

**HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1987
(Titles II, IV, V, VII)**

[Public Law 100–242; 101 Stat. 1859; 12 U.S.C. 1701q note]

[As added by Public Law 101–625; 104 Stat. 4249; 12 U.S.C. 4101
et seq.]

[As Amended Through P.L. 114–94, Enacted December 4, 2015]

【Currency: This publication is a compilation of the text of Public Law 100–242. 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).】

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SEC. 2. [42 U.S.C. 5301 note] FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) for the past 50 years, the Federal Government has taken the leading role in enabling the people of the Nation to be the best housed in the world, and recent reductions in Federal assistance have contributed to a deepening housing crisis for low- and moderate-income families;

(2) the efforts of the Federal Government have included a system of specialized lending institutions, favorable tax policies, construction assistance, mortgage insurance, loan guarantees, secondary markets, and interest and rental subsidies, that have enabled people to rent or buy affordable, decent, safe, and sanitary housing; and

(3) the tragedy of homelessness in urban and suburban communities across the Nation, involving a record number of people, dramatically demonstrates the lack of affordable residential shelter, and people living on the economic margins of our society (lower income families, the elderly, the working poor, and the deinstitutionalized) have few available alternatives for shelter.

(b) PURPOSE.—The purpose of this Act, therefore, is—

(1) to reaffirm the principle that decent and affordable shelter is a basic necessity, and the general welfare of the Nation and the health and living standards of its people require the addition of new housing units to remedy a serious shortage of housing units for all Americans, particularly for person of low and moderate income;

(2) to make the distribution of direct and indirect housing assistance more equitable by providing Federal assistance for the less affluent people of the Nation;

(3) to provide needed housing assistance for homeless people and for persons of low and moderate income who lack affordable, decent, safe, and sanitary housing; and

(4) to reform existing programs to ensure that such assistance is delivered in the most efficient manner possible.

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TITLE I—HOUSING ASSISTANCE

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SEC. 162. HOUSING FOR THE HANDICAPPED.

(a)

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(d) **[12 U.S.C. 1701q note] TERMINATION OF SECTION 8 ASSISTANCE.**—On and after the first date that amounts approved in an appropriation Act for any fiscal year become available for contracts under section 202(h)(4)(A) of the Housing Act of 1959, as amended by subsection (b) of this section, no project for handicapped (primarily nonelderly) families approved for such fiscal year pursuant to section 202 of such Act shall be provided assistance payments under section 8 of the United States Housing Act of 1937, except pursuant to a reservation for a contract to make such assistance payments that was made before the first date that amounts for contracts under such section 202(h)(4)(A) became available.

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SEC. 165. [42 U.S.C. 3543] PREVENTING FRAUD AND ABUSE IN DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PROGRAMS.

(a) **DISCLOSURE OF SOCIAL SECURITY ACCOUNT NUMBER.**—As a condition of initial or continuing eligibility for participation in any program of the Department of Housing and Urban Development involving loans, grants, interest or rental assistance of any kind, or mortgage or loan insurance, and to ensure that the level of benefits provided under such programs is proper, the Secretary of Housing and Urban Development may require that an applicant or participant (including members of the household of an applicant or participant) disclose his or her social security account number or employer identification number to the Secretary.

(b) **DEFINITIONS.**—For purposes of this section, the terms “applicant” and “participant” shall have such meanings as the Secretary of Housing and Urban Development by regulation shall prescribe. Such terms shall not include persons whose involvement is only in their official capacity, such as State or local government officials or officers of lending institutions.

SEC. 166. [42 U.S.C. 3536 note] ANNUAL REPORT ON CHARACTERISTICS OF FAMILIES IN ASSISTED HOUSING.

(a) **IN GENERAL.**—The Secretary of Housing and Urban Development shall include in the annual report under section 8 of the

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Housing and Urban Development Act¹ descriptions of the characteristics of families assisted under each of the following programs of assistance: public housing, section 8 of the United States Housing Act of 1937 (other than subsection (o) of such section), section 8(o) of the United States Housing Act of 1937, and section 202 of the Housing Act of 1959.

(b) **SPECIFIC REQUIREMENTS.**—The descriptions required in subsection (a) shall include information with respect to—

- (1) family size, including the number of children;
- (2) amount and sources of family income;
- (3) the age, race, and sex of family members; and
- (4) whether the head of the family (or the spouse of such person) is a member of the armed forces.

(c) **COLLECTION AND MAINTENANCE OF DATA.**—The Secretary shall collect and maintain data necessary to carry out the purposes of this section and shall coordinate such efforts, to the greatest extent possible, with activities and responsibilities under section 8 of the Department of Housing and Urban Development Act.

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TITLE II—PRESERVATION OF LOW INCOME HOUSING

Subtitle A—Short Title

SEC. 201. [12 U.S.C. 4101 note] SHORT TITLE.

This title may be cited as the “Low-Income Housing Preservation and Resident Homeownership Act of 1990”.

Subtitle B—Prepayment of Mortgages Insured Under National Housing Act

SEC. 211. [12 U.S.C. 4101] GENERAL PREPAYMENT LIMITATION.

(a) **PREPAYMENT AND TERMINATION.**—An owner of eligible low-income housing may prepay, and a mortgagee may accept prepayment of, a mortgage on such housing only in accordance with a plan of action approved by the Secretary under this subtitle or in accordance with section 224. An insurance contract with respect to eligible low-income housing may be terminated pursuant to section 229 of the National Housing Act only in accordance with a plan of action approved by the Secretary under this subtitle or in accordance with section 224.

(b) **FORECLOSURE.**—A mortgagee may foreclose the mortgage on, or acquire by deed in lieu of foreclosure, any eligible low-income housing project only if the mortgagee also conveys title to the project to the Secretary in connection with a claim for insurance benefits.

(c) **EFFECT OF UNAUTHORIZED PREPAYMENT.**—Any prepayment of a mortgage on eligible low-income housing or termination of the mortgage insurance on such housing not in compliance with the

¹ So in law. Probably should refer to the Department of Housing and Urban Development Act.

provisions of this subtitle shall be null and void and any low-income affordability restrictions on the housing shall continue to apply to the housing.

SEC. 212. [12 U.S.C. 4102] NOTICE OF INTENT.

(a) **FILING WITH THE SECRETARY.**—An owner of eligible low-income housing that intends to terminate the low-income affordability restrictions through prepayment or voluntary termination in accordance with section 218, extend the low-income affordability restrictions of the housing in accordance with section 219, or transfer the housing to a qualified purchaser in accordance with section 220, shall file with the Secretary a notice indicating such intent in the form and manner as the Secretary shall prescribe.

(b) **FILING WITH THE STATE OR LOCAL GOVERNMENT, TENANTS, AND MORTGAGEE.**—The owner, upon filing a notice of intent under this section, shall simultaneously file the notice of intent with the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located and with the mortgagee, and shall inform the tenants of the housing of the filing.

(c) **INELIGIBILITY FOR FILING.**—An owner shall not be eligible to file a notice of intent under this section if the mortgage covering the housing—

(1) falls into default on or after the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act;² or

(2)(A) fell into default before, but is current as of, such date; and

(B) the owner does not agree to recompense the appropriate Insurance Fund, in the amount the Secretary determines appropriate, for any losses sustained by the Fund as a result of any work-out or other arrangement agreed to by the Secretary and the owner with respect to the defaulted mortgage.

The Secretary shall carry out this subsection in a manner consistent with the provisions of section 203 of the Housing and Community Development Amendments of 1978.

SEC. 213. [12 U.S.C. 4103] APPRAISAL AND PRESERVATION VALUE OF ELIGIBLE LOW-INCOME HOUSING.

(a) **APPRAISAL.**—Upon receiving notice of intent regarding an eligible low-income housing project indicating an intent to extend the low-income affordability restrictions under section 219 or transfer the housing under section 220, the Secretary shall provide for determination of the preservation value of the housing, as follows:

(1) **APPRAISERS.**—The preservation value shall be determined by 2 independent appraisers, one of whom shall be selected by the Secretary and one of whom shall be selected by the owner. The appraisals shall be conducted not later than 4 months after filing the notice of intent under section 212, and the owner shall submit to the Secretary the appraisal made by the owner's selected appraiser not later than 90 days after receipt of the notice under paragraph (2). If the 2 appraisers fail to agree on the preservation value, and the Secretary and the

² November 28, 1990.

owner also fail to agree on the preservation value, the Secretary and the owner shall jointly select and jointly compensate a third appraiser, whose appraisal shall be binding on the parties.

(2) NOTICE.—Not later than 30 days after the filing of a notice of intent to seek incentives under section 219 or transfer the property under section 220, the Secretary shall provide written notice to the owner filing the notice of intent of—

(A) the need for the owner to acquire an appraisal of the property under paragraph (1);

(B) the rules and guidelines for such appraisals;

(C) the filing deadline for submission of the appraisal under paragraph (1);

(D) the need for an appraiser retained by the Secretary to inspect the housing and project financial records; and

(E) any delegation to the appropriate State agency by the Secretary of responsibilities regarding the appraisal.

(3) TIMELINESS.—The Secretary may approve a plan of action to receive incentives under section 219 or 220 only based upon an appraisal conducted in accordance with this subsection that is not more than 30 months old.

(b) PRESERVATION VALUE.—For purposes of this subtitle, the preservation value of eligible low-income housing appraised under this section shall be—

(1) for purposes of extending the low-income affordability restrictions and receiving incentives under section 219, the fair market value of the property based on the highest and best use of the property as residential rental housing; and

(2) for purposes of transferring the property under section 220 or 221, the fair market value of the housing based on the highest and best use of the property.

(c) GUIDELINES.—The Secretary shall provide written guidelines for appraisals of preservation value, which shall assume repayment of the existing federally assisted mortgage, termination of the existing low-income affordability restrictions, simultaneous termination of any Federal rental assistance, and costs of compliance with any State or local laws of general applicability. The guidelines may permit reliance upon assessments of rehabilitation needs and other conversion costs determined by an appropriate State agency, as determined by the Secretary. The guidelines shall instruct the appraiser to use the greater of actual project operating expenses at the time of the appraisal (based on the average of the actual project operating expenses during the preceding 3 years) or projected operating expenses after conversion in determining preservation value. The guidelines established by the Secretary shall not be inconsistent with customary appraisal standards. The guidelines shall also meet the following requirements:

(1) RESIDENTIAL RENTAL VALUE.—In the case of preservation value determined under subsection (b)(1), the guidelines shall assume conversion of the housing to market-rate rental housing and shall establish methods for (A) determining rehabilitation expenditures that would be necessary to bring the housing up to quality standards required to attract and sustain

a market rate tenancy upon conversion, and (B) assessing other costs that the owner could reasonably be expected to incur if the owner converted the property to market-rate multi-family rental housing.

