structures in such protected areas that are used in a manner consistent with the purpose for which the area is protected.

COLORADO RIVER FLOODWAY

SEC. 1322. [42 U.S.C. 4029] (a) Owners of existing National Flood Insurance Act³² policies with respect to structures located within the Floodway established under section 5 of the Colorado River Floodway Protection Act shall have the right to renew and transfer such policies. Owners of existing structures located within said Floodway on the date of enactment of the Colorado River Floodway Protection Act³³ who have not acquired National Flood Insurance Act policies shall have the right to acquire policies with respect to such structures for six months after the Secretary of the Interior files the Floodway maps required by section 5(b)(2) of the Colorado River Floodway Protection Act and to renew and transfer such policies.

(b) No new flood insurance coverage may be provided under this title on or after a date six months after the enactment of the

³¹The date of enactment was November 16, 1990.

³²So in law. Probably should refer to this Act.

³³October 8, 1986.

Colorado River Floodway Protection Act³⁴ for any new construction or substantial improvements of structures located within the Colorado River Floodway established by section 5 of the Colorado River Floodway Protection Act. New construction includes all structures that are not insurable prior to that date.

(c) The Secretary of the Interior may by rule after notice and comment pursuant to 5 U.S.C. 553 establish temporary Floodway boundaries to be in effect until the maps required by section 5(b)(2) of the Colorado River Floodway Protection Act are filed, for the purpose of enforcing subsections (b) and (d) of this section.

(d) A regulated lending institution or Federal agency lender may make loans secured by structures which are not eligible for flood insurance by reason of this section: *Provided*, That prior to making such a loan, such institution determines that the loans or structures securing the loan are within the Floodway.

【Section 1323 was repealed by section 100225(b) of Public Law 112–141.】

TREATMENT OF CERTAIN PAYMENTS

SEC. 1324. 【42 U.S.C. 4031】 Assistance provided under a program under this title for flood mitigation activities (including any assistance provided under the mitigation pilot program under section 1361A, any assistance provided under the mitigation assistance program under section 1366, and any funding provided under section 1323) with respect to a property shall not be considered income or a resource of the owner of the property when determining eligibility for or benefit levels under any income assistance or resource-tested program that is funded in whole or in part by an agency of the United States or by appropriated funds of the United States.

SEC. 1325. 【42 U.S.C. 4032】 TREATMENT OF SWIMMING POOL ENCLOSURES OUTSIDE OF HURRICANE SEASON.

(a) IN GENERAL.—Notwithstanding any other provision of law, including the adequate land use and control measures developed pursuant to section 1361 and applicable to non-one- and two-family structures located within coastal areas, as identified by the Administrator, the following may be permitted:

(1) Nonsupporting breakaway walls in the space below the lowest elevated floor of a building, if the space is used solely for a swimming pool between November 30 and June 1 of any year, in an area designated as Zone V on a flood insurance rate map.

(2) Openings in walls in the space below the lowest elevated floor of a building, if the space is used solely for a swimming pool between November 30 and June 1 of any year, in an area designated as Zone A on a flood insurance rate map.

(b) RULE OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to alter the terms and conditions of eligibility and insurability of coverage for a building under the standard flood insurance policy under the national flood insurance program.

³⁴ The date of enactment was October 8, 1986.

CHAPTER II—ORGANIZATION AND ADMINISTRATION OF
THE FLOOD INSURANCE PROGRAM

ORGANIZATION AND ADMINISTRATION

SEC. 1330. [42 U.S.C. 4041] Following such consultation with representatives of the insurance industry as may be necessary, the Administrator shall implement the flood insurance program authorized under chapter I in accordance with the provisions of part A of this chapter and, if a determination is made by him under section 1340, under part B of this chapter.

PART A—INDUSTRY PROGRAM WITH FEDERAL FINANCIAL
ASSISTANCE

INDUSTRY FLOOD INSURANCE POOL

SEC. 1331. [42 U.S.C. 4051] (a) The Administrator is authorized to encourage and otherwise assist any insurance companies and other insurers which meet the requirements prescribed under subsection (b) to form, associate, or otherwise join together in a pool—

(1) in order to provide the floor insurance coverage authorized under chapter I; and

(2) for the purpose of assuming, including as reinsurance of coverage provided by the flood insurance program, on such terms and conditions as may be agreed upon, such financial responsibility as will enable such companies and other insurers, with the Federal financial and other assistance available under this title, to assure a reasonable proportion of responsibility for the adjustment and payment of claims for losses under the flood insurance program.

(b) In order to promote the effective administration of the flood insurance program under this part, and to assure that the objectives of this title are furthered, the Administrator is authorized to prescribe appropriate requirements for insurance companies and other insurers participating in such pool including, but not limited to, minimum requirements for capital or surplus or assets.

AGREEMENTS WITH FLOOD INSURANCE POOL

SEC. 1332. [42 U.S.C. 4052] (a) The Administrator is authorized to enter into such agreements with the pool formed or otherwise created under this part as he deems necessary to carry out the purposes of this title.

(b) Such agreements shall specify—

(1) the terms and conditions under which risk capital will be available for the adjustment and payments of claims,

(2) the terms and conditions under which the pool (and the companies and other insurers participating therein) shall participate in premiums received and profits or losses realized or sustained,

(3) the maximum amount of profit, established by the Administrator and set forth in the schedules prescribed under section 1311, which may be realized by such pool (and the companies and other insurers participating therein),

(4) the terms and conditions under which operating costs and allowances set forth in the schedules prescribed under section 1311 may be paid, and

(5) the terms and conditions under which premium equalization payments under section 1334 will be made and reinsurance claims under section 1335 will be paid.

(c) In addition, such agreements shall contain such provisions as the Administrator finds necessary to assure that—

(1) no insurance company or other insurer which meets the requirements prescribed under section 1331(b), and which has indicated an intention to participate in the flood insurance program on a risk-sharing basis, will be excluded from participating in the pool,

(2) the insurance companies and other insurers participating in the pool will take whatever action may be necessary to provide continuity of flood insurance coverage or reinsurance by the pool, and

(3) any insurance companies and other insurers, insurance agents and brokers and insurance adjustment organizations will be permitted to cooperate with the pool as fiscal agents or otherwise, on other than a risk-sharing basis, to the maximum extent practicable.

ADJUSTMENT AND PAYMENT OF CLAIMS AND JUDICIAL REVIEW

SEC. 1333. [42 U.S.C. 4053] The insurance companies and other insurers which form, associate, or otherwise join together in the pool under this part may adjust and pay all claims for proved and approved losses covered by flood insurance in accordance with the provisions of this title and, upon the disallowance by any such company or other insurer of any such claim, or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant, within one year after the date of mailing of notice of disallowance or partial disallowance of the claim, may institute an action on such claim against such company or other insurer in the United States district court for the district in which the insured property or the major part thereof shall have been situated, and original exclusive jurisdiction is hereby conferred upon such court to hear and determine such action without regard to the amount in controversy.

PREMIUM EQUALIZATION PAYMENTS

SEC. 1334. [42 U.S.C. 4054] (a) The Administrator, on such terms and conditions as he may from time to time prescribe, shall make periodic payments to the pool formed or otherwise created under section 1331, in recognition of such reductions in chargeable premium rates under section 1308 below estimated premium rates under section 1307(a)(1) as are required in order to make flood insurance available on reasonable terms and conditions.

(b) Designated periods under this section and the methods for determining the sum of premiums paid or payable during such periods shall be established by the Administrator.

REINSURANCE COVERAGE

SEC. 1335. [42 U.S.C. 4055] (a)³⁵

(1) IN GENERAL.—The Administrator is authorized to take such action as may be necessary in order to make available, to the pool formed or otherwise created under section 1331, reinsurance for losses (due to claims for proved and approved losses covered by flood insurance) which are in excess of losses assumed by such pool in accordance with the excess loss agreement entered into under subsection (c).

(2) PRIVATE REINSURANCE.—The Administrator is authorized to secure reinsurance of coverage provided by the flood insurance program from the private market at rates and on terms determined by the Administrator to be reasonable and appropriate, in an amount sufficient to maintain the ability of the program to pay claims.

(b) Such reinsurance shall be made available pursuant to contract, agreement, or any other arrangement, in consideration of such payment of a premium, fee, or other charge as the Administrator finds necessary to cover anticipated losses and other costs of providing such reinsurance.

(c) The Administrator is authorized to negotiate an excess loss agreement, from time to time, under which the amount of flood insurance retained by the pool, after ceding reinsurance, shall be adequate to further the purposes of this title, consistent with the objective of maintaining appropriate financial participation and risk sharing to the maximum extent practicable on the part of participating insurance companies and other insurers.

(d) All reinsurance claims for losses in excess of losses assumed by the pool shall be submitted on a portfolio basis by such pool in accordance with terms and conditions established by the Administrator.

EMERGENCY IMPLEMENTATION OF PROGRAM

SEC. 1336. [42 U.S.C. 4056] (a) Notwithstanding any other provisions of this title, for the purpose of providing flood insurance coverage at the earliest possible time, the Administrator shall carry out the flood insurance program authorized under chapter I during the period ending on the date specified in section 1319, in accordance with the provisions of this part and the other provision of this title insofar as they relate to this part but subject to the modifications made by or under subsection (b).

(b) In carrying out the flood insurance program pursuant to subsection (a), the Administrator—

(1) shall provide insurance coverage without regard to any estimated risk premium rates which would otherwise be determined under section 1307; and

(2) shall utilize the provisions and procedures contained in or prescribed by this part (other than section 1334) and sections 1345 and 1346 to such extent and in such manner as he may consider necessary or appropriate to carry out the purpose of this section.

³⁵ So in law.

SEC. 1337. [42 U.S.C. 4057] ALTERNATIVE LOSS ALLOCATION SYSTEM FOR INDETERMINATE CLAIMS.

(a) **DEFINITIONS.**—In this section:

(1) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the Federal Emergency Management Agency.

(2) **COASTAL FORMULA.**—The term “COASTAL Formula” means the formula established under subsection (b).

(3) **COASTAL STATE.**—The term “coastal State” has the meaning given the term “coastal state” in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453), except that the term shall not apply with respect to a State or territory that has an operational wind and flood loss allocation system.

(4) **INDETERMINATE LOSS.**—

(A) **IN GENERAL.**—The term “indeterminate loss” means, as determined by an insurance claims adjuster certified under the national flood insurance program and in consultation with an engineer as appropriate, a loss resulting from physical damage to, or loss of, property located in any coastal State arising from the combined perils of flood and wind associated with a named storm.

(B) **REQUIREMENTS.**—An insurance claims adjuster certified under the national flood insurance program shall only determine that a loss is an indeterminate loss if the claims adjuster determines that—

(i) no material remnant of physical buildings or man-made structures remain except building foundations for the specific property for which the claim is made; and

(ii) there is insufficient or no tangible evidence created, yielded, or otherwise left behind of the specific property for which the claim is made as a result of the named storm.

(5) **NAMED STORM.**—The term “named storm” means any organized weather system with a defined surface circulation and maximum sustained winds of not less than 39 miles per hour which the National Hurricane Center of the United States National Weather Service names as a tropical storm or a hurricane.

(6) **POST-STORM ASSESSMENT.**—The term “post-storm assessment” means the post-storm assessment developed under section 12312(b) of the Omnibus Public Land Management Act of 2009.

(7) **STATE.**—The term “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(8) **SECRETARY.**—The term “Secretary” means the Secretary of Homeland Security.

(9) **STANDARD INSURANCE POLICY.**—The term “standard insurance policy” means any insurance policy issued under the national flood insurance program that covers loss or damage to property resulting from water peril.

(10) PROPERTY.—The term “property” means real or personal property that is insured under a standard insurance policy for loss or damage to structure or contents.

(11) UNDER SECRETARY.—The term “Under Secretary” means the Under Secretary of Commerce for Oceans and Atmosphere, in the Under Secretary’s capacity as Administrator of the National Oceanic and Atmospheric Administration.

(b) ESTABLISHMENT OF FLOOD LOSS ALLOCATION FORMULA FOR INDETERMINATE CLAIMS.—

(1) IN GENERAL.—Not later than 180 days after the date on which the protocol is established under section 12312(c)(1) of the Omnibus Public Land Management Act of 2009, the Secretary, acting through the Administrator and in consultation with the Under Secretary, shall publish for comment in the Federal Register a standard formula to determine and allocate wind losses and flood losses for claims involving indeterminate losses.

(2) CONTENTS.—The standard formula established under paragraph (1) shall—

(A) incorporate data available from the Coastal Wind and Water Event Database established under section 12312(f) of the Omnibus Public Land Management Act of 2009;

(B) use relevant data provided on the National Flood Insurance Program Elevation Certificate, or other data or information used to determine a property’s current risk of flood, as determined by the Administrator, for each indeterminate loss for which the formula is used;

(C) consider any sufficient and credible evidence, approved by the Administrator, of the pre-event condition of a specific property, including the findings of any policyholder or insurance claims adjuster in connection with the indeterminate loss to that specific property;

(D) include other measures, as the Administrator considers appropriate, required to determine and allocate by mathematical formula the property damage caused by flood or storm surge associated with a named storm; and

(E) subject to paragraph (3), for each indeterminate loss, use the post-storm assessment to allocate water damage (flood or storm surge) associated with a named storm.

(3) DEGREE OF ACCURACY REQUIRED.—The standard formula established under paragraph (1) shall specify that the Administrator may only use the post-storm assessment for purposes of the formula if the Under Secretary certifies that the post-storm assessment has a degree of accuracy of not less than 90 percent in connection with the specific indeterminate loss for which the assessment and formula are used.