(2) HIGHEST AND BEST USE VALUE.—In the case of preservation value determined under subsection (b)(2), the guidelines shall assume conversion of the housing to highest and best use for the property and shall establish methods for (A) determining any rehabilitation expenditures that would be necessary to convert the housing to such use, and (B) assessing other costs that the owner could reasonably be expected to incur if the owner converted the property to its highest and best use. [12 U.S.C. 4103]

SEC. 214. [12 U.S.C. 4104] ANNUAL AUTHORIZED RETURN AND PRESERVATION RENTS.

(a) ANNUAL AUTHORIZED RETURN.—Pursuant to an appraisal under section 213, the Secretary shall determine the annual authorized return on the appraised housing, which shall be equal to 8 percent of the preservation equity (as such term is defined in section 229(8)).

(b) PRESERVATION RENTS.—The Secretary shall also determine the aggregate preservation rents under this subsection for each project appraised under section 213. The aggregate preservation rents shall be used solely for the purposes of comparison with Federal cost limits under section 215. Actual rents received by an owner (or a qualified purchaser) shall be determined pursuant to section 219, 220, or 221. The aggregate preservation rents shall be established as follows:

(1) EXTENSION OF AFFORDABILITY LIMITS.—The aggregate preservation rent for purposes of receiving incentives pursuant to extension of the low-income affordability restrictions under section 219 shall be the gross potential income for the project, determined by the Secretary, that would be required to support the following costs:

(A) The annual authorized return determined under subsection (a).

(B) Debt service on any rehabilitation loan for the housing.

(C) Debt service on the federally-assisted mortgage for the housing.

(D) Project operating expenses.

(E) Adequate reserves.

(2) SALE.—The aggregate preservation rent for purposes of receiving incentives pursuant to sale under section 220 or 221 shall be the gross income for the project determined by the Secretary, that would be required to support the following costs:

(A) Debt service on the loan for acquisition of the housing.

(B) Debt service on any rehabilitation loan for the housing.

(C) Debt service on the federally-assisted mortgage for the housing.

(D) Project operating expenses.

(E) Adequate reserves.

(c) FUTURE FINANCING.—Neither this section, nor any plan of action or use agreement implementing this section, shall restrict an owner from obtaining a new loan or refinancing an existing loan secured by the project, or from distributing the proceeds of such a loan; except that, in conjunction with such refinancing—

(1) the owner shall provide for adequate rehabilitation pursuant to a capital needs assessment to ensure long-term sustainability of the property satisfactory to the lender or bond issuance agency;

(2) any resulting budget-based rent increase shall include debt service on the new financing, commercially reasonable debt service coverage, and replacement reserves as required by the lender; and

(3) for tenants of dwelling units not covered by a project- or tenant-based rental subsidy, any rent increases resulting from the refinancing transaction may not exceed 10 percent per year, except that—

(A) any tenant occupying a dwelling unit as of time of the refinancing may not be required to pay for rent and utilities, for the duration of such tenancy, an amount that exceeds the greater of—

(i) 30 percent of the tenant's income; or

(ii) the amount paid by the tenant for rent and utilities immediately before such refinancing; and

(B) this paragraph shall not apply to any tenant who does not provide the owner with proof of income.

Paragraph (3) may not be construed to limit any rent increases resulting from increased operating costs for a project.

SEC. 215. [12 U.S.C. 4105] FEDERAL COST LIMITS AND LIMITATIONS ON PLANS OF ACTION.

(a) DETERMINATION OF RELATIONSHIP TO FEDERAL COST LIMITS.—

(1) INITIAL DETERMINATION.—For each eligible low-income housing project appraised under section 213(a), the Secretary shall determine whether the aggregate preservation rents for the project determined under paragraph (1) or (2) of section 214(b) exceed the amount determined by multiplying 120 percent of the fair market rental (established under section 8(c) of the United States Housing Act of 1937) for the market area in which the housing is located by the number of dwelling units in the project (according to appropriate unit sizes).

(2) RELEVANT LOCAL MARKETS.—If the aggregate preservation rents for a project exceeds the amount determined under paragraph (1), the Secretary shall determine whether such aggregate rents exceed the amount determined by multiplying 120 percent of the prevailing rents in the relevant local market area in which the housing is located by the number of units in the project (according to the appropriate unit sizes). A relevant local market area shall be an area geographically smaller than a market area established by the Secretary under section 8(c)(1) of the United States Housing Act of 1937 that is identifiable as a distinct rental market area. The Secretary may rely on the appraisal to determine the relevant local mar-

ket areas and prevailing rents in such local areas and any other information the Secretary determines is appropriate.

(3) EFFECT.—For purposes of this subtitle, the aggregate preservation rents shall be considered to exceed the Federal cost limits under this subsection only if the aggregate preservation rents exceed the amount determined under paragraph (1) and the amount determined under paragraph (2).

(b) LIMITATIONS ON ACTION PURSUANT TO FEDERAL COST LIMITS.—

(1) HOUSING WITHIN FEDERAL COST LIMITS.—If the aggregate preservation rents for an eligible low-income housing project do not exceed the Federal cost limit, the owner may not prepay the mortgage on the housing or terminate the insurance contract with respect to the housing, except as permitted under section 224. The owner may—

(A) file a plan of action under section 217 to receive incentives under section 219; or

(B) file a second notice of intent under section 216(d) indicating an intention to transfer the housing under section 220 and take actions pursuant to such section.

(2) HOUSING EXCEEDING FEDERAL COST LIMITS.—If the aggregate preservation rents for an eligible low-income housing project exceed the Federal cost limit, the owner may—

(A) file a plan of action under section 217 to receive incentives under section 219 if the owner agrees to accept incentives under such sections in an amount that shall not exceed the Federal cost limit;

(B) file a second notice of intent under section 216(d) indicating an intention to transfer the housing under section 220 and take actions pursuant to such section if the owner agrees to transfer the housing at a price that shall not exceed the Federal cost limit; or

(C) file a second notice of intent under section 216(d) indicating an intention to prepay the mortgage or voluntarily terminate the insurance, subject to the mandatory sale provisions under section 221.

SEC. 216. [12 U.S.C. 4106] INFORMATION FROM SECRETARY.

(a) INFORMATION TO OWNERS TERMINATING AFFORDABILITY RESTRICTIONS.—The Secretary shall provide each owner who submits a notice of intent to terminate the low-income affordability restrictions on the housing under section 218 with information under this section not later than 6 months after receipt of the notice of intent. The information shall include a description of the criteria for such termination specified under section 218 and the documentation required to satisfy such criteria.

(b) INFORMATION TO OWNERS EXTENDING LOW-INCOME AFFORDABILITY RESTRICTIONS.—The Secretary shall provide each owner who submits notice of intent to extend the low-income affordability restrictions on the housing under section 219 or transfer the housing under section 220 to a qualified purchaser with information under this subsection not later than 9 months after receipt of the notice of intent. The information shall include any information nec-

essary for the owner to prepare a plan of action under section 217, including the following:

(1) PRESERVATION VALUES.—A statement of the preservation value of the housing determined under paragraphs (1) and (2) of section 213(b).

(2) PRESERVATION RENT.—A statement of the preservation rent for the housing as calculated under section 214(b).

(3) FEDERAL COST LIMITS.—A statement of the applicable Federal cost limits for the market area (or relevant local market area, if applicable) in which the housing is located, which shall explain the limitations under sections 219 and 220 of the amount of assistance that the Secretary may provide based on such cost limits.

(4) FEDERAL COST LIMIT ANALYSIS.—A statement of whether the aggregate preservation rents exceed the Federal cost limits and a direction to the owner to file a plan of action under section 217 or submit a second notice of intent under section 216(d), whichever is applicable.

(c) AVAILABILITY TO TENANTS.—The Secretary shall make any information provided to the owner under subsections (a) and (b) available to the tenants of the housing, together with other information relating to the rights and opportunities of the tenants.

(d) SECOND NOTICE OF INTENT.—

(1) FILING.—Each owner of eligible low-income housing that elects to transfer housing under section 220 shall submit to the Secretary, in such form and manner as the Secretary prescribes, notice of intent to sell the housing under section 220. To be eligible to prepay the mortgage or voluntarily terminate the insurance contract on the mortgage, an owner of housing for which the preservation rents exceed the Federal cost limits under section 215(b) shall submit to the Secretary notice of such intent. The provisions of sections 221 and 223 shall apply to any owner submitting a notice under the preceding sentence.

(2) TIMING.—A second notice of intent under this subsection shall be submitted not later than 30 days after receipt of information from the Secretary under this section. If an owner fails to submit such notice within such period, the notice of intent submitted by the owner under section 212 shall be void and ineffective for purposes of this subtitle.

(3) FILING WITH THE STATE OR LOCAL GOVERNMENT, TENANTS, AND MORTGAGEE.—Upon filing a second notice of intent under this subsection, the owner shall simultaneously file such notice of the intent with the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located and with the mortgagee, and shall inform the tenants of the housing of the filing.

SEC. 217. [12 U.S.C. 4107] PLAN OF ACTION.

(a) SUBMISSION TO SECRETARY.—

(1) TIMING.—Not later than 6 months after receipt of the information from the Secretary under section 216 an owner seeking to terminate the low-income affordability restrictions through prepayment of the mortgage or voluntary termination

under section 218, or to extend the low-income affordability restriction on the housing under section 219, shall submit a plan of action to the Secretary in such form and manner as the Secretary shall prescribe. Any owner or purchaser seeking a transfer of the housing under section 220 or 221 shall submit a plan of action under this section to the Secretary upon acceptance of a bona fide offer under section 220 (b) or (c) or upon making of any bona fide offer under section 221.

(2) COPIES TO TENANTS.—Each owner submitting a plan of action under this section to the Secretary shall also submit a copy to the tenants of the housing. The owner shall simultaneously submit the plan of action to the office of the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located. Each owner and the Secretary shall also, upon request, make available to the tenants of the housing and to the office of the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located all documentation supporting the plan of action, but not including any information that the Secretary determines is proprietary information. An appropriate agency of such State or local government shall review the plan and advise the tenants of the housing of any programs that are available to assist the tenants in carrying out the purposes of this title.

(3) FAILURE TO SUBMIT.—If the owner does not submit a plan of action to the Secretary within the 6-month period referred to in paragraph (1) (or the applicable longer period), the notice of intent shall be ineffective for purposes of this subtitle and the owner may not submit another notice of intent under section 212 until 6 months after the expiration of such period.

(b) CONTENTS.—

(1) TERMINATION OF AFFORDABILITY RESTRICTIONS.—If the plan of action proposes to terminate the low-income affordability restrictions through prepayment or voluntary termination in accordance with section 218, the plan shall include—

(A) a description of any proposed changes in the status or terms of the mortgage or regulatory agreement;

(B) a description of any proposed changes in the low-income affordability restrictions;

(C) a description of any change in ownership that is related to prepayment or voluntary termination;

(D) an assessment of the effect of the proposed changes on existing tenants;

(E) an analysis of the effect of the proposed changes on the supply of housing affordable to low- and very low-income families or persons in the community within which the housing is located and in the area that the housing could reasonably be expected to serve; and

(F) any other information that the Secretary determines is necessary to achieve the purposes of this title.