(c) AUTHORIZED USE OF POST-STORM ASSESSMENT AND COASTAL FORMULA.—

(1) IN GENERAL.—Subject to paragraph (3), the Administrator may use the post-storm assessment and the COASTAL Formula to—

(A) review flood loss payments for indeterminate losses, including as part of the quality assurance reinspec-

tion program of the Federal Emergency Management Agency for claims under the national flood insurance program and any other process approved by the Administrator to review and validate payments under the national flood insurance program for indeterminate losses following a named storm; and

(B) assist the national flood insurance program to—

(i) properly cover qualified flood loss for claims for indeterminate losses; and

(ii) avoid paying for any loss or damage to property caused by any peril (including wind), other than flood or storm surge, that is not covered under a standard policy under the national flood insurance program.

(2) **FEDERAL DISASTER DECLARATION.**—Subject to paragraph (3), in order to expedite claims and reduce costs to the national flood insurance program, following any major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) relating to a named storm in a coastal State, the Administrator may use the COASTAL Formula to determine and pay for any flood loss covered under a standard insurance policy under the national flood insurance program, if the loss is an indeterminate loss.

(3) **NATIONAL ACADEMY OF SCIENCES EVALUATION.**—

(A) **EVALUATION REQUIRED.**—

(i) **EVALUATION.**—Upon publication of the COASTAL Formula in the Federal Register as required by subsection (b)(1), and each time the Administrator modifies the COASTAL Formula, the National Academy of Sciences shall—

(I) evaluate the expected financial impact on the national flood insurance program of the use of the COASTAL Formula as so established or modified; and

(II) evaluate the validity of the scientific assumptions upon which the formula is based and determine whether the COASTAL formula can achieve a degree of accuracy of not less than 90 percent in allocating flood losses for indeterminate losses.

(ii) **REPORT.**—The National Academy of Sciences shall submit a report containing the results of each evaluation under clause (i) to the Administrator, the Committee on Banking, Housing, and Urban Affairs and the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Financial Services and the Committee on Science, Space, and Technology of the House of Representatives.

(B) **EFFECTIVE DATE AND APPLICABILITY.**—

(i) **EFFECTIVE DATE.**—Paragraphs (1) and (2) of this subsection shall not take effect unless the report under subparagraph (A) relating to the establishment of the COASTAL Formula concludes that the use of

the COASTAL Formula for purposes of paragraph (1) and (2) would not have an adverse financial impact on the national flood insurance program and that the COASTAL Formula is based on valid scientific assumptions that would allow a degree of accuracy of not less than 90 percent to be achieved in allocating flood losses for indeterminate losses.

(ii) EFFECT OF MODIFICATIONS.—Unless the report under subparagraph (A) relating to a modification of the COASTAL Formula concludes that the use of the COASTAL Formula, as so modified, for purposes of paragraphs (1) and (2) would not have an adverse financial impact on the national flood insurance program and that the COASTAL Formula is based on valid scientific assumptions that would allow a degree of accuracy of not less than 90 percent to be achieved in allocating flood losses for indeterminate losses the Administrator may not use the COASTAL Formula, as so modified, for purposes of paragraphs (1) and (2).

(C) FUNDING.—Notwithstanding section 1310 of the National Flood Insurance Act of 1968 (42 U.S.C. 4017), there shall be available to the Administrator from the National Flood Insurance Fund, of amounts not otherwise obligated, not more than \$750,000 to carry out this paragraph.

(d) DISCLOSURE OF COASTAL FORMULA.—Not later than 30 days after the date on which a post-storm assessment is submitted to the Secretary under section 12312(b)(2)(E) of the Omnibus Public Land Management Act of 2009, for each indeterminate loss for which the COASTAL Formula is used pursuant to subsection (c)(2), the Administrator shall disclose to the policyholder that makes a claim relating to the indeterminate loss—

(1) that the Administrator used the COASTAL Formula with respect to the indeterminate loss; and

(2) a summary of the results of the use of the COASTAL Formula.

(e) CONSULTATION.—In carrying out subsections (b) and (c), the Secretary shall consult with—

(1) the Under Secretary for Oceans and Atmosphere;

(2) the Director of the National Institute of Standards and Technology;

(3) the Chief of Engineers of the Corps of Engineers;

(4) the Director of the United States Geological Survey;

(5) the Office of the Federal Coordinator for Meteorology;

(6) State insurance regulators of coastal States; and

(7) such public, private, and academic sector entities as the Secretary considers appropriate for purposes of carrying out such subsections.

(f) RECORDKEEPING.—Each consideration and measure the Administrator determines necessary to carry out subsection (b) may be required, with advanced approval of the Administrator, to be provided for on the National Flood Insurance Program Elevation Certificate, or maintained otherwise on record if approved by the

Administrator, for any property that qualifies for the COASTAL Formula under subsection (c).

(g) CIVIL PENALTY.—

(1) IN GENERAL.—If an insurance claims adjuster knowingly and willfully makes a false or inaccurate determination relating to an indeterminate loss, the Administrator may, after notice and opportunity for hearing, impose on the insurance claims adjuster a civil penalty of not more than \$1,000.

(2) DEPOSIT.—Notwithstanding section 3302 of title 31, United States Code, or any other law relating to the crediting of money, the Administrator shall deposit in the National Flood Insurance Fund any amounts received under this subsection, which shall remain available until expended and be available to the Administrator for purposes authorized for the National Flood Insurance Fund without further appropriation.

(h) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to require the Administrator to make any payment under the national flood insurance program, or an insurance company that issues a standard flood insurance policy under the national flood insurance program to make any payment, for an indeterminate loss based upon post-storm assessment, the COASTAL Formula, or any other loss allocation or post-storm assessment arising under the laws or ordinances of any State.

(i) APPLICABILITY.—Subsection (c) shall apply with respect to an indeterminate loss associated with a named storm that occurs 60 days after publication of the COASTAL Formula in the Federal Register as required by subsection (b)(1).

(j) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to negate, set aside, or void any policy limit, including any loss limitation, set forth in a standard insurance policy.

(k) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to create a cause of action under this Act.

PART B—GOVERNMENT PROGRAM WITH INDUSTRY ASSISTANCE

FEDERAL OPERATION OF THE PROGRAM

SEC. 1340. [42 U.S.C. 4071] (a) If at any time, after consultation with representatives of the insurance industry, the Administrator determines that operation of the flood insurance program as provided under part A cannot be carried out, or that such operation, in itself, would be assisted materially by the Federal Government's assumption, in whole or in part, of the operational responsibility for flood insurance under this title (on a temporary or other basis) he shall promptly undertake any necessary arrangements to carry out the program of flood insurance authorized under chapter I through the facilities of the Federal Government, utilizing, for purposes of providing flood insurance coverage, either—

(1) insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations, as fiscal agents of the United States,

(2) such other officers and employees of any executive agency (as defined in section 105 of title 5 of the United States Code) as the Administrator and the head of any such agency

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may from time to time, agree upon, on a reimbursement or other basis, or

(3) both the alternative specified in paragraphs (1) and (2).

(b) Upon making the determination referred to in subsection (a), the Administrator shall make a report to the Congress and, at the same time, to the private insurance companies participating in the National Flood Insurance Program pursuant to section 1310 of this Act. Such report shall—

(1) state the reason for such determinations,

(2) be supported by pertinent findings,

(3) indicate the extent to which it is anticipated that the insurance industry will be utilized in providing flood insurance coverage under the program, and

(4) contain such recommendations as the Administrator deems advisable.

The Administrator shall not implement the program of flood insurance authorized under chapter I through the facilities of the Federal Government until 9 months after the date of submission of the report under this subsection unless it would be impossible to continue to effectively carry out the National Flood Insurance Program operations during this time.

ADJUSTMENT AND PAYMENT OF CLAIMS AND JUDICIAL REVIEW

SEC. 1341. [42 U.S.C. 4072] In the event the program is carried out as provided in section 1340, the Administrator shall be authorized to adjust and make payment of any claims for proved and approved losses covered by flood insurance, and upon the disallowance by the Administrator of any such claims, or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant, within one year after the date of mailing of notice of disallowance or partial disallowance by the Administrator, may institute an action against the Administrator on such claim in the United States district court for the district in which the insured property or the major part thereof shall have been situated, and original exclusive jurisdiction is hereby conferred upon such court to hear and determine such action without regard to the amount in controversy.

PART C—PROVISIONS OF GENERAL APPLICABILITY

SERVICES BY INSURANCE INDUSTRY

SEC. 1345. [42 U.S.C. 4081] (a) In administering the flood insurance program under this chapter, the Administrator is authorized to enter into any contracts, agreements, or other appropriate arrangements which may, from time to time, be necessary for the purpose of utilizing, on such terms and conditions as may be agreed upon, the facilities and services of any insurance companies or other insurers, insurance agents and brokers, or insurance adjustment organizations; and such contracts, agreements, or arrangements may include provision for payment of applicable operating costs and allowances for such facilities and services as set forth in the schedules prescribed under section 1311.

(b) Any such contracts, agreements, or other arrangements may be entered into without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) or any other provisions of law requiring competitive bidding and without regard to the provisions of chapter 10 of title 5, United States Code.

(c) The Administrator of the Federal Emergency Management Agency shall hold any agent or broker selling or undertaking to sell flood insurance under this title harmless from any judgment for damages against such agent or broker as a result of any court action by a policyholder or applicant arising out of an error or omission on the part of the Federal Emergency Management Agency, and shall provide any such agent or broker with indemnification, including court costs and reasonable attorney fees, arising out of and caused by an error or omission on the part of the Federal Emergency Management Agency and its contractors. The Administrator of the Federal Emergency Management Agency may not hold harmless or indemnify an agent or broker for his or her error or omission.

(d) FEMA AUTHORITY ON TRANSFER OF POLICIES.—Notwithstanding any other provision of this title, the Administrator may, at the discretion of the Administrator, refuse to accept the transfer of the administration of policies for coverage under the flood insurance program under this title that are written and administered by any insurance company or other insurer, or any insurance agent or broker.

(e) RISK TRANSFER.—The Administrator may secure reinsurance of coverage provided by the flood insurance program from the private reinsurance and capital markets at rates and on terms determined by the Administrator to be reasonable and appropriate, in an amount sufficient to maintain the ability of the program to pay claims.

USE OF INSURANCE POOL, COMPANIES, OR OTHER PRIVATE
ORGANIZATIONS FOR CERTAIN PAYMENTS

SEC. 1346. [42 U.S.C. 4082] (a) In order to provide for maximum efficiency in the administration of the flood insurance program and in order to facilitate the expeditious payment of any Federal funds under such program, the Administrator may enter into contracts with a pool formed or otherwise created under section 1331, or any insurance company or other private organization, for the purpose of securing reinsurance of insurance coverage provided by the program or for the purpose of securing performance by such pool, company, or organization of any or all of the following responsibilities:

- (1) Estimating and later determining any amounts of payments to be made.
- (2) Receiving from the Administrator, disbursing, and accounting for funds in making such payments.
- (3) Making such audits of the records of any insurance company or other insurer, insurance agent or broker, or insurance adjustment organization as may be necessary to assure that proper payments are made.

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(4) Placing reinsurance coverage on insurance provided by such program.

(5) Otherwise assisting in such manner as the contract may provide to further the purposes of this title.

(b) Any contract with the pool or an insurance company or other private organization under this section may contain such terms and conditions at the Administrator finds necessary or appropriate for carrying out responsibilities under subsection (a), and may provide for payment of any costs which the Administrator determines are incidental to carrying out such responsibilities which are covered by the contract.

(c) Any contract entered into under subsection (a) may be entered into without regard to section 3709 of the Revised Statutes (41 U.S.C. 5) or any other provision of law requiring competitive bidding.

(d) No contract may be entered into under this section unless the Administrator finds that the pool, company, or organization will perform its obligations under the contract efficiently and effectively, and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent.

(e)(1) Any such contract may require the pool, company, or organization or any of its officers or employees certifying payments or disbursing funds pursuant to the contract, or otherwise participating in carrying out the contract, to give surety bond to the United States in such amount as the Administrator may deem appropriate.

(2) No individual designated pursuant to a contract under this section to certify payments shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment certified by him under this section.

(3) No officer disbursing funds shall in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this section if it was based upon a voucher signed by an individual designated to certify payments as provided in paragraph (2) of this subsection.

(f) Any contract entered into under this section shall be for a term of one year, and may be made automatically renewable from term to term in the absence of notice by either party of an intention to terminate at the end of the current term; except that the Administrator may terminate any such contract at any time (after reasonable notice to the pool, company, or organization involved) if he finds that the pool, company, or organization has failed substantially to carry out the contract, or is carrying out the contract in a manner inconsistent with the efficient and effective administration of the flood insurance program authorized under this title.

SETTLEMENT AND ARBITRATION

SEC. 1347. [42 U.S.C. 4083] (a) The Administrator is authorized to make final settlement of any claims or demands which may arise as a result of any financial transactions which he is authorized to carry out under this chapter, and may, to assist him in making any such settlement, refer any disputes relating to such

claims or demands to arbitration, with the consent of the parties concerned.

(b) Such arbitration shall be advisory in nature, and any award, decision, or recommendation which may be made shall become final only upon the approval of the Administrator.

RECORDS AND AUDITS

SEC. 1348. [42 U.S.C. 4084] (a) The flood insurance pool formed or otherwise created under part A of this chapter, and any insurance company or other private organization executing any contract, agreement, or other appropriate arrangement with the Administrator under part B of this chapter or this part, shall keep such records as the Administrator shall prescribe, including records which fully disclose the total costs of the program undertaken or the services being rendered, and such other records as will facilitate an effective audit.

(b) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the pool and any such insurance company or other private organization that are pertinent to the costs of the program undertaken or the services being rendered.

CHAPTER III—COORDINATION OF FLOOD INSURANCE WITH LAND-MANAGEMENT PROGRAMS IN FLOOD-PRONE AREAS

IDENTIFICATION OF FLOOD-PRONE AREAS

SEC. 1360. [42 U.S.C. 4101] (a) The Administrator is authorized to consult with, receive information from, and enter into any agreements or other arrangements with the Secretaries of the Army, the Interior, Agriculture, and Commerce, the Tennessee Valley Authority, and the heads of other Federal departments or agencies, on a reimbursement basis, or with the head of any State or local agency, or enter into contracts with any persons or private firms, in order that he may—

(1) identify and publish information with respect to all flood plain areas, including coastal areas located in the United States, which have special flood hazards, within five years following the date of the enactment of this Act,³⁶ and

(2) establish or update flood-risk zone data in all such areas, and make estimates with respect to the rates of probable flood caused loss for the various flood risk zones for each of these areas until the date specified in section 1319.

(b) The Administrator is directed to accelerate the identification of risk zones within flood-prone and mudslide-prone areas, as provided by subsection (a)(2) of this section, in order to make known the degree of hazard within each such zone at the earliest possible date. To accomplish this objective, the Administrator is authorized, without regard to subsections (a) and (b) of section 3324 of title 31, United States Code, and section 3709 of the Revised

³⁶The date of enactment was August 1, 1968.

Statutes (41 U.S.C. 5), to make grants, provide technical assistance, and enter into contracts, cooperative agreements, or other transactions, on such terms as he may deem appropriate, or consent to modifications thereof, and to make advance or progress payments in connection therewith.

(c) The Secretary of Defense (through the Army Corps of Engineers), the Secretary of the Interior (through the United States Geological Survey), the Secretary of Agriculture (through the Soil Conservation Service), the Secretary of Commerce (through the National Oceanic and Atmospheric Administration), the head of the Tennessee Valley Authority, and the heads of all other Federal agencies engaged in the identification or delineation of flood-risk zones within the several States shall, in consultation with the Administrator, give the highest practicable priority in the allocation of available manpower and other available resources to the identification and mapping of flood hazard areas and flood-risk zones, in order to assist the Administrator to meet the deadline established by this section.

(d) The Administrator shall, not later than September 30, 1984, submit to the Congress a plan for bringing all communities containing flood-risk zones into full program status by September 30, 1987.

(e) REVIEW OF FLOOD MAPS.—Once during each 5-year period (the 1st such period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994³⁷) or more often as the Administrator determines necessary, the Administrator shall assess the need to revise and update all floodplain areas and flood risk zones identified, delineated, or established under this section, based on an analysis of all natural hazards affecting flood risks.

(f) UPDATING FLOOD MAPS.—The Administrator shall revise and update any floodplain areas and flood-risk zones—

(1) upon the determination of the Administrator, according to the assessment under subsection (e), that revision and updating are necessary for the areas and zones; or

(2) upon the request from any State or local government stating that specific floodplain areas or flood-risk zones in the State or locality need revision or updating, if sufficient technical data justifying the request is submitted and the unit of government making the request agrees to provide funds in an amount determined by the Administrator.

(g) AVAILABILITY OF FLOOD MAPS.—To promote compliance with the requirements of this title, the Administrator shall make flood insurance rate maps and related information available free of charge to the Federal entities for lending regulation, Federal agency lenders, State agencies directly responsible for coordinating the national flood insurance program, and appropriate representatives of communities participating in the national flood insurance program, and at a reasonable cost to all other persons. Any receipts resulting from this subsection shall be deposited in the National Flood Insurance Fund, pursuant to section 1310(b)(6).

³⁷The date of enactment was September 23, 1994.

(h) NOTIFICATION OF FLOOD MAP CHANGES.—The Administrator shall cause notice to be published in the Federal Register (or shall provide notice by another comparable method) of any change to flood insurance map panels and any change to flood insurance map panels issued in the form of a letter of map amendment or a letter of map revision. Such notice shall be published or otherwise provided not later than 30 days after the map change or revision becomes effective. Notice by any method other than publication in the Federal Register shall include all pertinent information, provide for regular and frequent distribution, and be at least as accessible to map users as notice in the Federal Register. All notices under this subsection shall include information on how to obtain copies of the changes or revisions.

(i) COMPENDIA OF FLOOD MAP CHANGES.—Every 6 months, the Administrator shall publish separately in their entirety within a compendium, all changes and revisions to flood insurance map panels and all letters of map amendment and letters of map revision for which notice was published in the Federal Register or otherwise provided during the preceding 6 months. The Administrator shall make such compendia available, free of charge, to Federal entities for lending regulation, Federal agency lenders, and States and communities participating in the national flood insurance program pursuant to section 1310 and at cost to all other parties. Any receipts resulting from this subsection shall be deposited in the National Flood Insurance Fund, pursuant to section 1310(b)(6).

(j) PROVISION OF INFORMATION.—In the implementation of revisions to and updates of flood insurance rate maps, the Administrator shall share information, to the extent appropriate, with the Under Secretary of Commerce for Oceans and Atmosphere and representatives from State coastal zone management programs.

CRITERIA FOR LAND MANAGEMENT AND USE

SEC. 1361. [42 U.S.C. 4102] (a) The Administrator is authorized to carry out studies and investigations, utilizing to the maximum extent practicable the existing facilities and services of other Federal departments or agencies, and State and local governmental agencies, and any other organizations, with respect to the adequacy of State and local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention, and may enter into any contracts, agreements or other appropriate arrangements to carry out such authority.

(b) Such studies and investigations shall include, but not be limited to, laws, regulations or ordinances relating to encroachments and obstructions on stream channels and floodways, the orderly development and use of flood plains of rivers or streams, floodway encroachment lines, and flood plain zoning, building codes, building permits, and subdivision or other building restrictions.

(c) On the basis of such studies and investigations, and such other information as he deems necessary, the Administrator shall from time to time develop comprehensive criteria designed to encourage, where necessary, the adoption of adequate State and local measures which, to the maximum extent feasible, will—

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(1) construct the development of land which is exposed to flood damage where appropriate,
 (2) guide the development of proposed construction away from locations which are threatened by flood hazards,
 (3) assist in reducing damage caused by floods, and
 (4) otherwise improve the long-range land management and use of flood prone areas,
 and he shall work closely with and provide any necessary technical assistance to State, interstate, and local governmental agencies, to encourage the application of such criteria and the adoption and enforcement of such measures.

(d) FLOOD MITIGATION METHODS FOR BUILDINGS.—The Administrator shall establish guidelines for property owners that—

(1) provide alternative methods of mitigation, other than building elevation, to reduce flood risk to residential buildings that cannot be elevated due to their structural characteristics, including—

(A) types of building materials; and

(B) types of floodproofing; and

(2) inform property owners about how the implementation of mitigation methods described in paragraph (1) may affect risk premium rates for flood insurance coverage under the National Flood Insurance Program.

【Section 1361A was repealed by section 100225(c) of Public Law 112–141.】

PURCHASE OF CERTAIN INSURED PROPERTIES

SEC. 1362. 【Repealed.】³⁸

APPEALS

SEC. 1363. 【42 U.S.C. 4104】 (a) In establishing projected flood elevations and designating areas having special flood hazards for land use purposes with respect to any community pursuant to section 1361, the Administrator shall first propose such determinations and designations by publication for comment in the Federal Register, by direct notification to the chief executive officer of the community, and by publication in a prominent local newspaper.

³⁸Section 551(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, approved September 23, 1994, repealed this section, which provided authority for the Director to purchase property insured under the national flood insurance program that had incurred significant flood damage and to make loans for elevating certain properties. Such section 551 provides as follows:

“SEC. 551. REPEAL OF FLOODED PROPERTY PURCHASE AND LOAN PROGRAM.

“(a) REPEAL.—Section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) is hereby repealed.

“(b) TRANSITION PHASE.—Notwithstanding subsection (a), during the 1-year period beginning on the date of enactment of this Act, the Director of the Federal Emergency Management Agency may enter into loan and purchase commitments as provided under section 1362 of the National Flood Insurance Act of 1968 (as in effect immediately before the enactment of this Act).

“(c) SAVINGS PROVISION.—Notwithstanding subsection (a), the Director shall take any action necessary to comply with any purchase or loan commitment entered into before the expiration of the period referred to in subsection (b) pursuant to authority under section 1362 of the National Flood Insurance Act of 1968 or subsection (b).”

(b) The Administrator shall publish notification of flood elevation determinations and designations of areas having special flood hazards in a prominent local newspaper at least twice during the ten-day period following notification to the local government. During the ninety-day period following the second publication, any owner or lessee of real property within the community who believes his property rights to be adversely affected by the Administrator's proposed determination may appeal such determination to the local government. The sole grounds for appeal shall be the possession of knowledge or information indicating that (1) the elevations being proposed by the Administrator with respect to an identified area having special flood hazards are scientifically or technically incorrect, or (2) the designation of an identified special flood hazard area is scientifically or technically incorrect.

(c) Appeals by private persons shall be made to the chief executive officer of the community, or to such agency as he shall publicly designate, and shall set forth the data that tend to negate or contradict the Administrator's finding in such form as the chief executive officer may specify. The community shall review and consolidate all such appeals and issue a written opinion stating whether the evidence presented is sufficient to justify an appeal on behalf of such persons by the community in its own name. Whether or not the community decides to appeal the Administrator's determination, copies of individual appeals shall be sent to the Administrator as they are received by the community, and the community's appeal or a copy of its decision not to appeal shall be filed with the Administrator not later than ninety days after the date of the second newspaper publication of the Administrator's notification.

(d) In the event the Administrator does not receive an appeal from the community within the ninety days provided he shall consolidate and review on their own merits, in accordance with the procedures set forth in subsection (e), the appeals filed within the community by private persons and shall make such modifications of his proposed determinations as may be appropriate, taking into account the written opinion, if any, issued by the community in not supporting such appeals. The Administrator's decision shall be in written form, and copies thereof shall be sent both to the chief executive officer of the community and to each individual appellant.

(e) Upon appeal by any community, as provided by this section, the Administrator shall review and take fully into account any technical or scientific data submitted by the community that tend to negate or contradict the information upon which his proposed determination is based. The Administrator shall resolve such appeal by consultation with officials of the local government involved, by administrative hearing, or by submission of the conflicting data to the Scientific Resolution Panel provided for in section 1363A. Until the conflict in data is resolved, and the Administrator makes a final determination on the basis of his findings in the Federal Register, and so notifies the governing body of the community, flood insurance previously available within the community shall continue to be available, and no person shall be denied the right to purchase such insurance at chargeable rates. The Administrator shall make his determination within a reasonable time. The community shall be given a reasonable time after the Administrator's

final determination in which to adopt local land use and control measures consistent with the Administrator's determination. The reports and other information used by the Administrator in making his final determination shall be made available for public inspection and shall be admissible in a court of law in the event the community seeks judicial review as provided by this section.

(f) REIMBURSEMENT OF CERTAIN EXPENSES.—When, incident to any appeal under subsection (b) or (c) of this section, the owner or lessee of real property or the community, as the case may be, or, in the case of an appeal that is resolved by submission of conflicting data to the Scientific Resolution Panel provided for in section 1363A, the community, incurs expense in connection with the services of surveyors, engineers, or similar services, but not including legal services, in the effecting of an appeal based on a scientific or technical error on the part of the Federal Emergency Management Agency, which is successful in whole or part, the Administrator shall reimburse such individual or community to an extent measured by the ratio of the successful portion of the appeal as compared to the entire appeal and applying such ratio to the reasonable value of all such services, but no reimbursement shall be made by the Administrator in respect to any fee or expense payment, the payment of which was agreed to be contingent upon the result of the appeal. The Administrator may use such amounts from the National Flood Insurance Fund established under section 1310 as may be necessary to carry out this subsection. The Administrator shall promulgate regulations to carry out this subsection.

(g) Except as provided in section 1363A, any appellant aggrieved by any final determination of the Administrator upon administrative appeal, as provided by this section, may appeal such determination to the United States district court for the district within which the community is located not more than sixty days after receipt of notice of such determination. The scope of review by the court shall be as provided by chapter 7 of title 5, United States Code. During the pendency of any such litigation, all final determinations of the Administrator shall be effective for the purposes of this title unless stayed by the court for good cause shown.

SEC. 1363A. [42 U.S.C. 4104-1] SCIENTIFIC RESOLUTION PANEL.