(2) EXTENSION OF AFFORDABILITY RESTRICTIONS.—If the plan of action proposes to extend the low-income affordability restrictions of the housing in accordance with section 219 or

transfer the housing to a qualified purchaser in accordance with section 220, the plan shall include—

(A) a description of any proposed changes in the status or terms of the mortgage or regulatory agreement;

(B) a description of the Federal incentives requested (including cash flow projections), and analyses of how the owner will address any physical or financial deficiencies and maintain the low-income affordability restrictions of the housing;

(C) a description of any assistance from State or local government agencies, including low-income housing tax credits, that have been offered to the owner or purchaser or for which the owner or purchaser has applied or intends to apply;

(D) a description of any transfer of the property, including the identity of the transferee and a copy of any documents of sale; and

(E) any other information that the Secretary determines is necessary to achieve the purposes of this title.

(c) REVISIONS.—An owner may from time to time revise and amend the plan of action as may be necessary to obtain approval of the plan under this subtitle. The owner shall submit any revision to the Secretary and to the tenants of the housing and make available to the Secretary and tenants all documentation supporting any revision, but not including any information that the Secretary determines is proprietary information.

SEC. 218. [12 U.S.C. 4108] PREPAYMENT AND VOLUNTARY TERMINATION.

(a) APPROVAL.—The Secretary may approve a plan of action that provides for termination of the low-income affordability restrictions through prepayment of the mortgage or voluntary termination of the mortgage insurance contract only upon a written finding that—

(1) implementation of the plan of action will not—

(A) materially increase economic hardship for current tenants, and will not in any event result in (i) a monthly rental payment by any current tenant that exceeds 30 percent of the monthly adjusted income of the tenant or an increase in the monthly rental payment in any year that exceeds 10 percent (whichever is lower), or (ii) in the case of a current tenant who already pays more than such percentage, an increase in the monthly rental payment in any year that exceeds the increase in the Consumer Price Index or 10 percent (whichever is lower); or

(B) involuntarily displace current tenants (except for good cause) where comparable and affordable housing is not readily available determined without regard to the availability of Federal housing assistance that would address any such hardship or involuntary displacement; and

(2) the supply of vacant, comparable housing is sufficient to ensure that such prepayment will not materially affect—

(A) the availability of decent, safe, and sanitary housing affordable to low-income and very low-income families

or persons in the area that the housing could reasonably be expected to serve;

(B) the ability of low-income and very low-income families or persons to find affordable, decent, safe, and sanitary housing near employment opportunities; or

(C) the housing opportunities of minorities in the community within which the housing is located.

(b) STANDARDS AND PROCEDURE FOR WRITTEN FINDINGS.—

(1) STANDARDS.—A written finding under subsection (a) shall be based on an analysis of the evidence considered by the Secretary in reaching such finding and shall contain documentation of such evidence.

(2) PROCEDURE AND CRITERIA.—The Secretary shall, by regulation, develop (A) a procedure for determining whether the conditions under paragraphs (1) and (2) of subsection (a) exist, (B) requirements for evidence on which such determinations are based, and (C) criteria on which such determinations are based.

(c) DISAPPROVAL.—If the Secretary determines a plan of action to prepay a mortgage or terminate an insurance contract fails to meet the requirements of subsection (a), the Secretary shall disapprove the plan, the notice of intent filed under section 212 by such owner shall not be effective for purposes of this subtitle, and the owner may, in order to receive incentives under this subtitle, file a new notice of intent under such section.

SEC. 219. [12 U.S.C. 4109] INCENTIVES TO EXTEND LOW-INCOME USE.

(a) AGREEMENTS BY SECRETARY.—After approving a plan of action from an owner of eligible low-income housing that includes the owner's plan to extend the low-income affordability restrictions of the housing, the Secretary shall, subject to the availability of appropriations for such purpose, enter into such agreements as are necessary to enable the owner to receive (for each year after the approval of the plan of action) the annual authorized return for the housing determined under section 214(a), pay debt service on the federally-assisted mortgage covering the housing, pay debt service on any loan for rehabilitation of the housing, and meet project operating expenses and establish adequate reserves. The Secretary shall take into account the Federal cost limits under section 215(a) for the housing when providing incentives under subsections (b)(2) and (3) of this section. The Secretary shall take such actions as are necessary to ensure that owners receive the annual authorized return for the housing determined under section 214(a) during the period in which rent increases are phased in as provided in section 222(a)(2)(E), including (in order of preference) (1) allowing the owner access to residual receipt accounts (pursuant to subsection (b)(1) of this section), (2) deferring remittance of excess rent payments, and (3) providing an increase in rents permitted under an existing contract under section 8 of the United States Housing Act of 1937 (pursuant to subsection (b)(2) of this section).

(b) PERMISSIBLE INCENTIVES.—Such agreements may include one or more of the following incentives:

(1) Increased access to residual receipts accounts.

(2) Subject to the availability of amounts provided in appropriations Acts—

(A) an increase in the rents permitted under an existing contract under section 8 of the United States Housing Act of 1937, or

(B) additional assistance under section 8 or an extension of any project-based assistance attached to the housing; and³

(3) An increase in the rents on units occupied by current tenants as permitted under section 222.

(4) Financing of capital improvements under section 201 of the Housing and Community Development Amendments of 1978.

(5) Financing of capital improvements through provision of insurance for a second mortgage under section 241 of the National Housing Act.

(6) In the case of housing defined in section 229(1)(A)(iii), redirection of the Interest Reduction Payment subsidies to a second mortgage.

(7) Access by the owner to a portion of the preservation equity in the housing through provision of insurance for a second mortgage loan insured under section 241(f) of the National Housing Act or a non-insured mortgage loan approved by the Secretary and the mortgagee.

(8) Other incentives authorized in law.

With respect to any housing with a mortgage insured or otherwise assisted pursuant to section 236 of the National Housing Act, the provisions of subsections (f) and (g) of section 236 of such Act notwithstanding, the fair market rental charge for each unit in such housing may be increased in accordance with this subsection, but the owner shall pay to the Secretary all rental charges collected in excess of the basic rental charges, in an amount not greater than the fair market rental charges as such charges would have been established under section 236(f) of such Act absent the requirements of this paragraph.

SEC. 220. [12 U.S.C. 4110] INCENTIVES FOR TRANSFER TO QUALIFIED PURCHASERS.

(a) **IN GENERAL.**—With respect to any eligible low-income housing for which an owner has submitted a second notice of intent under section 216(d) to transfer the housing to a qualified purchaser, the owner shall offer the housing for transfer to qualified purchasers as provided in this section. The Secretary shall issue regulations describing the means by which potential qualified purchasers shall be notified of the availability of the housing for sale. The Secretary shall take into account the Federal cost limits under section 215(a) for the housing when providing incentives under section 219(b)(2) and (b)(3) (pursuant to subsection (d)(3) of this section).

(b) **RIGHT OF FIRST OFFER TO PRIORITY PURCHASERS.**—

(1) **NEGOTIATION PERIOD.**—For the 12-month period beginning on the receipt by the Secretary of a second notice of intent under section 216(d) with respect to such housing, the owner

³ So in law.

may offer to sell and negotiate a sale of the housing only with priority purchasers. The negotiated sale price may not exceed the preservation value of the housing determined under section 213(b)(2). The owner or the purchaser shall submit a plan of action under section 217 for any sale under this subsection, which shall include any request for assistance under this section, upon the acceptance of any bona fide offer meeting the requirements of this paragraph.

(2) EXPRESSION OF INTEREST.—During such period, priority purchasers may submit written notice to the Secretary stating their interest in acquiring the housing. Such notice shall be made in the form and include such information as the Secretary may prescribe.

(3) INFORMATION.—Within 30 days of receipt of an expression of interest by a priority purchaser, the Secretary shall provide such purchaser with information on the assistance available from the Federal Government to facilitate a transfer and the owner shall provide appropriate information on the housing, as determined by the Secretary.

(c) RIGHT OF REFUSAL FOR OTHER QUALIFIED PURCHASERS.—If no bona fide offer to purchase any eligible low-income housing subject to this section that meets the requirements of subsection (b) is made and accepted during the period under such subsection, during the 3-month period beginning upon the expiration of the 12-month period under subsection (b)(1), the owner of the housing may offer to sell and may sell the housing only to qualified purchasers. The negotiated sale price may not exceed the preservation value of the housing determined under section 213(b)(2). The owner or purchaser shall submit a plan of action under section 217 for any sale under this subsection, which shall include any request for assistance under this section, upon the acceptance of any bona fide offer meeting the requirements of this paragraph.⁴

(d) ASSISTANCE.—

(1) APPROVAL.—If the qualified purchaser is a resident council, the Secretary may not approve a plan of action for assistance under this section unless the council's proposed resident homeownership program meets the requirements under section 226. For all other qualified purchasers, the Secretary may not approve the plan unless the Secretary finds that the criteria for approval under section 222 have been satisfied.

(2) AMOUNT.—Subject to the availability of amounts approved in appropriations Acts, the Secretary shall, for approvable plans of action, provide assistance sufficient to enable qualified purchasers (including all priority purchasers other than resident councils acquiring under the homeownership program authorized by section 226) to—

(A) acquire the eligible low-income housing from the current owner for a purchase price not greater than the preservation equity of the housing;

(B) pay the debt service on the federally-assisted mortgage covering the housing;

⁴ So in law. Probably intended to refer to this subsection.

(C) pay the debt service on any loan for the rehabilitation of the housing;

(D) meet project operating expenses and establish adequate reserves for the housing, and in the case of a priority purchaser, meet project oversight costs;

(E) receive a distribution equal to an 8 percent annual return on any actual cash investment (from sources other than assistance provided under this title) made to acquire or rehabilitate the project;

(F) in the case of a priority purchaser, receive a reimbursement of all reasonable transaction expenses associated with the acquisition, loan closing, and implementation of an approved plan of action; and

(G) in the case of an approved resident homeownership program, cover the costs of training for the resident council, homeownership counseling and training, the fees for the nonprofit entity or public agency working with the resident council and costs related to relocation of tenants who elect to move.

(3) INCENTIVES.—

(A) IN GENERAL.—For all qualified purchasers of housing under this subsection, the Secretary may provide assistance for an approved plan of action in the form of 1 or more of the incentives authorized under section 219(b), except that the incentive under such section 219(b)(7) may include an acquisition loan under section 241(f) of the National Housing Act.

(B) PRIORITY PURCHASERS.—Where the qualified purchaser is a priority purchaser, the Secretary may provide assistance for an approved plan of action (in the form of a grant) for each unit in the housing in an amount, as determined by the Secretary, that does not exceed the present value of the total of the projected published fair market rentals for existing housing (established by the Secretary under section 8(c) of the United States Housing Act of 1937) for the next 10 years (or such longer period if additional assistance is necessary to cover the costs referred to in paragraph (2)).