(a) AVAILABILITY.—

(1) IN GENERAL.—Pursuant to the authority provided under section 1363(e), the Administrator shall make available an independent review panel, to be known as the Scientific Resolution Panel, to any community—

(A) that has—

(i) filed a timely map appeal in accordance with section 1363;

(ii) completed 60 days of consultation with the Federal Emergency Management Agency on the appeal; and

(iii) not allowed more than 120 days, or such longer period as may be provided by the Administrator by waiver, to pass since the end of the appeal period; or

- (B) that has received an unsatisfactory ruling under the map revision process established pursuant to section 1360(f).
- (2) APPEALS BY OWNERS AND LESSEES.—If a community and an owner or lessee of real property within the community appeal a proposed determination of a flood elevation under section 1363(b), upon the request of the community—
- (A) the owner or lessee shall submit scientific and technical data relating to the appeals to the Scientific Resolution Panel; and
- (B) the Scientific Resolution Panel shall make a determination with respect to the appeals in accordance with subsection (c).
- (3) DEFINITION.—For purposes of paragraph (1)(B), an “unsatisfactory ruling” means that a community—
- (A) received a revised Flood Insurance Rate Map from the Federal Emergency Management Agency, via a Letter of Final Determination, after September 30, 2008, and prior to the date of enactment of this section;
- (B) has subsequently applied for a Letter of Map Revision or Physical Map Revision with the Federal Emergency Management Agency; and
- (C) has received an unfavorable ruling on their request for a map revision.
- (b) MEMBERSHIP.—The Scientific Resolution Panel made available under subsection (a) shall consist of 5 members with expertise that relates to the creation and study of flood hazard maps and flood insurance. The Scientific Resolution Panel may include representatives from Federal agencies not involved in the mapping study in question and from other impartial experts. Employees of the Federal Emergency Management Agency may not serve on the Scientific Resolution Panel.
- (c) DETERMINATION.—
- (1) IN GENERAL.—Following deliberations, and not later than 90 days after its formation, the Scientific Resolution Panel shall issue a determination of resolution of the dispute. Such determination shall set forth recommendations for the base flood elevation determination or the designation of an area having special flood hazards that shall be reflected in the Flood Insurance Rate Maps.
- (2) BASIS.—The determination of the Scientific Resolution Panel shall be based on—
- (A) data previously provided to the Administrator by the community, and, in the case of a dispute submitted under subsection (a)(2), an owner or lessee of real property in the community; and
- (B) data provided by the Administrator.
- (3) NO ALTERNATIVE DETERMINATIONS PERMISSIBLE.—The Scientific Resolution Panel—
- (A) shall provide a determination of resolution of a dispute that—
- (i) is either in favor of the Administrator or in favor of the community on each distinct element of the dispute; or

(ii) in the case of a dispute submitted under subsection (a)(2), is in favor of the Administrator, in favor of the community, or in favor of the owner or lessee of real property in the community on each distinct element of the dispute; and

(B) may not offer as a resolution any other alternative determination.

(4) EFFECT OF DETERMINATION.—

(A) BINDING.—The recommendations of the Scientific Resolution Panel shall be binding on all appellants and not subject to further judicial review unless the Administrator determines that implementing the determination of the panel would—

(i) pose a significant threat due to failure to identify a substantial risk of special flood hazards; or

(ii) violate applicable law.

(B) WRITTEN JUSTIFICATION NOT TO ENFORCE.—If the Administrator elects not to implement the determination of the Scientific Resolution Panel pursuant to subparagraph (A), then not later than 60 days after the issuance of the determination, the Administrator shall issue a written justification explaining such election.

(C) APPEAL OF DETERMINATION NOT TO ENFORCE.—If the Administrator elects not to implement the determination of the Scientific Resolution Panel pursuant to subparagraph (A), the community may appeal the determination of the Administrator as provided for under section 1363(g).

(d) MAPS USED FOR INSURANCE AND MANDATORY PURCHASE REQUIREMENTS.—With respect to any community that has a dispute that is being considered by the Scientific Resolution Panel formed pursuant to this subsection, the Federal Emergency Management Agency shall ensure that for each such community that—

(1) the Flood Insurance Rate Map described in the most recently issued Letter of Final Determination shall be in force and effect with respect to such community; and

(2) flood insurance shall continue to be made available to the property owners and residents of the participating community.

NOTICE REQUIREMENTS

SEC. 1364. [42 U.S.C. 4104a] (a) NOTIFICATION OF SPECIAL FLOOD HAZARDS.—

(1) REGULATED LENDING INSTITUTIONS.—Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council) shall by regulation require regulated lending institutions, as a condition of making, increasing, extending, or renewing any loan secured by improved real estate or a mobile home that the regulated lending institution determines is located or is to be located in an area that has been identified by the Administrator under this title or the Flood Disaster Protection Act of 1973 as an area having special flood hazards, to notify the purchaser

or lessee (or obtain satisfactory assurances that the seller or lessor has notified the purchaser or lessee) and the servicer of the loan of such special flood hazards, in writing, a reasonable period in advance of the signing of the purchase agreement, lease, or other documents involved in the transaction. The regulations shall also require that the regulated lending institution retain a record of the receipt of the notices by the purchaser or lessee and the servicer.

(2) **FEDERAL AGENCY LENDERS.**—Each Federal agency lender shall by regulation require notification in the manner provided under paragraph (1) with respect to any loan that is made by the Federal agency lender and secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Administrator under this title or the Flood Disaster Protection Act of 1973 as an area having special flood hazards. Any regulations issued under this paragraph shall be consistent with and substantially identical to the regulations issued under paragraph (1).

(3) **CONTENTS OF NOTICE.**—Written notification required under this subsection shall include—

(A) a warning, in a form to be established by the Administrator, stating that the building on the improved real estate securing the loan is located, or the mobile home securing the loan is or is to be located, in an area having special flood hazards;

(B) a description of the flood insurance purchase requirements under section 102(b) of the Flood Disaster Protection Act of 1973;

(C) a statement that flood insurance coverage may be purchased under the national flood insurance program and is also available from private insurers, as required under section 102(b)(6) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b)(6)); and

(D) any other information that the Administrator considers necessary to carry out the purposes of the national flood insurance program.

(b) **NOTIFICATION OF CHANGE OF SERVICER.**—

(1) **LENDING INSTITUTIONS.**—Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council) shall by regulation require regulated lending institutions, in connection with the making, increasing, extending, renewing, selling, or transferring any loan described in subsection (a)(1), to notify the Administrator (or the designee of the Administrator) in writing during the term of the loan of the servicer of the loan. Such institutions shall also notify the Administrator (or such designee) of any change in the servicer of the loan, not later than 60 days after the effective date of such change. The regulations under this subsection shall provide that upon any change in the servicing of a loan, the duty to provide notification under this subsection shall transfer to the transferee servicer of the loan.

(2) **FEDERAL AGENCY LENDERS.**—Each Federal agency lender shall by regulation provide for notification in the manner

provided under paragraph (1) with respect to any loan described in subsection (a)(1) that is made by the Federal agency lender. Any regulations issued under this paragraph shall be consistent with and substantially identical to the regulations issued under paragraph (1) of this subsection.

(c) NOTIFICATION OF EXPIRATION OF INSURANCE.—The Administrator (or the designee of the Administrator) shall, not less than 45 days before the expiration of any contract for flood insurance under this title, issue notice of such expiration by first class mail to the owner of the property covered by the contract, the servicer of any loan secured by the property covered by the contract, and (if known to the Administrator) the owner of the loan.

STANDARD HAZARD DETERMINATION FORMS

SEC. 1365. [42 U.S.C. 4104b] (a) DEVELOPMENT.—The Administrator, in consultation with representatives of the mortgage and lending industry, the Federal entities for lending regulation, the Federal agency lenders, and any other appropriate individuals, shall develop a standard form for determining, in the case of a loan secured by improved real estate or a mobile home, whether the building or mobile home is located in an area identified by the Administrator as an area having special flood hazards and in which flood insurance under this title is available. The form shall be established by regulations issued not later than 270 days after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.³⁹

(b) DESIGN AND CONTENTS.—

(1) PURPOSE.—The form under subsection (a) shall be designed to facilitate compliance with the flood insurance purchase requirements of this title.

(2) CONTENTS.—The form shall require identification of the type of flood-risk zone in which the building or mobile home is located, the complete map and panel numbers for the improved real estate or property on which the mobile home is located, the community identification number and community participation status (for purposes of the national flood insurance program) of the community in which the improved real estate or such property is located, and the date of the map used for the determination, with respect to flood hazard information on file with the Administrator. If the building or mobile home is not located in an area having special flood hazards the form shall require a statement to such effect and shall indicate the complete map and panel numbers of the improved real estate or property on which the mobile home is located. If the complete map and panel numbers are not available because the building or mobile home is not located in a community that is participating in the national flood insurance program or because no map exists for the relevant area, the form shall require a statement to such effect. The form shall provide for inclusion or attachment of any relevant documents indicating revisions or amendments to maps.

³⁹The date of enactment was September 23, 1994.

(c) **REQUIRED USE.**—The Federal entities for lending regulation shall by regulation require the use of the form under this section by regulated lending institutions. Each Federal agency lender shall by regulation provide for the use of the form with respect to any loan made by such Federal agency lender. The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and the Government National Mortgage Association shall require the use of the form with respect to any loan purchased by such entities. A lender or other person may comply with the requirement under this subsection by using the form in a printed, computerized, or electronic manner.

(d) **GUARANTEES REGARDING INFORMATION.**—In providing information regarding special flood hazards on the form developed under this section, any lender (or other person required to use the form) who makes, increases, extends, or renews a loan secured by improved real estate or a mobile home may provide for the acquisition or determination of such information to be made by a person other than such lender (or other person), only to the extent such person guarantees the accuracy of the information.

(e) **RELIANCE ON PREVIOUS DETERMINATION.**—Any person increasing, extending, renewing, or purchasing a loan secured by improved real estate or a mobile home may rely on a previous determination of whether the building or mobile home is located in an area having special flood hazards (and shall not be liable for any error in such previous determination), if the previous determination was made not more than 7 years before the date of the transaction and the basis for the previous determination has been set forth on a form under this section, unless—

(1) map revisions or updates pursuant to section 1360(f) after such previous determination have resulted in the building or mobile home being located in an area having special flood hazards; or

(2) the person contacts the Administrator to determine when the most recent map revisions or updates affecting such property occurred and such revisions and updates have occurred after such previous determination.

(f) **EFFECTIVE DATE.**—The regulations under this section requiring use of the form established pursuant to this section shall be issued together with the regulations required under subsection (a) and shall take effect upon the expiration of the 180-day period beginning on such issuance.

MITIGATION ASSISTANCE

SEC. 1366. [42 U.S.C. 4104c] (a) **AUTHORITY.**—The Administrator shall carry out a program to provide financial assistance to States and communities, using amounts made available from the National Flood Mitigation Fund under section 1367, for planning and carrying out activities designed to reduce the risk of flood damage to structures covered under contracts for flood insurance under this title. Such financial assistance shall be made available—

(1) to States and communities in the form of grants under this section for carrying out mitigation activities;

(2) to States and communities in the form of grants under this section for carrying out mitigation activities that reduce flood damage to severe repetitive loss structures; and

(3) to property owners in the form of direct grants under this section for carrying out mitigation activities that reduce flood damage to individual structures for which 2 or more claim payments for losses have been made under flood insurance coverage under this title if the Administrator, after consultation with the State and community, determines that neither the State nor community in which such a structure is located has the capacity to manage such grants.

(b) **ELIGIBILITY FOR MITIGATION ASSISTANCE.**—To be eligible to receive financial assistance under this section for mitigation activities, a State or community shall develop, and have approved by the Administrator, a flood risk mitigation plan (in this section referred to as a “mitigation plan”), that describes the mitigation activities to be carried out with assistance provided under this section, is consistent with the criteria established by the Administrator under section 1361, provides for reduction of flood losses to structures for which contracts for flood insurance are available under this title, and may be included in a multihazard mitigation plan. The mitigation plan shall be consistent with a comprehensive strategy for mitigation activities for the area affected by the mitigation plan, that has been adopted by the State or community following a public hearing.

(c) **ELIGIBLE MITIGATION ACTIVITIES.**—

(1) **REQUIREMENT OF CONSISTENCY WITH APPROVED MITIGATION PLAN.**—Amounts provided under this section may be used only for mitigation activities that are consistent with mitigation plans that are approved by the Administrator and identified under paragraph (4). The Administrator shall provide assistance under this section to the extent amounts are available in the National Flood Mitigation Fund pursuant to appropriation Acts, subject only to the absence of approvable mitigation plans.

(2) **REQUIREMENTS OF TECHNICAL FEASIBILITY, COST EFFECTIVENESS, AND INTEREST OF NATIONAL FLOOD INSURANCE FUND.**—

(A) **IN GENERAL.**—The Administrator may approve only mitigation activities that the Administrator determines—

- (i) are technically feasible and cost-effective; or
- (ii) will eliminate future payments from the National Flood Insurance Fund for severe repetitive loss structures through an acquisition or relocation activity.

(B) **CONSIDERATIONS.**—In making a determination under subparagraph (A), the Administrator shall take into consideration recognized ancillary benefits.

(3) **ELIGIBLE ACTIVITIES.**—Eligible activities under a mitigation plan may include—

(A) demolition or relocation of any structure located on land that is along the shore of a lake or other body of water and is certified by an appropriate State or local land

use authority to be subject to imminent collapse or subsidence as a result of erosion or flooding;

(B) elevation, relocation, demolition, or floodproofing of structures (including public structures) located in areas having special flood hazards or other areas of flood risk;

(C) acquisition by States and communities of properties (including public properties) located in areas having special flood hazards or other areas of flood risk and properties substantially damaged by flood, for public use, as the Administrator determines is consistent with sound land management and use in such area;

(D) elevation, relocation, or floodproofing of utilities (including equipment that serves structures);

(E) minor physical mitigation efforts that do not duplicate the flood prevention activities of other Federal agencies and that lessen the frequency or severity of flooding and decrease predicted flood damages, which shall not include major flood control projects such as dikes, levees, seawalls, groins, and jetties unless the Administrator specifically determines in approving a mitigation plan that such activities are the most cost-effective mitigation activities for the National Flood Mitigation Fund;

(F) the development or update of mitigation plans by a State or community which meet the planning criteria established by the Administrator, except that the amount from grants under this section that may be used under this subparagraph may not exceed \$50,000 for any mitigation plan of a State or \$25,000 for any mitigation plan of a community;

(G) the provision of technical assistance by States to communities and individuals to conduct eligible mitigation activities;

(H) other activities that the Administrator considers appropriate and specifies in regulation;

(I) other mitigation activities not described in subparagraphs (A) through (G) or the regulations issued under subparagraph (H), that are described in the mitigation plan of a State or community; and

(J) without regard to the requirements under paragraphs (1) and (2) of subsection (d), and if the State applied for and was awarded at least \$1,000,000 in grants available under this section in the prior fiscal year, technical assistance to communities to identify eligible activities, to develop grant applications, and to implement grants awarded under this section, not to exceed \$50,000 to any 1 State in any fiscal year.