SEC. 221. [12 U.S.C. 4111] MANDATORY SALE FOR HOUSING EXCEEDING FEDERAL COST LIMITS.

(a) IN GENERAL.—With respect to any eligible low-income housing for which the aggregate preservation rents determined under section 214(b) exceed the Federal cost limit, the owner shall offer the housing for sale to qualified purchasers as provided in this section.

(b) RIGHT OF FIRST REFUSAL TO PRIORITY PURCHASERS.—

(1) DURATION AND REQUIRED SALE.—For the 12-month period beginning upon the receipt by the Secretary of the second notice of intent under section 216(d) with respect to such housing, the owner of the housing may offer to sell and may sell the housing only to priority purchasers. If, during such period, a priority purchaser makes a bona fide offer to purchase the housing for a sale price not less than the preservation value of the housing determined under section 213(b)(2), the Secretary

shall require the owner to sell the housing pursuant to such offer.

(2) **EXPRESSION OF INTEREST.**—During the period under paragraph (1), priority purchasers shall have the opportunity to submit written notice to the owner and the Secretary stating their interest in acquiring the housing. Such written notice shall be in such form and include such information as the Secretary may prescribe.

(3) **INFORMATION FROM SECRETARY.**—Not later than 30 days after receipt of any notice under paragraph (2), the Secretary shall provide such purchaser with information on the assistance available from the Federal Government to facilitate a transfer and the owner shall provide such purchaser with appropriate information on the housing, as determined by the Secretary.

(c) **RIGHT OF REFUSAL FOR OTHER QUALIFIED PURCHASERS.**—If no bona fide offer to purchase any eligible low-income housing subject to this section that meets the requirements of subsection (b) is made during the period under such subsection, during the 3-month period beginning upon the expiration of the 12-month period under subsection (b)(1), the owner of the housing may offer to sell and may sell the housing only to qualified purchasers. If, during such period, a qualified purchaser makes a bona fide offer to purchase the housing for a sale price not less than the preservation value of the housing determined under section 213(b)(2), the Secretary shall require the owner to sell the housing pursuant to such offer.

(d) **ASSISTANCE.**—

(1) **FEDERAL COST LIMIT.**—Subject to the availability of amounts approved in appropriations Acts, the Secretary shall, for approvable plans of action, provide to qualified purchasers assistance under section 8 of the United States Housing Act of 1937 sufficient to produce a gross income potential equal to the amount determined by multiplying 120 percent of the prevailing rents in the relevant local market area in which the housing is located by the number of units in the project (according to appropriate unit sizes), and any other incentives authorized under section 219(b) that would have been provided to a qualified purchaser under section 220.

(2) **ADDITIONAL ASSISTANCE.**—From amounts made available under section 234(b), the Secretary may make grants to assist in the completion of sales and transfers under this section to any qualified purchasers. Any grant under this paragraph shall be in an amount not exceeding the difference between the preservation value for the housing (determined under section 213(b)(2)) and the level of assistance under paragraph (1) of this subsection.

(3) **SECURING STATE AND LOCAL FUNDING.**—The Secretary shall assist any qualified purchaser of such housing in securing funding and other assistance (including tax and assessment reductions) from State and local governments to facilitate a sale under this section.

SEC. 222. [12 U.S.C. 4112] CRITERIA FOR APPROVAL OF PLAN OF ACTION INVOLVING INCENTIVES.

(a) **IN GENERAL.**—The Secretary may approve a plan of action for extension of the low-income affordability restrictions on any eligible low-income housing or transfer the housing to a qualified purchaser (other than a resident council) only upon finding that—

(1) due diligence has been given to ensuring that the package of incentives is, for the Federal Government, the least costly alternative that is consistent with the full achievement of the purposes of this title;

(2) binding commitments have been made to ensure that—

(A) the housing will be retained as housing affordable for very low-income families or persons, low income⁵ families or persons, and moderate-income families or persons for the remaining useful life of such housing (as determined under subsection (c));

(B) throughout such period, adequate expenditures will be made for maintenance and operation of the housing and that the project meets housing standards established by the Secretary under subsection (d), as determined by inspections conducted under such subsection by the Secretary;

(C) current tenants will not be involuntarily displaced (except for good cause);

(D) monthly rent contributions by current and future tenants, including tenants receiving assistance under section 8 of the United States Housing Act of 1937, shall not exceed the lesser of—

(i) 30 percent of the adjusted income of the tenant;

or

(ii) 90 percent of the actual rent paid for a comparable unit in comparable unassisted housing in the market area in which the eligible low-income housing is located;

except that the rent contributions of tenants (other than tenants receiving assistance under section 8 of the United States Housing Act of 1937) occupying the housing at the time of any increase may not be reduced under this subparagraph.

(E)(i) any resulting increase in rents for current tenants (except for increases made necessary by increased operating costs)—

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

(II) shall be limited to not more than 10 percent per year if such increase is more than 10 percent but less than 30 percent;

(ii) assistance under section 8 of the United States Housing Act of 1937 shall be provided, to the extent available under appropriation Acts, if necessary to mitigate any

⁵ So in law.

adverse effect on current income-eligible very low- and low-income tenants; and⁶

(iii)(I) to retain the tenant occupancy profile required by subparagraph (F)(i), tenants that are determined by the Secretary to be low-income tenants at initial income certification upon occupancy, or at the time of implementation of a plan of action (whichever occurs last), shall pay for rent an amount that is not less than the lesser of—

(aa) 30 percent of 45 percent of median income for the area (as determined by the Secretary and adjusted for family size); or

(bb) 90 percent of the actual rent paid for a comparable unit in comparable unassisted housing in the market area in which the eligible low-income housing is located.

Subject to subclause (II), payment of this minimum rent shall be a condition of continued occupancy and eligibility for section 8 assistance.

(II) Notwithstanding the rents required under subclause (I), a tenant who occupies a unit designated for occupancy by low-income persons and families, and who becomes a very low-income tenant, shall be provided with the next available unit designated for occupancy by very low-income persons and families, and, until such unit becomes available, shall pay for rent not more than the amount chargeable as rent under section 3(a) of the United States Housing Act of 1937. Such tenant shall not be evicted for nonpayment of rent if the rent amounts set forth in this subclause are paid. The costs resulting from the difference between rents required under subclause (I) and the rents permitted under this subclause shall be incorporated into the section 8 contract for units designated for occupancy by low-income persons or families; and⁷

(F)⁸(i) rents for units becoming available to new tenants shall be at levels approved by the Secretary that will

⁶So in law. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995, Pub. L. 103-327, 108 Stat. 2316, approved September 28, 1994, enacted section 601 of the bill S. 2281, 103d Congress, as reported (S. Rep. 103-307), by incorporating such section by reference. Subsection (c) of such section 601 provides as follows:

“(c) SECTION 8 ASSISTANCE.—Section 222(a)(1)(E)(ii) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4112(a)(1)(E)) is amended—

“(1) by striking “; and” at the end and inserting a period; and

“(2) by adding at the end the following: “For any section 8 assistance provided under this subtitle, whether through the extension of an existing contract or the provision of a new contract for assistance, the Secretary shall have the discretion to adjust contract rents within the limits established under section 215, irrespective of the comparable rent requirements set forth in section 8(c) of the United States Housing Act of 1937. Notwithstanding any provision of law to the contrary, any conflict pertaining to the computation of contract rents arising from differences between this subtitle and section 8 of the United States Housing Act of 1937 shall, subject to the prior approval of the Secretary, be resolved in favor of this subtitle; and”.”

The amendment could not be executed to paragraph (1) of this subsection and was probably intended to be made to this subparagraph.

⁷So in law.

⁸The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995, Pub. L. 103-327, 108 Stat. 2316, approved Sep-

ensure, to the extent practicable, that the units will be available and affordable to the same proportions of very low-income families or persons, low-income families or persons, and moderate-income families or persons (including families or persons whose incomes are 95 percent or more of area median income) as resided in the housing as of January 1, 1987 (based on the area median income limits established by the Secretary in February 1987), or the date the plan of action is approved, whichever date results in the highest proportion of very low-income families, except that this limitation shall not prohibit a higher proportion of very low-income families from occupying the housing; and

(ii) in approving rents under this paragraph, the Secretary shall take into account any additional incentives provided under this subtitle;

(G) future rent adjustments shall be—

(i) made by applying an annual factor (to be determined by the Secretary) to the portion of rent attributable to operating expenses for the housing and, where the owner is a priority purchaser, to the portion of rent attributable to project oversight costs; and

(ii) subject to a procedure, established by the Secretary, for owners to apply for rent increases not adequately compensated by annual adjustment under clause (i), under which the Secretary may increase rents in excess of the amount determined under clause (i) only if the Secretary determines such increases are necessary to reflect extraordinary necessary expenses of owning and maintaining the housing; and

(H)⁹ any savings from reductions in operating expenses due to management efficiencies shall be deposited in project reserves for replacement and the owner shall have periodic access to such reserves, to the extent the Secretary determines that the level of reserves is adequate and that the housing is maintained

tember 28, 1994, enacted section 601 of the bill S. 2281, 103d Congress, as reported (S. Rep. 103-307), by incorporating such section by reference. Subsection (d) of such section 601 provides as follows:

“(d) APPLICABILITY OF FEDERAL PREFERENCES.—Section 222(a)(1)(F) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4112(a)(1)(F)) is amended—

“(1) in clause (i)—

“(A) by striking “rents for units becoming available to new tenants shall be at levels approved by the Secretary that will ensure, to the extent practicable, that the units will be” and inserting “to the extent practicable, the units becoming available to new tenants shall be”; and

“(B) by striking “and” at the end;

“(2) by redesignating clause (ii) as clause (iii); and

“(3) by inserting after clause (i) the following new clause:

“(ii) in order to maintain the proportions of very low- and low-income families and persons required by clause (i), owners shall be required to apply any required Federal preference rules only with respect to tenants within each low- or very low-income category, in accordance with the approved tenant profile; and”.

The amendment could not be executed to paragraph (1)(F) of this subsection and was probably intended to be made to this subparagraph.

⁹Indented so in law.

in accordance with the standards established under section 222(d); and

(3) no incentives under section 219 (other than to purchasers under section 220) may be provided until the Secretary determines the project meets housing standards under subsection (d), except that incentives under such section and other incentives designed to correct deficiencies in the project may be provided.

(b) IMPLEMENTATION.—Any agreement to maintain the low-income affordability restrictions for the remaining useful life of the housing may be made through execution of a new regulatory agreement, modifications to the existing regulatory agreement or mortgage, or, in the case of the prepayment of a mortgage or voluntary termination of mortgage insurance, a recorded instrument.

(c) DETERMINATION OF REMAINING USEFUL LIFE.—

(1) DEFINITION.—For purposes of this title, the term “remaining useful life” means, with respect to eligible low-income housing, the period during which the physical characteristics of the housing remain in a condition suitable for occupancy, assuming normal maintenance and repairs are made and major systems and capital components are replaced as becomes necessary.

(2) STANDARDS.—The Secretary shall, by rule under section 553 of title 5, United States Code, establish standards for determining when the useful life of an eligible low-income housing project has expired. The determination shall be made on the record after opportunity for a hearing.

(3) OWNER PETITION.—The Secretary shall establish a procedure under which owners of eligible low-income housing may petition the Secretary for a determination that the useful life of such housing has expired. The procedure shall not permit such a petition before the expiration of the 50-year period beginning upon the approval of a plan of action under this subtitle with respect to such housing. In making a determination pursuant to a petition under this paragraph, the Secretary shall presume that the useful life of the housing has not expired, and the owner shall have the burden of proof in establishing such expiration. The Secretary may not determine that the useful life of any housing has expired if such determination results primarily from failure to make regular and reasonable repairs and replacement, as became necessary.

(4) TENANT AND COMMUNITY COMMENT AND APPEAL.—In making a determination regarding the useful life of any housing pursuant to a petition submitted under paragraph (3), the Secretary shall provide for comment by tenants of the housing and interested persons and organizations with respect to the petition. The Secretary shall also provide the tenants and interested persons and organizations with an opportunity to appeal a determination under this subsection.

(d) HOUSING STANDARDS.—

(1) ESTABLISHMENT AND INSPECTION.—The Secretary shall, by regulation, establish standards regarding the physical condition in which any eligible low income housing project receiving incentives under this subtitle shall be maintained. The Sec-

retary shall inspect each such project not less than annually to ensure that the project is in compliance with such standards.

(2) SANCTIONS.—

(A) IN GENERAL.—The Secretary shall take any action appropriate to require the owner of any housing not in compliance with such standards to bring such housing into compliance with the standards, including—

(i) directing the mortgagee, with respect to an equity take-out loan under section 241(f) of the National Housing Act, to withhold the disbursement to the owner of any escrowed loan proceeds and requiring that such proceeds be used for repair of the housing; and

(ii) reduce the amount of the annual authorized return, as determined by the Secretary, for the period ending upon a determination by the Secretary that the project is in compliance with the standards and requiring that such amounts be used for repair.

(B) CONTINUED COMPLIANCE.—To ensure continued compliance with the standards for a project subject to any action under subparagraph (A), the Secretary may also limit access of the owner to such amounts and use of such amounts for not more than the 2-year period beginning upon the determination that the project is in compliance with the standards.

(C) REMOVAL OF ASSISTANCE.—If, upon inspection, the Secretary determines that any eligible low income housing project has failed to comply with the standards established under this subsection for 2 consecutive years, the Secretary may take 1 or more of the following actions:

(i) Subject to availability of amounts provided in appropriations Acts, provide assistance under sections 8(b) and 8(o) of the United States Housing Act of 1937 (other than project-based assistance attached to the housing) for any tenant eligible for such assistance who desires to terminate occupancy in the housing. For each unit in the housing vacated pursuant to the provision of assistance under this clause, the Secretary may, notwithstanding any other law or contract for assistance, cancel the provision of project-based assistance attached to the housing for 1 dwelling unit, if the housing is receiving such assistance.

(ii) In the case of housing for which an equity take-out loan has been made under section 241(f) of the National Housing Act, declare such loan to be in default and accelerate the maturity date of the loan.

(iii) Declare any rehabilitation loan insured or provided by the Secretary (with respect to the housing) to be in default and accelerate the maturity date of the loan.

(iv) Suspend payments under or terminate any contract for project-based rental assistance under section 8 of the United States Housing Act of 1937.

(v) Take any other action authorized by law or the project regulatory agreement to ensure that the housing will be brought into compliance with the standards established under this subsection.

(e) DISTRIBUTION AND RESIDUAL RECEIPTS.—

(1) AUTHORITY.—After the date of the enactment of this subsection, the owner of a property subject to a plan of action or use agreement pursuant to this section shall be entitled to distribute—

(A) annually, all surplus cash generated by the property, but only if the owner is in material compliance with such use agreement including compliance with prevailing physical condition standards established by the Secretary; and

(B) notwithstanding any conflicting provision in such use agreement, any funds accumulated in a residual receipts account, but only if the owner is in material compliance with such use agreement and has completed, or set aside sufficient funds for completion of, any capital repairs identified by the most recent third party capital needs assessment.

(2) OPERATION OF PROPERTY.—An owner that distributes any amounts pursuant to paragraph (1) shall—

(A) continue to operate the property in accordance with the affordability provisions of the use agreement for the property for the remaining useful life of the property;

(B) as required by the plan of action for the property, continue to renew or extend any project-based rental assistance contract for a term of not less than 20 years; and

(C) if the owner has an existing multi-year project-based rental assistance contract for less than 20 years, have the option to extend the contract to a 20-year term.

SEC. 223. [12 U.S.C. 4113] ASSISTANCE FOR DISPLACED TENANTS.

(a) SECTION 8 ASSISTANCE.—Each low-income family that is displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low income housing shall, subject to the availability or¹⁰ amounts provided under appropriations Acts, receive tenant-based assistance under section 8 of the United States Housing Act of 1937. To the extent sufficient amounts are made available under appropriations Acts, in each fiscal year the Secretary shall reserve from amounts made available under section 234(a) of this Act or, if necessary, under section 5(c) of the United States Housing Act of 1937, such amounts as the Secretary determines are necessary to provide assistance payments for low-income families displaced during the fiscal year.

(b) RELOCATION ASSISTANCE.—The Secretary shall coordinate with public housing agencies to ensure that any very low- or low-income family displaced from eligible low-income housing as the result of the prepayment of the mortgage (or termination of the mortgage insurance contract) on such housing is able to acquire a suitable, affordable dwelling unit in the area of the housing from which

¹⁰So in law.

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the family is displaced. The Secretary shall require the owner of such housing to pay 50 percent of the moving expenses of each family relocated, except that such percentage shall be increased to the extent that State or local law of general applicability requires a higher payment by the owner.

(c) CONTINUED OCCUPANCY.—

(1) IN GENERAL.—Each owner that prepays the mortgage (or terminates the mortgage insurance contract) on eligible low-income housing shall, as provided in paragraph (3), allow the tenants occupying units in such housing on the date of the submission of notice of intent under section 212 to remain in the housing for a period of 3 years, at rent levels (except for increases necessary for increased operating costs) existing at the time of prepayment.

(2) PROVISION OF ASSISTANCE BY OWNER.—In any case in which the Secretary requires an owner to allow tenants to occupy units under paragraph (1), an owner may fulfill the requirements of such paragraph by providing such assistance necessary for the tenant to rent a decent, safe, and sanitary unit in another project for the same period and at a rental cost to the tenant not in excess of the rental amount the tenant would have been required to pay in the housing of the owner, except that the tenant must freely agree to waive the right to occupy the unit in the owner's housing.

(3) APPLICABILITY TO LOW-VACANCY AREAS AND SPECIAL NEEDS TENANTS.—The provisions of this subsection shall apply only to—

(A) eligible low income housing located in a low-vacancy area (as such term is defined by the Secretary); and

(B) tenants in any eligible low-income housing in any area who have special needs restricting their ability to relocate (including elderly tenants and tenants with disabilities), as determined under regulations established by the Secretary.

(d) REQUIRED ACCEPTANCE OF SECTION 8 ASSISTANCE.—An owner who prepays the mortgage (or terminates the mortgage insurance contract) on eligible low-income housing and maintains the housing for residential rental occupancy may not refuse to rent, refuse to negotiate for the rental of, or otherwise make unavailable or deny the rent of a dwelling unit in such property to any person, or discriminate against any person in the terms, conditions, or privileges of rental of a dwelling (or in the provision of services or facilities in connection therewith), because the person receives assistance under section 8 of United States Housing Act of 1937.

(e) REGIONAL POOLS.—In providing assistance under this section, the Secretary shall allocate the assistance on a regional basis through the regional offices of the Department of Housing and Urban Development. The Secretary shall allocate assistance under this section in a manner so that the total number of assisted units in each such region available for occupancy by, and affordable to, lower income families and persons does not decrease because of the prepayment or payment of a mortgage on eligible low-income housing or the termination of an insurance contract on such housing.

(f) ENHANCED VOUCHER ASSISTANCE FOR CERTAIN TENANTS.—

(1) **AUTHORITY.**—In lieu of benefits under subsections (b), (c), and (d), and subject to the availability of appropriated amounts, each family described in paragraph (2) shall be offered enhanced voucher assistance under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)).

(2) **ELIGIBLE FAMILIES.**—A family described in this paragraph is a family that is—

(A)(i) a low-income family; or

(ii) a moderate-income family that is: (I) an elderly family; (II) a disabled family; or (III) residing in a low-vacancy area; and

(B) residing in eligible low-income housing on the date of the prepayment of the mortgage or voluntary termination of the insurance contract.

SEC. 224. [12 U.S.C. 4114] PERMISSIBLE PREPAYMENT OR VOLUNTARY TERMINATION AND MODIFICATION OF COMMITMENTS.

(a) **IN GENERAL.**—Notwithstanding any limitations on prepayment or voluntary termination under this subtitle, an owner may terminate the low-income affordability restrictions through prepayment or voluntary termination, subject to compliance with the provisions of section 223, under one of the following circumstances:

(1)(A) The Secretary approves a plan of action under section 219(a), but does not provide the assistance approved in such plan during the 15-month period beginning on the date of approval.

(B) After the date that the housing would have been eligible for prepayment pursuant to the terms of the mortgage (notwithstanding this subtitle), the Secretary approves a plan of action under section 220 or 221, but does not provide the assistance approved in such plan before the earlier of (i) the expiration of the 2-month period beginning on the commencement of the 1st fiscal year beginning after such approval, or (ii) the expiration of the 6-month period beginning on the date of approval.

(C) The Secretary approves a plan of action under section 220 or 221 for any eligible low-income housing not covered by subparagraph (B), but does not provide the assistance approved in such plan before the earlier of (i) the expiration of the 2-month period beginning on the commencement of the 1st fiscal year beginning after such approval, or (ii) the expiration of the 9-month period beginning on the date of approval.

(2) An owner who intended to transfer the housing to a qualified purchaser under section 220 or 221, and fully complied with the provisions of such section, did not receive any bona fide offers from any qualified purchasers within the applicable time periods.

In the event that the purchaser under the plan of action is unable to consummate the purchase for reasons other than the failure of the Secretary to provide incentives, an owner may terminate the low-income affordability restrictions through prepayment or voluntary termination subject to the provisions of sections 220 and 221.