(4) ELIGIBILITY OF DEMOLITION AND REBUILDING OF PROPERTIES.—The Administrator shall consider as an eligible activity the demolition and rebuilding of properties to at least base flood elevation or greater, if required by the Administrator or if required by any State regulation or local ordinance, and in accordance with criteria established by the Administrator.

(d) MATCHING REQUIREMENT.—The Administrator may provide grants for eligible mitigation activities as follows:

(1) SEVERE REPETITIVE LOSS STRUCTURES.—In the case of mitigation activities to severe repetitive loss structures, in an amount up to—

(A) 100 percent of all eligible costs, if the activities are approved under subsection (c)(2)(A)(i); or

(A)⁴⁰ the expected savings to the National Flood Insurance Fund from expected avoided damages through acquisition or relocation activities, if the activities are approved under subsection (c)(2)(A)(ii).

(2) REPETITIVE LOSS STRUCTURES.—In the case of mitigation activities to repetitive loss structures, in an amount up to 90 percent of all eligible costs.

(3) OTHER MITIGATION ACTIVITIES.—In the case of all other mitigation activities, in an amount up to 75 percent of all eligible costs

(e) RECAPTURE.—

(1) NONCOMPLIANCE WITH PLAN.—If the Administrator determines that a State or community that has received mitigation assistance under this section has not carried out the mitigation activities as set forth in the mitigation plan, the Administrator shall recapture any unexpended amounts and deposit the amounts in the National Flood Mitigation Fund under section 1367.

(2) FAILURE TO PROVIDE MATCHING FUNDS.—If the Administrator determines that a State or community that has received mitigation assistance under this section has not provided matching funds in the amount required under subsection (d), the Administrator shall recapture any unexpended amounts of mitigation assistance exceeding the amount of such matching funds actually provided and deposit the amounts in the National Flood Mitigation Fund under section 1367.

(f) REPORTS.—Not later than 1 year after the date of enactment of the Biggert-Waters Flood Insurance Reform Act of 2012⁴¹ and biennially thereafter, the Administrator shall submit a report to the Congress describing the status of mitigation activities carried out with assistance provided under this section.

(g) FAILURE TO MAKE GRANT AWARD WITHIN 5 YEARS.—For any application for a grant under this section for which the Administrator fails to make a grant award within 5 years of the date of the application, the grant application shall be considered to be denied and any funding amounts allocated for such grant applications shall remain in the National Flood Mitigation Fund under section 1367 of this title and shall be made available for grants under this section.

(h) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) COMMUNITY.—The term “community” means—

(A) a political subdivision that—

(i) has zoning and building code jurisdiction over a particular area having special flood hazards; and

⁴⁰ So in law. Probably should be redesignated as “(B)”.

⁴¹ The date of enactment was July 6, 2012.

- (ii) is participating in the national flood insurance program; or
 - (B) a political subdivision of a State, or other authority, that is designated by political subdivisions, all of which meet the requirements of subparagraph (A), to administer grants for mitigation activities for such political subdivisions.
- (2) REPETITIVE LOSS STRUCTURE.—The term “repetitive loss structure” has the meaning given such term in section 1370.
- (3) SEVERE REPETITIVE LOSS STRUCTURE.—The term “severe repetitive loss structure” means a structure that—
- (A) is covered under a contract for flood insurance made available under this title; and
 - (B) has incurred flood-related damage—
 - (i) for which 4 or more separate claims payments have been made under flood insurance coverage under this title, with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or
 - (ii) for which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the value of the insured structure.

NATIONAL FLOOD MITIGATION FUND

SEC. 1367. [42 U.S.C. 4104d] (a) ESTABLISHMENT AND AVAILABILITY.—The Administrator shall establish in the Treasury of the United States a fund to be known as the National Flood Mitigation Fund, which shall be credited with amounts described in subsection (b) and shall be available, to the extent provided in appropriation Acts, for providing assistance under section 1366.

(b) CREDITS.—The National Flood Mitigation Fund shall be credited with—

(1) in each fiscal year, amounts from the National Flood Insurance Fund not to exceed \$90,000,000 and to remain available until expended, of which—

(A) not more than \$40,000,000 shall be available pursuant to subsection (a) of this section for assistance described in section 1366(a)(1);

(B) not more than \$40,000,000 shall be available pursuant to subsection (a) of this section for assistance described in section 1366(a)(2); and

(C) not more than \$10,000,000 shall be available pursuant to subsection (a) of this section for assistance described in section 1366(a)(3);

(2) any penalties collected under section 102(f) of the Flood Disaster Protection Act of 1973; and

(3) any amounts recaptured under section 1366(e).

(c) ADMINISTRATIVE EXPENSES.—The Administrator may use not more than 5 percent of amounts made available under subsection (b) to cover salaries, expenses, and other administrative costs incurred by the Administrator to make grants and provide assistance under section 1366.

(d) PROHIBITION ON OFFSETTING COLLECTIONS.—Notwithstanding any other provision of this title, amounts made available pursuant to this section shall not be subject to offsetting collections through premium rates for flood insurance coverage under this title.

(e) CONTINUED AVAILABILITY AND REALLOCATION.—Any amounts made available pursuant to subparagraph (A), (B), or (C) of subsection (b)(1) that are not used in any fiscal year shall continue to be available for the purposes specified in the subparagraph of subsection (b)(1) pursuant to which such amounts were made available, unless the Administrator determines that reallocation of such unused amounts to meet demonstrated need for other mitigation activities under section 1366 is in the best interest of the National Flood Insurance Fund.

(f) INVESTMENT.—If the Administrator determines that the amounts in the National Flood Mitigation Fund are in excess of amounts needed under subsection (a), the Administrator may invest any excess amounts the Administrator determines advisable in interest-bearing obligations issued or guaranteed by the United States.

(g) REPORT.—The Administrator shall submit a report to the Congress not later than the expiration of the 1-year period beginning on the date of enactment of this Act⁴² and not less than once during each successive 2-year period thereafter. The report shall describe the status of the Fund and any activities carried out with amounts from the Fund.

CHAPTER IV—APPROPRIATIONS AND MISCELLANEOUS PROVISIONS

DEFINITIONS

SEC. 1370. [42 U.S.C. 4121] (a) As used in this title—

(1) the term “flood” shall have such meaning as may be prescribed in regulations of the Administrator, and may include inundation from rising waters or from the overflow of streams, rivers, or other bodies of water, or from tidal surges, abnormally high tidal water, tidal waves, tsunamis, hurricanes, or other severe storms or deluge;

(2) the terms “United States” (when used in a geographic sense) and “State” includes the several States, the District of Columbia, the territories and possessions, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands;

(3) the terms “insurance company”, “other insurer” and “insurance agent or broker” include any organization or person that is authorized to engage in the business of insurance under the laws of any State, subject to the reporting requirements of the Securities Exchange Act of 1934 pursuant to section 13(a) or 15(d) of such Act (15 U.S.C. 78m(a) and 78o(d)), or authorized by the Administrator to assume reinsurance on risks insured by the flood insurance program;

⁴² Probably intended to refer to the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325, approved September 23, 1994. Section 554(a) of such Act amended this chapter by inserting this section.

(4) the term “insurance adjustment organization” includes any organizations and persons engaged in the business of adjusting loss claims arising under insurance policies issued by any insurance company or other insurer;

(5) the term “person” includes any individual or group of individuals, corporation, partnership, association, or any other organized group of persons, including State and local governments and agencies thereof;

(6) the term “Administrator” means the Administrator of the Federal Emergency Management Agency;

(7) the term “repetitive loss structure” means a structure covered by a contract for flood insurance that—

(A) has incurred flood-related damage on 2 occasions, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event; and

(B) at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.⁴³

(8) the term “Federal agency lender” means a Federal agency that makes direct loans secured by improved real estate or a mobile home, to the extent such agency acts in such capacity;

(9) the term “Federal entity for lending regulation” means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the National Credit Union Administration, and the Farm Credit Administration, and with respect to a particular regulated lending institution means the entity primarily responsible for the supervision of the institution;

(10) the term “improved real estate” means real estate upon which a building is located;

(11) the term “lender” means a regulated lending institution or Federal agency lender;

(12) the term “natural and beneficial floodplain functions” means—

(A) the functions associated with the natural or relatively undisturbed floodplain that (i) moderate flooding, retain flood waters, reduce erosion and sedimentation, and mitigate the effect of waves and storm surge from storms, and (ii) reduce flood related damage; and

(B) ancillary beneficial functions, including maintenance of water quality and recharge of ground water, that reduce flood related damage;

(13) the term “regulated lending institution” means any bank, savings and loan association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation;

(14) the term “servicer” means the person responsible for receiving any scheduled periodic payments from a borrower pursuant to the terms of a loan, including amounts for taxes,

⁴³ So in law.

insurance premiums, and other charges with respect to the property securing the loan, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan; and

(15) the term “substantially damaged structure” means a structure covered by a contract for flood insurance that has incurred damage for which the cost of repair exceeds an amount specified in any regulation promulgated by the Administrator, or by a community ordinance, whichever is lower.

(b) The term “flood” shall also include inundation from mudslides which are proximately caused by accumulations of water on or under the ground; and all of the provisions of this title shall apply with respect to such mudslides in the same manner and to the same extent as with respect to floods described in subsection (a)(1), subject to and in accordance with such regulations, modifying the provisions of this title (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the Administrator may prescribe to achieve (with respect to such mudslides) the purposes of this title and the objectives of the program.

(c) The term “flood” shall also include the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels, and all of the provisions of this title shall apply with respect to such collapse or subsidence in the same manner and to the same extent as with respect to floods described in subsection (a)(1), subject to and in accordance with such regulations, modifying the provisions of this title (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the Administrator may prescribe to achieve (with respect to such collapse or subsidence) the purposes of this title and the objectives of the program.

STUDIES OF OTHER NATURAL DISASTERS

SEC. 1371. [42 U.S.C. 4122] (a) The Administrator is authorized to undertake such studies as may be necessary for the purpose of determining the extent to which insurance protection against earthquakes or any other natural disaster perils, other than flood, is not available from public or private sources, and the feasibility of such insurance protection being made available.

(b) Studies under this section shall be carried out, to the maximum extent practicable, with the cooperation of other Federal departments and agencies and State and local agencies, and the Administrator is authorized to consult with, receive information from, and enter into any necessary agreements or other arrangements with such other Federal departments and agencies (on a reimbursement basis) and such State and local agencies.

PAYMENTS

SEC. 1372. [42 U.S.C. 4123] Any payments under this title may be made (after necessary adjustment on account of previously

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made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Administrator may determine.

GOVERNMENT CORPORATION CONTROL ACT

SEC. 1373. [42 U.S.C. 4124] The provisions of chapter 91 of title 31, United States Code, shall apply to the program authorized under this title to the same extent as they apply to wholly owned Government corporations.

FINALITY OF CERTAIN TRANSACTIONS

SEC. 1374. [42 U.S.C. 4125] Notwithstanding the provisions of any other law—

(1) Any financial transaction authorized to be carried out under this title, and

(2) any payment authorized to be made or to be received in connection with any such financial transaction, shall be final and conclusive upon all officers of the Government.

ADMINISTRATIVE EXPENSES

SEC. 1375. [42 U.S.C. 4126] Any administrative expenses which may be sustained by the Federal Government in carrying out the flood insurance and floodplain management programs authorized under this title may be paid with amounts from the National Flood Insurance Fund (as provided under section 1310(a)(4)), subject to approval in appropriations Acts.

APPROPRIATIONS

SEC. 1376. [42 U.S.C. 4127] (a) There are hereby authorized to be appropriated such sums as may from time to time be necessary to carry out this title, including sums—

(1) to cover administrative expenses authorized under section 1375;

(2) to reimburse the National Flood Insurance Fund established under section 1310 for—

(A) premium equalization payments under section 1334 which have been made from such fund; and

(B) reinsurance claims paid under the excess loss reinsurance coverage provided under section 1335; and

(3) to make such other payments as may be necessary to carry out the purposes of this title.

(b) All such funds shall be available without fiscal year limitation.

(c) There are authorized to be appropriated such sums as may be necessary through the date specified in section 1319, for studies under this title.

EFFECTIVE DATE

SEC. 1377. [42 U.S.C. 4001 note] This title shall take effect one hundred and twenty days following the date of its enact-

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ment,⁴⁴ except that the Administrator on the basis of a finding that conditions exist necessitating the prescribing of an additional period, may prescribe a later effective date which in no event shall be more than one hundred and eighty days following such date of enactment.

TITLE XIV—INTERSTATE LAND SALES

SHORT TITLE

SEC. 1401. [15 U.S.C. 1701 note] This title may be cited as the “Interstate Land Sales Full Disclosure Act.”