(b) **SECTION 8 RENTAL ASSISTANCE.**—When providing rental assistance under section 8, the Secretary may enter into a contract

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with an owner, contingent upon the future availability of appropriations for the purpose of renewing expiring contracts for rental assistance as provided in appropriations Acts, to extend the term of such rental assistance for such additional period or periods necessary to carry out an approved plan of action. The contract and the approved plan of action shall provide that, if the Secretary is unable to extend the term of such rental assistance or is unable to develop a revised package of incentives providing benefits to the owner comparable to those received under the original approved plan of action, the Secretary, upon the request of the owner, shall take the following actions (subject to the limitations under the following paragraphs):

(1) **MODIFICATION OF COMMITMENTS.**—Modify the binding commitments made pursuant to section 222(a)(2) that are dependent on such rental assistance.

(2) **TERMINATION OF PLAN OF ACTION.**—Permit the owner to prepay the mortgage and terminate the plan of action and any implementing use agreements or restrictions, but only if the owner agrees in writing to comply with provisions of section 223.

At least 30 days before making a request under this subsection, an owner shall notify the Secretary of the owner's intention to submit the request. The Secretary shall have a period of 90 days following receipt of such notice to take action to extend the rental assistance contract and to continue the binding commitments under section 222(a)(2).

SEC. 225. [12 U.S.C. 4115] TIMETABLE FOR APPROVAL OF PLAN OF ACTION.

(a) **NOTIFICATION OF DEFICIENCIES.**—Not later than 60 days after receipt of a plan of action, the Secretary shall notify the owner in writing of any deficiencies that prevent the plan of action from being approved. If deficiencies are found, such notice shall describe alternative ways in which the plan may be revised to meet the criteria for approval.

(b) **NOTIFICATION OF APPROVAL.**—

(1) **IN GENERAL.**—Not later than 180 days after receipt of a plan of action, or such longer period as the owner requests, the Secretary shall notify the owner in writing whether the plan of action, including any revisions, is approved. If approval is withheld, the notice shall describe—

(A) the reasons for withholding approval; and

(B) the actions that could be taken to meet the criteria for approval.

(2) **OPPORTUNITY TO REVISE.**—The Secretary shall subsequently give the owner a reasonable opportunity to revise the plan of action and seek approval.

(c) **DELAYED APPROVAL.**—If the Secretary does not approve a plan of action within the period under subsection (b), the Secretary shall provide incentives and assistance under this subtitle in the amount that the owner would have received if the Secretary had complied with such time limitations. The preceding sentence shall not apply if the plan of action was not approved because of deficiencies. An owner may bring an action in the appropriate Federal district court to enforce this subsection.

SEC. 226. [12 U.S.C. 4116] RESIDENT HOMEOWNERSHIP PROGRAM.

(a) **FORMATION OF RESIDENT COUNCIL.**—Tenants seeking to purchase eligible low-income housing in accordance with section 220 shall organize a resident council for the purpose of developing a resident homeownership program in accordance with standards established by the Secretary. The resident council shall work with a public or private nonprofit organization or a public body (including an agency or instrumentality thereof). Such organization or public body shall have experience to enable it to help the tenants consider their options and to develop the capacity necessary to own and manage the housing, where appropriate, and shall be approved by the Secretary.

(b) **OTHER PROGRAM REQUIREMENTS AND LIMITATIONS.**—

(1) **SALES TO RESIDENTS.**—As a condition of approval of a plan of action involving homeownership program under this subtitle, the resident council shall prepare a workable plan acceptable to the Secretary for giving all residents an opportunity to become owners, which plan shall identify—

(A) the price at which the resident council intends to transfer ownership interests in, or shares representing, units in the housing;

(B) the factors that will influence the establishment of such price;

(C) how such price compares to the estimated appraised value of the ownership interests or shares;

(D) the underwriting standard the resident council plans to use (or reasonably expects a public or private lender to use) for potential tenant purchasers;

(E) the financing arrangements the tenants are expected to pursue or be provided; and

(F) a workable schedule of sale (subject to the limitations of paragraph (8)) based on estimated tenant incomes.

(2) **APPROVAL OF METHOD OF CONVERSION AND LIMITATION ON CONDITIONS OF APPROVAL.**—The Secretary shall approve the method for converting the housing to homeownership, which may involve acquisition of ownership interests in, or shares representing, the units in a project under any arrangement determined by the Secretary to be appropriate, such as cooperative ownership (including limited equity cooperative ownership) and fee simple ownership (including condominium ownership). The Secretary may not require the prepayment of the mortgage on eligible low-income housing for the approval of a plan of action involving a homeownership program for the housing.

(3) **REQUIRED CONDITIONS.**—The Secretary shall require that the form of homeownership impose appropriate conditions, including conditions to assure that—

(A) the number of initial owners that are very low-income, lower income, or moderate-income persons at initial occupancy meet standards required or approved by the Secretary;

(B) occupancy charges payable by the owners meet requirements established by the Secretary;

(C) the aggregate incomes of initial and subsequent owners and other sources of funds for the project are suffi-

cient to permit occupancy charges to cover the full operating costs of the housing and any debt service;

(D) each initial owner occupies the unit it acquires; and

(E) the low-income affordability restrictions shall continue to apply to any rental units in the housing for any period during which such units remain rental units.

(4) USE OF PROCEEDS FROM SALES TO ELIGIBLE FAMILIES.—The entity that transfers ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, may use 50 percent of the proceeds, if any, from the initial sale for costs of the homeownership program, including improvements to the project, operating and replacement reserves for the project, additional homeownership opportunities in the project, and other project-related activities approved by the Secretary. The remaining 50 percent of such proceeds shall be returned to the Secretary for use under section 220, subject to availability under appropriations Acts. Such entity shall keep, and make available to the Secretary, all records necessary to calculate accurately payments due the Secretary under this paragraph.

(5) RESTRICTIONS ON RESALE BY HOMEOWNERS.—

(A) IN GENERAL.—

(i) TRANSFER PERMITTED.—A homeowner under a homeownership program may transfer the homeowner's ownership interest in, or shares representing, the unit, except that a homeownership program may establish restrictions on the resale of units under the program.

(ii) RIGHT TO PURCHASE.—Where a resident management corporation, resident council, or cooperative has jurisdiction over the unit, the corporation, council, or cooperative shall have the right to purchase the ownership interest in, or shares representing, the unit from the homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer.

(iii) PROMISSORY NOTE REQUIRED.—The homeowner shall execute a promissory note equal to the difference, if any, between the market value and the purchase price, payable to the Secretary, together with a mortgage securing the obligation of the note.

(B) 6 YEARS OR LESS.—In the case of a transfer within 6 years of the acquisition under the program, the homeownership program shall provide for appropriate restrictions to assure that an eligible family may not receive any undue profit. The plan shall provide for limiting the family's consideration for its interest in the property to the total of—

(i) the contribution to equity paid by the family;

(ii) the value, as determined by such means as the Secretary shall determine through regulation, of any improvements installed at the expense of the family during the family's tenure as owner; and

(iii) the appreciated value determined by an inflation allowance at a rate which may be based on a cost-of-living index, an income index, or market index as determined by the Secretary through regulation and agreed to by the purchaser and the entity that transfers ownership interests in, or shares representing, units to eligible families (or another entity specified in the approved application), at the time of initial sale, and applied against the contribution to equity.

Such an entity may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(C) 6–20 YEARS.—In the case of a transfer during the period beginning 6 years after the acquisition and ending 20 years after the acquisition, the homeownership program shall provide for the recapture by the Secretary or the program of an amount equal to the amount of the declining balance on the note described in subparagraph (A)(iii).

(D) USE OF RECAPTURED FUNDS.—Any net sales proceeds that may not be retained by the homeowner under the plan approved pursuant to this paragraph shall be paid to the HOME Investment Trust Fund for the unit of general local government in which the housing is located. If the housing is located in a unit of general local government that is not a participating jurisdiction (as such term is defined in section 104 of the Cranston-Gonzalez National Affordable Housing Act), any such net sales proceeds shall be paid to the HOME Investment Trust Fund for the State in which the housing is located. With respect to any proceeds transferred to a HOME Investment Trust Fund under this subparagraph, the Secretary shall take such actions as are necessary to ensure that the proceeds shall be immediately available for eligible activities to expand the supply of affordable housing under section 212 of the Cranston-Gonzalez National Affordable Housing Act. The Secretary shall require the maintenance of any records necessary to calculate accurately payments due under this paragraph.

(6) PROTECTION OF NONPURCHASING FAMILIES.—

(A) EVICTION.—No tenant residing in a dwelling unit in a property on the date the Secretary approves a plan of action may be evicted by reason of a homeownership program approved under this subtitle.

(B) RENTAL ASSISTANCE.—If a tenant decides not to purchase a unit, or is not qualified to do so, the Secretary shall ensure that rental assistance under section 8 is available for use by each otherwise qualified tenant (that meets the eligibility requirements under such section) in that or another property. Any system for preferences established under section 8(d)(1)(A) or 8(o)(6)(A) of the United States Housing Act of 1937 shall not apply to the provision of assistance to such families.

(C) RELOCATION ASSISTANCE.—The resident council shall also inform each such tenant that if the tenant choos-

es to move, the owner will pay relocation assistance in accordance with the approved homeownership program.

(7) QUALIFIED MANAGEMENT.—As a condition of approval of a homeownership program under this subtitle, the resident council shall have demonstrated its abilities to manage eligible properties by having done so effectively and efficiently for a period of not less than 3 years or by entering into a contract with a qualified management entity that meets such standards as the Secretary may prescribe to ensure that the property will be maintained in a decent, safe, and sanitary condition.

(8) TIMELY HOMEOWNERSHIP.—Except in the case of limited equity cooperatives, resident councils shall transfer ownership of the property to tenants within a specified period of time that the Secretary determines to be reasonable. During the interim period when the property continues to be operated and managed as rental housing, the resident council shall utilize written tenant selection policies and criteria that are approved by the Secretary as consistent with the purpose of providing housing for very low-income families. The resident council shall promptly notify in writing any rejected applicant of the grounds for any rejection.

(9) RECORDS AND AUDIT OF RESIDENT COUNCILS.—

(A) MAINTENANCE.—Each resident council shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such resident council of the proceeds of assistance received under this subtitle (including any proceeds from sales under paragraphs (4) and (5)(D)), the total cost of the homeownership program in connection with which such assistance is given or used, and the amount and nature of that portion of the program supplied by other sources, and such other sources as will facilitate an effective audit.

(B) ACCESS.—The Secretary shall have access for the purpose of audit and examination to any books, documents, papers, and records of the resident council that are pertinent to assistance received under this subtitle.

(C) AUDIT.—The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall also have access for the purpose of audit and examination to any books, documents, papers, and records of the resident council that are pertinent to assistance received under this subtitle.

(10) ASSUMPTION CONDITIONS.—Any entity that assumes a mortgage covering low-income housing in connection with the acquisition of the housing from an owner under this section must comply with any low-income affordability restrictions for the remaining useful life of the housing as determined under section 222(c).

SEC. 227. [12 U.S.C. 4117] DELEGATED RESPONSIBILITY TO STATE AGENCIES.

(a) IN GENERAL.—In addition to any responsibilities delegated under section 213(c), the Secretary shall delegate some or all responsibility for implementing this subtitle to a State housing agen-

cy if such agency submits a preservation plan acceptable to the Secretary.

(b) **APPROVAL.**—State preservation plans shall be submitted in such form and in accordance with such procedures as the Secretary shall establish. The Secretary may approve plans that contain—

(1) an inventory of low-income housing located within the State that is or will be eligible low-income housing under this subtitle within 5 years;

(2) a description of the agency's experience in the area of multifamily financing and restructuring;

(3) a description of the administrative resources that the agency will commit to the processing of plans of action in accordance with this subtitle;

(4) a description of the administrative resources that the agency will commit to the monitoring of approved plans of action in accordance with this subtitle;

(5) an independent analysis of the performance of the multifamily housing inventory financed or otherwise monitored by the agency;

(6) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 105 of the Cranston-Gonzalez National Affordable Housing Act that the proposed activities are consistent with the approved housing strategy of the State within which the eligible low-income housing is located; and

(7) such other certifications or information that the Secretary determines to be necessary or appropriate to achieve the purposes of this subtitle.

(c) **IMPLEMENTATION AGREEMENTS.**—The Secretary may enter into any agreements necessary to implement an approved State preservation plan, which may include incentives that are authorized under other provisions of this subtitle.

SEC. 228. [12 U.S.C. 4118] CONSULTATIONS WITH OTHER INTERESTED PARTIES.

The Secretary shall confer with any appropriate State or local government agency to confirm any State or local assistance that is available to achieve the purposes of this title and shall give consideration to the views of any such agency when making determinations under this subtitle. The Secretary shall also confer with appropriate interested parties that the Secretary believes could assist in the development of a plan of action that best achieves the purposes of this subtitle.

SEC. 229. [12 U.S.C. 4119] DEFINITIONS.

For purposes of this subtitle:

(1) The term “eligible low-income housing” means any housing financed by a loan or mortgage—

(A) that is—

(i) insured or held by the Secretary under section 221(d)(3) of the National Housing Act and receiving loan management assistance under section 8 of the United States Housing Act of 1937 due to a conversion from section 101 of the Housing and Urban Development Act of 1965;

(ii) insured or held by the Secretary and bears interest at a rate determined under the proviso of section 221(d)(5) of the National Housing Act;

(iii) insured, assisted, or held by the Secretary or a State or State agency under section 236 of the National Housing Act; or

(iv) held by the Secretary and formerly insured under a program referred to in clause (i), (ii), or (iii); and

(B) that, under regulation or contract in effect before February 5, 1988, is or will within 24 months become eligible for prepayment without prior approval of the Secretary.

(2) The term “Federal cost limit” means, for any eligible low-income housing, the amount determined under section 215(a).

(3) The term “low-income affordability restrictions” means limits imposed by regulation or regulatory agreement on tenant rents, rent contributions, or income eligibility in eligible low-income housing.

(4)¹¹(A) The term “low-income tenants” means families or persons with incomes that exceed 50 percent of the median income for the area (as determined by the Secretary with adjustments for family size) but do not exceed 80 percent of the median income for the area (as determined by the Secretary with adjustments for family size).

(B) The term “very low-income tenants” means families or persons with incomes that are less than or equal to 50 percent of the median income for the area (as determined by the Secretary with adjustments for family size).

(5) The term “moderate-income families or persons” means families or persons whose incomes are between 80 percent and 95 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families.

(6) The term “nonprofit organization” means any private, nonprofit organization that—

(A) is organized or chartered under State or local laws;

(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(C) complies with standards of financial accountability acceptable to the Secretary; and

(D) has among its principal purposes significant activities related to the provision of decent housing that is affordable to very low-, low-, and moderate-income families.

(7) The term “owner” means the current or subsequent owner or owners of eligible low-income housing.

¹¹This paragraph was amended to read as shown by section 601(e) of the bill S. 2281, 103d Congress, as reported (S. Rep. 103-307), which was enacted by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995, Pub. L. 103-327, 108 Stat. 2316, approved September 28, 1994, by incorporating such section 601 by reference. Such Act provides that “the provisions of such section 601 shall be effective only during fiscal year 1995.”

(8) The term “preservation equity” means, for any eligible low-income housing—

(A) for purposes of determining the authorized return under section 214(a) and providing incentives to extend the low-income affordability restrictions on the housing under section 219—

(i) the preservation value of the housing determined under section 213(b)(1); less

(ii) any debt secured by the property; and

(B) for purposes of determining incentives under section 220 and 221 and determining the amount of an acquisition loan under the provisions of section 241(f)(3) of the National Housing Act—

(i) the preservation value of the housing determined under section 213(b)(2); less

(ii) the outstanding balance of the federally-assisted mortgage or mortgages for the housing.

(9) The term “preservation value” means, for any eligible low-income housing, the applicable value determined under paragraph (1) or (2) of section 213(b).

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

(11) The term “resident council” means any incorporated nonprofit organization or association that—

(A) is representative of the residents of the housing;

(B) adopts written procedures providing for the election of officers on a regular basis; and

(C) has a democratically elected governing board, elected by the residents of the housing.

SEC. 230. [12 U.S.C. 4120] NOTICE TO TENANTS.

Where a provision of this subtitle requires that information or material be given to tenants of the housing, the requirement may be met by (1) posting a copy of the information or material in readily accessible locations within each affected building, or posting notices in each such location describing the information or material and specifying a location, as convenient to the tenants as is reasonably practical, where a copy may be examined, and (2) supplying a copy of the information or material to a representative of the tenants.

SEC. 231. [12 U.S.C. 4121] DEFINITIONS OF QUALIFIED AND PRIORITY PURCHASER AND RELATED PARTY RULE.

(a) **PRIORITY PURCHASER.**—The term “priority purchaser” means (A) a resident council organized to acquire the housing in accordance with a resident homeownership program that meets the requirements of section 231¹²; and (B) any nonprofit organization or State or local agency that agrees to maintain low-income affordability restrictions for the remaining useful life of the housing (as determined under section 222(d)).¹³

(b) **QUALIFIED PURCHASER.**—The term “qualified purchaser” means any entity that agrees to maintain low-income affordability restrictions for the remaining useful life of the housing (as deter-

¹²So in law. Probably intended to refer to section 226.

¹³So in law. Probably intended to refer to section 222(c).

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mined under section 222(c)), and includes for-profit entities and priority purchasers.

(c) **RELATED PARTIES.**—Except as provided in subsection (d), the terms “qualified purchaser” and “priority purchaser” do not include any entity that, either directly or indirectly, is wholly or partially owned or controlled by the owner of the housing being transferred under this subtitle, is under whole or partial common control with such owner, or has any financial interest in such owner or in which such owner has any financial interest. The Secretary shall issue any regulations appropriate to implement the preceding sentence.

(d) **MANAGEMENT EXCEPTION.**—A qualified purchaser shall not be precluded from retaining as a property management entity a company that is owned or controlled by the selling owner or a principal thereof if retention of the management company is neither a condition of sale nor part of consideration paid for sale and the property management contract is negotiated by the qualified purchaser on an arm’s length basis.

SEC. 232. [12 U.S.C. 4122] PREEMPTION OF STATE AND LOCAL LAWS.

(a) **IN GENERAL.**—No State or political subdivision of a State may establish, continue in effect, or enforce any law or regulation that—

(1) restricts or inhibits the prepayment of any mortgage described in section 229(1) (or the voluntary termination of any insurance contract pursuant to section 229 of the National Housing Act) on eligible low income housing;

(2) restricts or inhibits an owner of such housing from receiving the authorized annual return provided under section 214;

(3) is inconsistent with any provision of this subtitle, including any law, regulation, or other restriction that limits or impairs the ability of any owner of eligible low income housing to receive incentives authorized under this subtitle (including authorization to increase rental rates, transfer the housing, obtain secondary financing, or use the proceeds of any of such incentives); or

(4) in its applicability to low-income housing is limited only to eligible low-income housing for which the owner has prepaid the mortgage or terminated the insurance contract.

Any law, regulation, or restriction described under paragraph (1), (2), (3), or (4) shall be ineffective and any eligible low-income housing exempt from the law, regulation, or restriction, only to the extent that it violates the provisions of this subsection.

(b) **EFFECT.**—This section shall not prevent the establishment, continuing in effect, or enforcement of any law or regulation of any State or political subdivision of a State not inconsistent with the provisions of this subtitle, such as any law or regulation relating to building standards, zoning limitations, health, safety, or habitability standards for housing, rent control, or conversion of rental housing to condominium or cooperative ownership, to the extent such law or regulation is of general applicability to both housing receiving Federal assistance and nonassisted housing. This section shall not preempt, annul, or alter any contractual restrictions or

obligations existing before the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act¹⁴ that prevent or limit an owner of eligible low-income housing from prepaying the mortgage on the housing (or terminating the insurance contract on the housing).

SEC. 233. [12 U.S.C. 4123] SEVERABILITY.

If any provision of this subtitle, or the application of such provision with respect to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to any other person or circumstance, shall not be affected by such holding.

SEC. 234. [12 U.S.C. 4124] AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.**—There are authorized to be appropriated for assistance and incentives authorized under this subtitle \$638,252,784 for fiscal year 1993 and \$665,059,401 for fiscal year 1994.

(b) **GRANTS.**—Subject to approval in appropriation Acts, not more than \$50,000,000 of the amounts made available under subsection (a) for fiscal year 1993, and not more than \$50,000,000 of the amounts made available under subsection (a) for fiscal year 1994, shall be available for grants under section 221(d)(2).

SEC. 235. [12 U.S.C. 4101 note] APPLICABILITY.

Subject to section 605 of the Cranston-Gonzalez National Affordable Housing Act, the requirements of this subtitle shall apply to any project that is eligible low-income housing on or after November 1, 1987.

Subtitle C¹⁵—Rural Rental Housing Displacement Prevention

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Subtitle D¹⁶—Other Measures to Preserve Low Income Housing

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¹⁴ November 28, 1990.

¹⁵ Section 312 of the Housing and Community Development Act of 1992, Pub. L. 102-550, approved October 28, 1992, amended “[t]itle II of the Housing and Community Development Act of 1987... by adding at the end” this subtitle C.

However, the Housing and Community Development Act of 1987, Pub. L. 100-242, approved February 5, 1988, included subtitles C and D (relating to rural rental housing displacement prevention and other measures to preserve low-income housing), consisting of sections 241-243 and 261-263.

Therefore, the new subtitle C added by section 312 of Public Law 102-550 is added after subtitle D (after section 263), the subtitle probably should have been designated as subtitle E, and the sections of such subtitle probably should have been designated as sections 271 through 277.