DEFINITIONS

SEC. 1402. [15 U.S.C. 1701] For the purposes of this title, the term—

(1) “Director” means the Director of the Bureau of Consumer Financial Protection;

(2) “person” means an individual, or an unincorporated organization, partnership, association, corporation, trust, or estate;

(3) “subdivision” means any land which is located in any State or in a foreign country and is divided or is proposed to be divided into lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan;

(4) “common promotional plan” means a plan, undertaken by a single developer or a group of developers acting in concert, to offer lots for sale or lease; where such land is offered for sale by such a developer or group of developers acting in concert, and such land is contiguous or is known, designated, or advertised as a common unit or by a common name, such land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan;

(5) “developer” means any person who, directly or indirectly, sells or leases, or offers to sell or lease, or advertises for sale or lease any lots in a subdivision;

(6) “agent” means any person who represents, or acts for or on behalf of, a developer in selling or leasing, or offering to sell or lease, any lot or lots in a subdivision; but shall not include an attorney at law whose representation or another person consists solely of rendering legal services;

(7) “blanket encumbrance” means a trust deed, mortgage, judgment, or any other lien or encumbrance, including an option or contract to sell or a trust agreement, affecting a subdivision or affecting more than one lot offered within a subdivision, except that such term shall not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority;

(8) “interstate commerce” means trade or commerce among the several states or between any foreign country and any state;

⁴⁴The date of enactment was August 1, 1968.

(9) "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

(10) "purchaser" means an actual or prospective purchaser or lessee of any lot in a subdivision;

(11) "offer" includes any inducement, solicitation, or attempt to encourage a person to acquire a lot in a subdivision; and

(12) "Bureau" means the Bureau of Consumer Financial Protection.

EXEMPTIONS

SEC. 1403. [15 U.S.C. 1702] (a) Unless the method of disposition is adopted for the purpose of evasion of this title, the provisions of this title shall not apply to—

(1) the sale or lease of lots in a subdivision containing less than twenty-five lots;

(2) the sale or lease of any improved land on which there is a residential, commercial, condominium, or industrial building, or the sale or lease of land under a contract obligating the seller or lessor to erect such a building thereon within a period of two years;

(3) the sale of evidences of indebtedness secured by a mortgage or deed of trust on real estate;

(4) the sale of securities issued by a real estate investment trust;

(5) the sale or lease of real estate by any government or government agency;

(6) the sale or lease of cemetery lots;

(7) the sale or lease of lots to any person who acquires such lots for the purpose of engaging in the business of constructing residential, commercial, or industrial buildings or for the purpose of resale or lease of such lots to persons engaged in such business; or

(8) the sale or lease of real estate which is zoned by the appropriate governmental authority for industrial or commercial development or which is restricted to such use by a declaration of covenants, conditions, and restrictions which has been recorded in the official records of the city or county in which such real estate is located, when—

(A) local authorities have approved access from such real estate to a public street or highway;

(B) the purchaser or lessee of such real estate is a duly organized corporation, partnership, trust, or business entity engaged in commercial or industrial business;

(C) the purchaser or lessee of such real estate is represented in the transaction of sale or lease by a representative of its own selection;

(D) the purchaser or lessee of such real estate affirms in writing to the seller or lessor that it either (i) is purchasing or leasing such real estate substantially for its own use, or (ii) has a binding commitment to sell, lease, or sublease such real estate to an entity which meets the

requirements of subparagraph (B), is engaged in commercial or industrial business, and is not affiliated with the seller, lessor, or agent thereof; and

(E) a policy of title insurance or a title opinion is issued in connection with the transaction showing that title to the real estate purchased or leased is vested in the seller or lessor, subject only to such exceptions as may be approved in writing by such purchaser or the lessee prior to recordation of the instrument of conveyance or execution of the lease, but (i) nothing herein shall be construed as requiring the recordation of a lease, and (ii) any purchaser or lessee may waive, in writing in a separate document, the requirement of this subparagraph that a policy of title insurance or title opinion be issued in connection with the transaction.

(b) Unless the method of disposition is adopted for the purpose of evasion of this title, the provisions requiring registration and disclosure (as specified in section 1404(a)(1) and sections 1405 through 1408) shall not apply to—

(1) the sale or lease of lots in a subdivision containing fewer than one hundred lots which are not exempt under subsection (a);

(2) the sale or lease of lots in a subdivision if, within the twelve-month period commencing on the date of the first sale or lease of a lot in such subdivision after the effective date of this subsection or on such other date within that twelve-month period as the Director may prescribe, not more than twelve lots are sold or leased, and the sale or lease of the first twelve lots in such subdivision in any subsequent twelve-month period, if not more than twelve lots have been sold or leased in any preceding twelve-month period after the effective date of this subsection;

(3) the sale or lease of lots in a subdivision if each non-contiguous part of such subdivision contains not more than twenty lots, and if the purchaser or lessee (or spouse thereof) has made a personal, on-the-lot inspection of the lot purchased or leased, prior to signing of the contract or agreement to purchase or lease;

(4) the sale or lease of lots in a subdivision in which each of the lots is at least twenty acres (inclusive of easements for ingress and egress or public utilities);

(5) the sale or lease of a lot which is located within a municipality or county where a unit of local government specifies minimum standards for the development of subdivision lots taking place within its boundaries, when—

(A)(i) the subdivision meets all local codes and standards, and (ii) each lot is either zoned for single family residences or, in the absence of a zoning ordinance, is limited exclusively to single family residences;

(B)(i) the lot is situated on a paved street or highway which has been built to standards applicable to streets and highways maintained by the unit of local government in which the subdivision is located and is acceptable to such unit, or, where such street or highway is not complete, a

bond or other surety acceptable to the municipality or county in the full amount of the cost of completing such street or highway has been posted to assure completion to such standards, and (ii) the unit of local government or a homeowners association has accepted or is obligated to accept the responsibility of maintaining such street or highway, except that, in any case in which a homeowners association has accepted or is obligated to accept such responsibility, a good faith written estimate of the cost of carrying out such responsibility over the first ten years of ownership or lease is provided to the purchaser or lessee prior to the signing of the contract or agreement to purchase or lease;

(C) at the time of closing, potable water, sanitary sewage disposal, and electricity have been extended to the lot or the unit of local government is obligated to install such facilities within one hundred and eighty days, and, for subdivisions which do not have a central water or sewage disposal system, rather than installation of water or sewer facilities, there must be assurances that an adequate potable water supply is available year-round and that the lot is approved for the installation of a septic tank;

(D) the contract of sale requires delivery of a warranty deed (or, where such deed is not commonly used in the jurisdiction where the lot is located, a deed or grant which warrants that the grantor has not conveyed the lot to another person and that the lot is free from encumbrances made by the grantor or any other person claiming by, through, or under him) to the purchaser within one hundred and eighty days after the signing of the sales contract;

(E) at the time of closing, a title insurance binder or a title opinion reflecting the condition of the title shall be in existence and issued or presented to the purchaser or lessee showing that, subject only to such exceptions as may be approved in writing by the purchaser or lessee at the time of closing, marketable title to the lot is vested in the seller or lessor;

(F) the purchaser or lessee (or spouse thereof) has made a personal, on-the-lot inspection of the lot purchased or leased, prior to signing of the contract or agreement to purchase or lease; and

(G) there are no offers, by direct mail or telephone solicitation, of gifts, trips, dinners, or other such promotional techniques to induce prospective purchasers or lessees to visit the subdivision or to purchase or lease a lot;

(6) the sale or lease of a lot, if a mobile home is to be erected or placed thereon as a residence, where the lot is sold as a homesite by one party and the home by another, under contracts that obligate such sellers to perform, contingent upon the other seller carrying out its obligations so that a completed mobile home will be erected or placed on the completed homesite within a period of two years, and provide for all funds received by the sellers to be deposited in escrow accounts (con-

trolled by parties independent of the sellers) until the transactions are completed, and further provide that such funds shall be released to the buyer on demand without prejudice if the land with the mobile home erected or placed thereon is not conveyed within such two-year period. Such homesite must conform to all local codes and standards for mobile home subdivisions, if any, must provide potable water, sanitary sewage disposal, electricity, access by roads, the purchaser must receive marketable title to the lot, and where common facilities are to be provided, they must be completed or fully funded;

(7)(A) the sale or lease of real estate by a developer who is engaged in a sales operation which is intrastate in nature. For purposes of this exemption, a lot may be sold only if—

(i) the lot is free and clear of all liens, encumbrances, and adverse claims;

(ii) the purchaser or lessee (or spouse thereof) has made a personal on-the-lot inspection of the lot to be purchased or leased;

(iii) each purchase or lease agreement contains—

(I) a clear and specific statement describing a good faith estimate of the year of completion of, and the party responsible for, providing and maintaining the roads, water facilities, sewer facilities and any existing or promised amenities; and

(II) a nonwaivable provision specifying that the contract or agreement may be revoked at the option of the purchaser or lessee until midnight of the seventh day following the signing of such contract or agreement or until such later time as may be required pursuant to applicable State laws; and

(iv) the purchaser or lessee has, prior to the time the contract or lease is entered into, acknowledged in writing the receipt of a written statement by the developer containing good faith estimates of the cost of providing electric, water, sewage, gas, and telephone service to such a lot.

(B) As used in subparagraph (A)(i) of this paragraph, the terms “liens”, “encumbrances”, and “adverse claims” do not include United States land patents and similar Federal grants or reservations, property reservations which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed, taxes and assessments imposed by a State, by any other public body having authority to assess and tax property, or by a property owners’ association, which, under applicable State or local law, constitute liens on the property before they are due and payable or beneficial property restrictions which would be enforceable by other lot owners or lessees in the subdivision, if—

(i) the developer, prior to the time the contract of sale or lease is entered into, has furnished each purchaser or lessee with a statement setting forth in descriptive and concise terms all such liens, reservations, taxes, assess-

ments and restrictions which are applicable to the lot to be purchased or leased; and

(ii) receipt of such statement has been acknowledged in writing by the purchaser or lessee.

(C) For the purpose of this paragraph, a sales operation is "intrastate in nature" if the developer is subject to the laws of the State in which the land is located, and each lot in the subdivision, other than those which are exempt under section 1403(a), (b)(6), or (b)(8), is sold or leased to residents of the State in which the land is located;

(8) the sale or lease of a lot in a subdivision containing fewer than three hundred lots if—

(A) the principal residence of the purchaser or lessee is within the same standard metropolitan statistical area, as defined by the Office of Management and Budget, as the lot purchased or leased;

(B) the lot is free and clear of liens (such as mortgages, deeds of trust, tax liens, mechanics liens, or judgments) at the time of the signing of the contract or agreement and until a deed is delivered to the purchaser or the lease expires. As used in this subparagraph, the term "liens" does not include (i) United States land patents and similar Federal grants or reservations, (ii) property reservations which lands developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed, (iii) taxes and assessments imposed by a State, by any other public body having authority to assess and tax property, or by a property owners' association, which, under applicable State or local law, constitute liens on the property before they are due and payable or beneficial property restrictions which would be enforceable by other lot owners or lessees in the subdivision, or (iv) other interests described in regulations prescribed by the Director;

(C) the purchaser or lessee (or spouse thereof) has made a personal on-the-lot inspection of the lot to be purchased or leased;

(D) each purchase or lease agreement contains (i) a clear and specific statement describing a good faith estimate of the year of completion of and the party responsible for providing and maintaining the roads, water facilities sewer facilities and any existing or promised amenities; and (ii) a non waivable provision specifying that the contract or agreement may be revoked at the option of the purchaser or lessee until midnight of the seventh day following the signing of such contract or agreement or until such later time as may be required pursuant to applicable State laws;

(E) the purchaser or lessee has, prior to the time the contract or lease is entered into, acknowledged in writing receipt of a written statement by the developer setting forth (i) in descriptive and concise terms all liens, reservations, taxes, assessments, beneficial property restrictions which would be enforceable by other lot owners or lessees

in the subdivision, and adverse claims which are applicable to the lot to be purchased or leased, and (ii) good faith estimates of the cost of providing electric, water, sewer, gas, and telephone service to such lot;

(F) the developer executes and supplies to the purchaser a written instrument designating a person within the State of residence of the purchaser as his agent for service of process and acknowledging that the developer submits to the legal jurisdiction of the State in which the purchaser or lessee resides; and

(G) the developer executes a written affirmation to the effect that he has complied with the provisions of this paragraph, such affirmation to be given on a form provided by the Director, which shall include the following: the name and address of the developer; the name and address of the purchaser or lessee; a legal description of the lot; and affirmation that the provisions of this paragraph have been complied with; a statement that the developer submits to the jurisdiction of this title with regard to the sale of lease; and the signature of the developer; or

(9) the sale or lease of a condominium unit that is not exempt under subsection (a).

(c) The Director may from time to time, pursuant to rules and regulations issued by him, exempt from any of the provisions of this title any subdivision or any lots in a subdivision, if he finds that the enforcement of this title with respect to such subdivision or lots is not necessary in the public interest and for the protection of purchasers by reason of the small amount involved or the limited character of the public offering.

(d) For purposes of subsection (b), the term “condominium unit” means a unit of residential or commercial property to be designated for separate ownership pursuant to a condominium plan or declaration provided that upon conveyance—

(1) the owner of such unit will have sole ownership of the unit and an undivided interest in the common elements appurtenant to the unit; and

(2) the unit will be an improved lot.

REQUIREMENTS RELATING TO THE SALE OR LEASE OF LOTS

SEC. 1404. [15 U.S.C. 1703] (a) It shall be unlawful for any developer or agent, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce, or of the mails—

(1) with respect to the sale or lease of any lot not exempt under section 1403—

(A) to sell or lease any lot unless a statement of record with respect to such lot is in effect in accordance with section 1407;

(B) to sell or lease any lot unless a printed property report, meeting the requirements of section 1408, has been furnished to the purchaser or lessee in advance of the signing of any contract or agreement by such purchaser of lessee;

- (C) to sell or lease any lot where any part of the statement of record or the property report contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein pursuant to sections 1405 through 1408 of this title or any regulations thereunder; or
- (D) to display or deliver to prospective purchasers or lessees advertising and promotional material which is inconsistent with information required to be disclosed in the property report; or
- (2) with respect to the sale or lease, or offer to sell or lease, any lot not exempt under section 1403(a)—
- (A) to employ any device, scheme, or artifice to defraud;
- (B) to obtain money or property by means of any untrue statement of a material fact, or any omission to state a material fact necessary in order to make the statements made (in light of the circumstances in which they were made and within the context of the overall offer and sale or lease) not misleading, with respect to any information pertinent to the lot or subdivision;
- (C) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser; or
- (D) to represent that roads, sewers, water, gas, or electric service, or recreational amenities will be provided or completed by the developer without stipulating in the contract of sale or lease that such services or amenities will be provided or completed.
- (b) Any contract or agreement for the sale or lease of a lot not exempt under section 1403 may be revoked at the option of the purchaser or lessee until midnight of the seventh day following the signing of such contract or agreement or until such later time as may be required pursuant to applicable State laws, and such a contract or agreement shall clearly provide this right.
- (c) In the case of any contract or agreement for the sale or lease of a lot for which a property report is required by this title and the property report has not been given to the purchaser or lessee in advance or his or her signing such contract or agreement, such contract or agreement may be revoked at the option of the purchaser or lessee within two years from the date of such signing, and such contract or agreement shall clearly provide this right.
- (d) Any contract or agreement which is for the sale or lease of a lot not exempt under section 1403 and which does not provide—
- (1) a description of the lot which makes such lot clearly identifiable and which is in a form acceptable for recording by the appropriate public official responsible for maintaining land records in the jurisdiction in which the lot is located;
- (2) that, in the event of a default or breach of the contract or agreement by the purchaser or lessee, the seller or lessor (or successor thereof) will provide the purchaser or lessee with written notice of such default or breach and of the opportunity, which shall be given such purchaser or lessee, to remedy such

default or breach within twenty days after the date of the receipt of such notice; and

(3) that, if the purchaser or lessee loses rights and interest in the lot as a result of a default or breach of the contract or agreement which occurs after the purchaser or lessee has paid 15 per centum of the purchase price of the lot, excluding any interest owed under the contract or agreement, the seller or lessor (or successor thereof) shall refund to such a purchaser or lessee any amount which remains after subtracting (A) 15 per centum of the purchase price of the lot, excluding any interest owed under the contract or agreement, or the amount of damages incurred by the seller or lessor (or successor thereof) as a result of such breach, whichever is greater, from (B) the amount paid by the purchaser or lessee with respect to the purchase price of the lot, excluding any interest paid under the contract or agreement,

may be revoked at the option of the purchaser or lessee for two years from the date of the signing of such contract or agreement. This subsection shall not apply to the sale of a lot for which, within one hundred and eighty days after the signing of the sales contract, the purchaser receives a warranty deed (or, where such deed is not commonly used in the jurisdiction where the lot is located, a deed or grant that warrants at least that the grantor has not conveyed the lot to another person and that the lot is free from encumbrances made by the grantor or any other person claiming by, through, or under him or her).

(e) If a contract or agreement is revoked pursuant to subsection (b), (c), or (d), if the purchaser or lessee tenders to the seller or lessor (or successor thereof) an instrument conveying his or her rights and interests in the lot, and if the rights and interests and the lot are in a condition which is substantially similar to the condition in which they were conveyed or purported to be conveyed to the purchaser or lessee, such purchaser or lessee shall be entitled to all money paid by him or her under such contract or agreement.

REGISTRATION OF SUBDIVISIONS

SEC. 1405. [15 U.S.C. 1704] (a) A subdivision may be registered by filing with the Director a statement of record, meeting the requirements of this title and such rules and regulations as may be prescribed by the Director in furtherance of the provisions of this title. A statement of record shall be deemed effective only as to the lots specified therein.

(b) At the time of filing a statement of record, or any amendment thereto, the developer shall pay to the Director a fee, not in excess of \$1,000, in accordance with a schedule to be fixed by the regulations of the Director, which fees may be used by the Director to cover all or part of the cost of rendering services under this title, and such expenses as are paid from such fees shall be considered non-administrative.

(c) The filing with the Director of a statement of record, or of an amendment thereto, shall be deemed to have taken place upon the receipt thereof, accompanied by payment of the fee required by subsection (b).

(d) The information contained in or filed with any statement of record shall be made available to the public under such regulations as the Director may prescribe and copies thereof shall be furnished to every applicant at such reasonable charge as the Director may prescribe.

INFORMATION REQUIRED IN STATEMENT OF RECORD

SEC. 1406. [15 U.S.C. 1705] The statement of record shall contain the information and be accompanied by the documents specified hereinafter in this section—

(1) the name and address of each person having an interest in the lots in the subdivision to be covered by the statement of record and the extent of such interest;

(2) a legal description of, and a statement of the total area included in, the subdivision and a statement of the topography thereof, together with a map showing the division proposed and the dimensions of the lots to be covered by the statement of record and their relation to existing streets and roads;

(3) a statement of the condition of the title to the land comprising the subdivision, including all encumbrances and deed restrictions and covenants applicable thereto;

(4) a statement of the general terms and conditions, including the range of selling prices or rents at which it is proposed to dispose of the lots in the subdivision;

(5) a statement of the present condition of access to the subdivision, the existence of any unusual conditions relating to noise or safety which affect the subdivision and are known to the developer, the availability of sewage disposal facilities and other public utilities (including water, electricity, gas and telephone facilities) in the subdivision, the proximity in miles to the subdivision to nearby municipalities, and the nature of any improvements to be installed by the developer and his estimated schedule for completion;

(6) in the case of any subdivision or portion thereof against which there exists a blanket encumbrance, a statement of the consequences for an individual purchaser of a failure, by the person or persons bound, to fulfill obligations under the instrument or instruments creating such encumbrance and the steps, if any, taken to protect the purchaser in such eventuality;

(7)(A) copy of its articles of incorporation, with all amendments thereto, if the developer is a corporation; (B) copies of all instruments by which the trust is created or declared, if the developer is a trust; (C) copies of its articles of partnership or association and all other papers pertaining to its organization, if the developer is a partnership, unincorporated association, joint stock company, or any other form of organization; and (D) if the purported holder of legal title is a person other than developer, copies of the above documents for such person;

(8) copies of the deed or other instrument establishing title to the subdivision in the developer or other person and copies of any instrument creating a lien or encumbrance upon the title of developer or other person or copies of the opinion or opinions of counsel in respect to the title to the subdivision in

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the developer or other person or copies of the title insurance policy guaranteeing such title;

(9) copies of all forms of conveyance to be used in selling or leasing lots to purchasers;

(10) copies of instruments creating easements or other restrictions;

(11) such certified and uncertified financial statements of the developer as the Director may require; and

(12) such other information and such other documents and certifications as the Director may require as being reasonably necessary or appropriate for the protection of purchasers.

TAKING EFFECT OF STATEMENTS OF RECORD AND AMENDMENTS
THERE TO

SEC. 1407. [15 U.S.C. 1706] (a) Except as hereinafter provided, the effective date of a statement of record, or any amendment thereto, shall be the thirtieth day after the filing thereof or such earlier date as the Director may determine, having due regard to the public interest and the protection of purchaser. If any amendment to any such statement is filed prior to the effective date of the statement, the statement shall be deemed to have been filed when such amendment was filed; except that such an amendment filed with the consent of the Secretary, or filed pursuant to an order of the Director, shall be treated as being filed as of the date of the filing of the statement of record. When a developer records additional lands to be offered for disposition, he may consolidate the subsequent statement of record with any earlier recording offering subdivided land for disposition under the same promotional plan. At the time of consolidation the developer shall include in the consolidated statement of record any material changes in the information contained in the earlier statement.

(b) If it appears to the Director that a statement of record, or any amendment thereto, is on its face incomplete or inaccurate in any material respect, the Director shall so advise the developer within a reasonable time after the filing of the statement or the amendment, but prior to the date the statement or amendment would otherwise be effective. Such notification shall serve to suspend the effective date of the statement or the amendment until thirty days after the developer files such additional information as the Director shall require. Any developer, upon receipt of such notice, may request a hearing, and such hearing shall be held within twenty days of receipt of such request by the Director.

(c) If, at any time subsequent to the effective date of a statement or record, a change shall occur affecting any material fact required to be contained in the statement, the developer shall promptly file an amendment thereto. Upon receipt of any such amendment, the Director may, if he determines such action to be necessary or appropriate in the public interest or for the protection of purchasers, suspend the statement of record until the amendment becomes effective.

(d) If it appears to the Director at any time that a statement of record, which is in effect, includes any untrue statement of a material fact or omits to state any material fact required to be stated

therein or necessary to make the statements therein not misleading, the Director may, after notice, and after opportunity for hearing (at a time fixed by the Director) within fifteen days after such notice, issue an order suspending the statement of record. When such statement has been amended in accordance with such order, the Director shall so declare and thereupon the order shall cease to be effective.

(e) The Director is hereby empowered to make an examination in any case to determine whether an order should issue under subsection (d). In making such examination, the Director or anyone designated by him shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the developer, any agents, or any other person, in respect of any matter relevant to the examination. If the developer or any agents shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of an order suspending the statement of record.

(f) Any notice required under this section shall be sent to or served on the developer or his authorized agent.

INFORMATION REQUIRED IN PROPERTY REPORT

SEC. 1408. [15 U.S.C. 1707] (a) A property report relating to the lots in a subdivision shall contain such of the information contained in the statement of record, and any amendments thereto, as the Director may deem necessary, but need not include the documents referred to in paragraphs (7) to (11), inclusive, of section 1406. A property report shall also contain such other information as the Director may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of purchasers.

(b) The property report shall not be used for any promotional purposes before the statement of record becomes effective and then only if it is used in its entirety. No person may advertise or represent that the Director approves or recommends the subdivision or the sale or lease of lots therein. No portion of the property report shall be underscored, italicized, or printed in larger, or bolder type than the balance of the statement unless the Director requires or permits it.

CERTIFICATION OF SUBSTANTIALLY EQUIVALENT STATE LAW

SEC. 1409. [15 U.S.C. 1708] (a)(1) A State shall be certified if the Director determines—

(A) that, when taken as a whole, the laws and regulations of the State applicable to the sale or lease of lots not exempt under section 1403 require the seller or lessor of such lots to disclose information which is at least substantially equivalent to the information required to be disclosed by section 1408; and

(B) that the State's administration of such laws and regulations provides, to the maximum extent practicable, that such information is accurate.

(2) In the case of any State which is not certified under paragraph (1), such State shall be certified if the Director determines—

(A) that when taken as a whole, the laws and regulations of the State applicable to the sale or lease of lots not exempt under section 1403 provide sufficient protection for purchasers and lessees with respect to the matters for which information is required to be disclosed by section 1408 but which is not required to be disclosed by such State's laws and regulations; and

(B) that the State's administration of such laws and regulations provides, to the maximum extent practicable, that (i) information required to be disclosed by such laws and regulations is accurate, and (ii) sufficient protection for purchasers and lessees is made available with respect to the matters for which information is not required to be disclosed.

(3) Any State requesting certification must agree to accept a property report covering land located in another certified State but offered for sale or lease in the State requesting certification if the property report has been approved by the other certified State. Such property report shall be the only property report required by the State with respect to the sale or lease of such land.

(b) After the Director has certified a State under subsection (a), the Director shall accept for filing under sections 1405 through 1408 (and declare effective as the Federal statement of record and property report which shall be used in all States in which the lots are offered for sale or lease) disclosure materials found acceptable, and any related documentation required, by State authorities in connection with the sale or lease of lots located within the State. The Director may accept for such filing, and declare effective as the Federal statement of record and property report, such materials and documentation found acceptable by the State in connection with the sale or lease of lots located outside that State. Nothing in this subsection shall preclude the Director from exercising the authority conferred by subsections (d) and (e) of section 1407.

(c) If a State fails to meet the standards for certification pursuant to subsection (a), the Director shall notify the State in writing of the changes in State law, regulation, or administration that are needed in order to obtain certification.

(d) The Director shall periodically review the laws and regulations, and the administration thereof, of States certified under subsection (a), and may withdraw such certification upon a determination that such laws, regulations, and the administration thereof, taken as a whole, no longer meet the requirements of subsection (a).

(e) Nothing in this title may be construed to prevent or limit the authority of any State or local government to enact and enforce with regard to the sale of land any law, ordinance, or code not in conflict with this title. In administering this title, the Director shall cooperate with State authorities charged with the responsibility of regulating the sale or lease of lots which are subject to this title.

CIVIL LIABILITIES

SEC. 1410. [15 U.S.C. 1709] (a) A purchaser or lessee may bring an action at law or in equity against a developer or agent if the sale or lease was made in violation of section 1404(a). In a suit

authorized by this subsection, the court may order damages, specific performance, or such other relief as the court deems fair, just, and equitable. In determining such relief the court may take into account, but not be limited to, the following factors: the contract price of the lot or leasehold; the amount the purchaser or lessee actually paid; the cost of any improvements to the lot; the fair market value of the lot or leasehold at the time relief is determined; and the fair market value of the lot or leasehold at the time such lot was purchased or leased.

(b) A purchaser or lessee may bring an action at law or in equity against the seller or lessor (or successor thereof) to enforce any right under subsection (b), (c), (d), or (e) of section 1404.

(c) The amount recoverable in a suit authorized by this section may include, in addition to matters specified in subsections (a) and (b), interest, court costs, and reasonable amounts for attorneys' fees, independent appraisers' fees, and travel to and from the lot.

(d) Every person who becomes liable to make any payment under this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment.

COURT REVIEW OF ORDERS

SEC. 1411. [15 U.S.C. 1710] (a) Any person, aggrieved by an order or determination of the Director issued after a hearing, may obtain a review of such order or determination in the court of appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order or determination, a written petition praying that the order or determination of the Director be modified or be set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Director, and thereupon the Director shall file in the court the record upon which the order or determination complained of was entered, as provided in section 2112 of title 28, United States Code. No objection to an order or determination of the Director shall be considered by the court unless such objection shall have been urged before the Director. The finding of the Director as to the facts, if supported by substantial evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Director, the court may order such additional evidence to be taken before the Director and to be adduced upon a hearing in such manner and upon such terms and conditions as to the court may seem proper. The Director may modify his findings as to the facts by reason of the additional evidence so taken, and shall file such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. Upon the filing of such petition, the jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or

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setting aside, in whole or in part, any order of the Director, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's⁴⁵ order.

LIMITATION OF ACTIONS

SEC. 1412. [15 U.S.C. 1711] (a) No action shall be maintained under section 1410 with respect to—

(1) a violation of subsection (a)(1) or (a)(2)(D) of section 1404 more than three years after the date of signing of the contract of sale or lease; or

(2) a violation of subsection (a)(2)(A), (a)(2)(B), or (a)(2)(C) of section 1404 more than three years after discovery of the violation or after discovery should have been made by the exercise of reasonable diligence.

(b) No action shall be maintained under section 1410 to enforce a right created under subsection (b), (c), (d), or (e) of section 1404 unless brought within three years after the signing of the contract or lease, notwithstanding delivery of a deed to a purchaser.

CONTRARY STIPULATION VOID

SEC. 1413. [15 U.S.C. 1712] Any condition, stipulation, or provision binding any person acquiring any lot in a subdivision to waive compliance with any provision of this title of the rules and regulations of the Director shall be void.

ADDITIONAL REMEDIES

SEC. 1414. [15 U.S.C. 1713] The rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity.

INVESTIGATIONS, INJUNCTIONS, AND PROSECUTION OF OFFENSES

SEC. 1415. [15 U.S.C. 1714] (a) Whenever it shall appear to the Director that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this title, or of any rule or regulation prescribed pursuant thereto, he may, in his discretion, bring an action in any district court of the United States, or the United States District Court for the District of Columbia to enjoin such acts or practices, and, upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. The Director may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the appropriate criminal proceedings under this title.

(b) The Director may, in his discretion, make such investigations as he deems necessary to determine whether any person has

⁴⁵ Probably should be "Director's". See the amendment made by section 1098A of Public Law 111-203 which provided for an amendment to strike "Secretary" each place that term appears and insert "Director".

violated or is about to violate any provision of this title or any rule or regulation prescribed pursuant thereto, and may require or permit any person to file with him a statement in writing, under oath or otherwise as the Director shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Director is authorized, in his discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which he may deem necessary or proper to aid in the enforcement of the provisions of this title, in the prescribing of rules and regulations thereunder or in securing information to service as a basis for recommending further legislation concerning the matters to which this title relates.

(c) For the purpose of any such investigation, or any other proceeding under this title, the Director, or any officer designated by him, is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which the Director deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

(d) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Director may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memorandums, and other records and documents. And such court may issue an order requiring such person to appear before the Director or any officer designated by the Director, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

ADMINISTRATION

SEC. 1416. [15 U.S.C. 1715] (a) The authority and responsibility for administering this title shall be in the Director of the Bureau of Consumer Financial Protection who may delegate any of his functions, duties, and powers to employees of the Bureau of Consumer Financial Protection or to boards of such employees including functions, duties, and powers with respect to investigating, hearing, determining, ordering, or otherwise acting as to any work, business, or matter under this title. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Bureau in compliance with sections 3105, 3344, 5372, and 7521 of title 5 of the United States Code. The Director shall by rule prescribe such rights of appeal from the decisions of his administrative law judges to other administrative law judges or to other officers in the Bu-

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reau, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(b) All hearings shall be public and appropriate records thereof shall be kept, and any order issued after such hearing shall be based on the record made in such hearing which shall be conducted in accordance with provisions of subchapter II of chapter 5, and chapter 7, of title 5, United States Code.

(c) The Director shall conduct all actions with respect to rule-making or adjudication under this title in accordance with the provisions of chapter 5 of title 5, United States Code. Notice shall be given of any adverse action or final disposition and such notice and the entry of any order shall be accompanied by a written statement of supporting facts and legal authority.

UNLAWFUL REPRESENTATIONS

SEC. 1417. [15 U.S.C. 1716] The fact that a statement of record with respect to a subdivision has been filed or is in effect shall not be deemed a finding by the Director that the statement of record is true and accurate on its face, or be held to mean the Director has in any way passed upon the merits of, or given approval to, such subdivision. It shall be unlawful to make, or cause to be made, to any prospective purchaser any representation contrary to the foregoing.

PENALTIES

SEC. 1418. [15 U.S.C. 1717] Any person who willfully violates any of the provisions of this title, or the rules and regulations prescribed pursuant thereto, or any person who willfully, in a statement of record filed under, or in a property report issued pursuant to, this title, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein, shall upon conviction be fined not more than \$10,000 or imprisoned not more than 5 years, or both.

CIVIL MONEY PENALTIES

SEC. 1418a. [15 U.S.C. 1717a] (a) IN GENERAL.—

(1) AUTHORITY.—Whenever any person knowingly and materially violates any of the provisions of this title or any rule, regulation, or order issued under this title, the Director may impose a civil money penalty on such person in accordance with the provisions of this section. The penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Director imposes other administrative sanctions.

(2) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the Director, may not exceed \$1,000 for each violation, except that the maximum penalty for all violations by a particular person during any 1-year period shall not exceed \$1,000,000. Each violation of this title, or any rule, regulation, or order issued under this title, shall constitute a separate violation with respect to each sale or lease or offer to sell or lease. In the case of a continuing violation, as determined by the Director, each day shall constitute a separate violation.

(b) AGENCY PROCEDURES.—

(1) ESTABLISHMENT.—The Director shall establish standards and procedures governing the imposition of civil money penalties under subsection (a). The standards and procedures—

(A) shall provide for the imposition of a penalty only after a person has been given an opportunity for a hearing on the record; and

(B) may provide for review by the Director of any determination or order, or interlocutory ruling, arising from a hearing.

(2) FINAL ORDERS.—If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Director reviews the determination or order, the Director may affirm, modify, or reverse that determination or order. If the Director does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

(3) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under subsection (a), consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before enactment of this section), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Director may determine in regulations to be appropriate.

(4) REVIEWABILITY OF IMPOSITION OF PENALTY.—The Secretary's⁴⁶ determination or order imposing a penalty under subsection (a) shall not be subject to review, except as provided in subsection (c).

(c) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

(1) IN GENERAL.—After exhausting all administrative remedies established by the Director under subsection (b)(1), a person aggrieved by a final order of the Director assessing a penalty under this section may seek judicial review pursuant to section 1411.

(2) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Director.

(d) ACTION TO COLLECT PENALTY.—If any person fails to comply with the determination or order of the Director imposing a civil money penalty under subsection (a), after the determination or order is no longer subject to review as provided by subsections (b) and (c), the Director may request the Attorney General of the United States to bring an action in any appropriate United States district court to obtain a monetary judgment against the person and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys fees and

⁴⁶ Probably should be "Director's". See the amendment made by section 1098A of Public Law 111-203 which provided for an amendment to strike "Secretary" each place that term appears and insert "Director".

other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's⁴⁷ determination or order imposing the penalty shall not be subject to review.

(e) **SETTLEMENT BY DIRECTOR.**—The Director may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(f) **DEFINITION OF KNOWINGLY.**—The term “knowingly” means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(g) **REGULATIONS.**—The Director shall issue such regulations as the Director deems appropriate to implement this section.

(h) **USE OF PENALTIES FOR ADMINISTRATION.**—Civil money penalties collected under this section shall be paid to the Director and, upon approval in an appropriation Act, may be used by the Director to cover all or part of the cost of rendering services under this title.

SEC. 1419. [15 U.S.C. 1718] The Director shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon him elsewhere in this title. For the purpose of his rules and regulations, the Director may classify persons and matters within his jurisdiction and prescribe different requirements for different classes of persons or matters.

JURISDICTION OF OFFENSES AND SUITS

SEC. 1420. [15 U.S.C. 1719] The district courts of the United States, the United States courts of any territory, and the United States District Court for the District of Columbia shall have jurisdiction of offenses and violations under this title and under the this title and under the rules and regulations prescribed by the Director pursuant thereto, and concurrent with State courts, of all suits in equity and actions at law brought to enforce any liability or duty created by this title. Any such suit or action may be brought to enforce any liability or duty created by this title. Any such suit or action may be brought in the district where the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254 and 1291 of title 28, United State Code. No case arising under this title and brought in any State court of competent jurisdiction shall be removed to any court of the United States, except where the United States or any officer or employee of the United States in his official capacity is a party. No costs shall be assessed for or against the Director in any proceeding under this title brought by or against him in the Supreme Court or such other courts.

⁴⁷ Probably should be “Director’s”. See the amendment made by section 1098A of Public Law 111–203 which provided for an amendment to strike “Secretary” each place that term appears and insert “Director”.

[REPORT TO CONGRESS]

[SEC. 1421. [Repealed.]]

APPROPRIATIONS

SEC. 1422. [15 U.S.C. 1720] There are authorized to be appropriated such sums as may be necessary to carry out this title.

EFFECTIVE DATE

SEC. 1423. [15 U.S.C. 1701 note] This title shall take effect upon the expiration of two hundred and seventy days after the date of its enactment.⁴⁸

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TITLE XVI—HOUSING GOALS AND ANNUAL HOUSING REPORT

REAFFIRMATION OF GOAL

SEC. 1601. [42 U.S.C. 1441a] (a) The Congress finds that the supply of the Nation's housing is not increasing rapidly enough to meet the national housing goal, established in the Housing Act of 1949, of the "realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family". The Congress reaffirms this national housing goal and determines that it can be substantially achieved within the next decade by the construction or rehabilitation of twenty-six million housing units, six million of these for low and moderate income families.

(b) The Congress further finds that policies designed to contribute to the achievement of the national housing goal have not directed sufficient attention and resources to the preservation of existing housing and neighborhoods, that the deterioration and abandonment of housing for the Nation's lower income families has accelerated over the last decade, and that this acceleration has contributed to neighborhood disintegration and has partially negated the progress toward achieving the national housing goal which has been made primarily through new housing construction.

(c) The Congress declares that if the national housing goal is to be achieved, a greater effort must be made to encourage the preservation of existing housing and neighborhoods through such measures as housing preservation, moderate rehabilitation, and improvements in housing management and maintenance, in conjunction with the provision of adequate municipal services. Such an effort should concentrate, to a greater extent than it has in the past, on housing and neighborhoods where deterioration is evident but has not yet become acute.

REPORT OUTLINING PLAN

SEC. 1602. [42 U.S.C. 1441b] Not later than January 15, 1969, the President shall make a report to the Congress setting forth a plan, to be carried out over a period of ten years (June 30, 1968,

⁴⁸The date of enactment was August 1, 1968.

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to June 30, 1978), for the elimination of all substandard housing and the realization of the goal referred to in section 1601. Such plan shall—

(1) indicate the number of new or rehabilitated housing units which it is anticipated, will have to be provided, with or without Government assistance, during each fiscal year of the ten-year period, in order to achieve the objectives of the plan, showing the number of such units which it is anticipated will have to be provided under each of the various Federal programs designed to assist in the provision of housing;

(2) indicate the reduction in the number of occupied substandard housing units which it is anticipated will have to occur during each fiscal year of the ten-year period in order to achieve the objectives of the plan;

(3) provide an estimate of the cost of carrying out the plan for each of the various Federal programs and for each fiscal year during the ten-year period to the extent that such costs will be reflected in the Federal budget;

(4) make recommendations with respect to the legislative and administrative actions necessary or desirable to achieve the objectives of the plan; and

(5) provide such other pertinent data, estimates, and recommendations as the President deems advisable.

Such report shall, in addition, contain a projection of the residential mortgage market needs and prospects during the coming year, including an estimate of the requirements with respect to the availability, need, and flow of mortgage funds (particularly in declining urban and rural areas) during such year, together with such recommendations as may be deemed appropriate for encouraging the availability of such funds.

PERIODIC REPORTS

SEC. 1603. [42 U.S.C. 1441c] Not later than March 15 of each year beginning with calendar year 1981, the President shall transmit to the Congress a report which—

(1) reviews the progress made in achieving housing production objectives during the preceding year, and in the event that proposed objectives are not achieved, identifies the reasons for the failure;

(2) projects the level, composition, and general location of production and rehabilitation activity during the current year and sets general objectives for such activity during the next year, and reassesses the availability of required resources;

(3) specifies Federal programs and policies to be implemented or recommended in order to achieve the objectives;

(4) updates estimates of the housing needs of lower income families, analyzing these needs, insofar as possible, by type of household, housing need, including households with specialized needs, and general location, and in addition, reassesses the capacity of each Federal housing program to serve the needs identified;

(5) reviews the progress made in achieving goals of conserving and upgrading older housing and neighborhoods, ex-

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panding homeownership and equal housing opportunities, and assuring reasonable shelter costs;

(6) reports on progress made toward developing new methods for measuring and monitoring progress in achieving these goals; and

(7) identifies legislative and administrative actions which will or should be adopted or implemented during the current year and, as feasible, the next year to support achievement of the goals.

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