Because the provisions of subtitles C and D of the Public Law 100-242 contained only amendments to other laws, such provisions are not set forth in this compilation. The laws amended by the provisions of such subtitles are, however, set forth in this compilation.

¹⁶ See preceding footnote.

Subtitle C¹⁶—Technical Assistance and Capacity Building

SEC. 251. [12 U.S.C. 4141] AUTHORITY.

The Secretary of Housing and Urban Development may provide technical assistance and capacity building to further the preservation program established under this title.

SEC. 252. [12 U.S.C. 4142] PURPOSES.

The purposes of this subtitle are—

(1) to promote the ability of residents of eligible low-income housing to meaningfully participate in the preservation process established by this title and affect decisions about the future of their housing;

(2) to promote the ability of community-based nonprofit housing developers and resident councils to acquire, rehabilitate, and competently own and manage eligible housing as rental or cooperative housing for low- and moderate-income people; and

(3) to assist the Secretary in discharging the obligation under section 220 to notify potential qualified purchasers of the availability of properties for sale and to otherwise facilitate the coordination and oversight of the preservation program established under this title.

SEC. 253. [12 U.S.C. 4143] GRANTS FOR BUILDING RESIDENT CAPACITY AND FUNDING PREDEVELOPMENT COSTS.

(a) IN GENERAL.—Assistance made available under this section shall be used for direct assistance grants to resident organizations and community-based nonprofit housing developers and resident councils to assist the acquisition of specific projects (including the payment of reasonable administrative expenses to participating intermediaries).

(b) ALLOCATION.—30 percent of the assistance made available under this section shall be used for resident capacity grants in accordance with subsection (d). The remainder shall be used for predevelopment grants in connection with specific projects in accordance with subsection (e).

(c) LIMITATION ON GRANT AMOUNTS.—A resident capacity grant under subsection (d) may not exceed \$30,000 per project and a grant under subsection (e) for predevelopment costs may not exceed \$200,000 per project, exclusive of any fees paid to a participating intermediary by the Secretary for administering the program.

(d) RESIDENT CAPACITY GRANTS.—

(1) USE.—Resident capacity grants under this subsection shall be available to eligible applicants to cover expenses for resident outreach, incorporation of a resident organization or council, conducting democratic elections, training, leadership development, legal and other technical assistance to the board of directors, staff and members of the resident organization or council.

(2) ELIGIBLE HOUSING.—Grants under this subsection may be provided with respect to eligible low-income housing for which the owner has filed a notice of intent under subtitle B of this title or title II of the Emergency Low Income Housing

Preservation Act of 1987 (pursuant to section 604 of the Cranston-Gonzalez National Affordable Housing Act).

(e) PREDEVELOPMENT GRANTS.—

(1) USE.—Predevelopment grants under this subsection shall be made available to community-based nonprofit housing developers and resident councils to cover the cost of organizing a purchasing entity and pursuing an acquisition, including third party costs for training, development consulting, legal, appraisal, accounting, environmental, architectural and engineering, application fees, and sponsor's staff and overhead costs.

(2) ELIGIBLE HOUSING.—Such grants may only be made available with respect to any eligible low-income housing project for which the owner has filed an initial notice of intent to transfer the housing to a qualified purchaser in accordance with section 220 of this title, or has filed a notice of intent and entered into a binding agreement to sell the housing to a resident organization or nonprofit organization.

(3) PHASE-IN OF GRANT PAYMENTS.—Grant payments under this subsection shall be made in phases, based on performance benchmarks established by the Secretary in consultation with intermediaries selected under section 255(b).

(f) GRANT APPLICATIONS.—Grant applications for assistance under subsections (d) and (e) shall be received monthly on a rolling basis and approved or rejected on at least a quarterly basis by intermediaries selected under section 255(b).

(g) APPEAL.—If an application for assistance under subsections (d) or (e) is denied, the applicant shall have the right to appeal the denial to the Secretary and receive a binding determination within 30 days of the appeal.

SEC. 254. [12 U.S.C. 4144] GRANTS FOR OTHER PURPOSES.

The Secretary may provide grants under this subtitle—

(1) to resident-controlled or community-based nonprofit organizations with experience in resident education and organizing for the purpose of conducting community, city or county wide outreach and training programs to identify and organize residents of eligible low-income housing; and

(2) to State and local government agencies and nonprofit intermediaries for the purpose of carrying out such activities as the Secretary deems appropriate to further the preservation program established under this title.

SEC. 255. [12 U.S.C. 4145] DELIVERY OF ASSISTANCE THROUGH INTERMEDIARIES.

(a) IN GENERAL.—The Secretary shall approve and disburse assistance under section 253 through eligible intermediaries selected by the Secretary under subsection (b). If the Secretary does not receive an acceptable proposal from an intermediary offering to administer assistance under this section in a given State, the Secretary shall administer the program in such State directly.

(b) SELECTION OF ELIGIBLE INTERMEDIARIES.—

(1) IN GENERAL.—The Secretary shall develop criteria to select eligible intermediaries, through a competitive process, to

administer assistance under this subtitle. The process shall include provision for a reasonable administrative fee.

(2) PRIORITY.—With respect to all forms of grants available under section 253, such criteria shall give priority to applications from eligible intermediaries with demonstrated expertise or experience with the program established under this title or under the Emergency Low Income Housing Preservation Act of 1987.

(3) CRITERIA.—The criteria developed under this subsection shall—

(A) not assign any preference or priority to applications from eligible intermediaries based on their previous participation in administering or receiving Federal grants or loans (but may exclude applicants who have failed to perform under prior contracts of a similar nature);

(B) require an applicant to prepare a proposal that demonstrates adequate staffing, qualifications, prior experience, and a plan for participation; and

(C) permit an applicant to serve as the administrator of assistance made available under section 253(d) or (e), based on the applicant's suitability and interest.

(4) GEOGRAPHIC COVERAGE.—The Secretary may select more than 1 State or regional intermediary for a single State or region. The number of intermediaries chosen for each State or region may be based on the number of eligible low-income housing projects in the State or region, provided there is no duplication of geographic coverage by intermediaries in the administration of the direct assistance grant program.

(5) NATIONAL NONPROFIT INTERMEDIARIES.—National nonprofit intermediaries shall be selected to administer the assistance made available under section 253 only with respect to States or regions for which no other eligible intermediary, acceptable to the Secretary, has submitted a proposal to participate.

(6) PREFERENCE.—With respect to assistance made available under section 254, preference shall be given to eligible regional, State, and local intermediaries, over national nonprofit organizations.

(c) CONFLICTS OF INTEREST.—Eligible intermediaries selected under subsection (b) to disburse assistance under section 253 shall certify that they will serve only as delegated program administrators, charged with the responsibility for reviewing and approving grant applications on behalf of the Secretary. Selected intermediaries shall—

(1) establish appropriate procedures for grant administration and fiscal management, pursuant to standards established by the Secretary; and

(2) receive a reasonable administrative fee, except that they may not provide other services to grant recipients with respect to projects that are the subject of the grant application and may not receive payment, directly or indirectly, from the proceeds of grants they have approved.

(d) DEFINITION OF ELIGIBLE INTERMEDIARIES.—For purposes of this section, the term “eligible intermediary” means a State, re-

gional, or national organization (including a quasi-public organization) or a State or local housing agency that—

(1) has as a central purpose the preservation of existing affordable housing and the prevention of displacement;

(2) does not receive direct Federal appropriations for operating support;

(3) in the case of a national nonprofit organization, has been in existence for at least 5 years prior to the date of application and has been classified by the Internal Revenue Service as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986;

(4) in the case of a regional or State nonprofit organization, has been in existence for at least 3 years prior to the date of application and has been classified by the Internal Revenue Service as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 or is otherwise a tax-exempt entity;

(5) has a record of service to low-income individuals or community-based nonprofit housing developers in multiple communities and, with respect to intermediaries administering assistance under section 253, has experience with the allocation or administration of grant or loan funds; and

(6) meets standards of fiscal responsibility established by the Secretary.

SEC. 256. [12 U.S.C. 4146] DEFINITIONS.

For purposes of this subtitle—

(1) the term “community-based nonprofit housing developer” means a nonprofit community development corporation that—

(A) has been classified by the Internal Revenue Service as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986;

(B) has been in existence for at least 2 years prior to the date of the grant application;

(C) has a record of service to low- and moderate-income people in the community in which the project is located;

(D) is organized at the neighborhood, city, county or multi-county level; and

(E) in the case of a corporation acquiring eligible housing under subtitle B of this title, agrees to form a purchaser entity that conforms to the definition of a community-based nonprofit organization under such subtitle and agrees to use its best efforts to secure majority tenant consent to the acquisition of the project for which grant assistance is requested; and

(2) the terms “eligible low-income housing”, “nonprofit organization”, “owner”, and “resident council” have the meanings given such terms in section 229.

SEC. 257. [12 U.S.C. 4147] FUNDING.

The Secretary shall use not more than \$25,000,000 of the amounts made available under section 234(a) for fiscal year 1993, and not more than \$25,000,000 of the amounts made available

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under section 234(a) for fiscal year 1994, to carry out this subtitle. Of any amounts made available to carry out this subtitle in any appropriation Act, 90 percent shall be set aside for use in accordance with section 253 and 10 percent shall be set aside for use in accordance with subsection 254.

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**TITLE IV—MORTGAGE INSURANCE AND SECONDARY
MORTGAGE MARKET PROGRAMS**

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SEC. 421. [12 U.S.C. 1715z-4a] DOUBLE DAMAGES REMEDY FOR UNAUTHORIZED USE OF MULTIFAMILY HOUSING PROJECT ASSETS AND INCOME.

(a) ACTION TO RECOVER ASSETS OR INCOME.—

(1) The Secretary of Housing and Urban Development (referred to in this section as the “Secretary”) may request the Attorney General to bring an action in a United States district court to recover any assets or income and by any person in violation of (A) a regulatory agreement that applies to a multifamily project, nursing home, intermediate care facility, board and care home, assisted living facility, or hospital whose mortgage is or, at the time of the violations, was insured or held by the Secretary under title II of the National Housing Act; (B) a regulatory agreement that applies to a multifamily project whose mortgage is or, at the time of the violations, was insured or held by the Secretary under section 202 of the Housing Act of 1959 (including property subject to section 202 of such Act as it existed before enactment of the Cranston-Gonzalez National Affordable Housing Act of 1990); (C) a regulatory agreement or such other form of regulatory control as may be imposed by the Secretary that applies to mortgages insured or held or, at the time of the violations, was insured or held by the Secretary under section 542 of the Housing and Community Development Act of 1992, but not reinsured under section 542 of the Housing and Community Development Act of 1992; or (D) any applicable regulation. For purposes of this section, a use of assets or income in violation of the regulatory agreement, or such other form of regulatory control as may be imposed by the Secretary, or any applicable regulation shall include any use for which the documentation in the books and accounts does not establish that the use was made for a reasonable operating expense or necessary repair of the property and has not been maintained in accordance with the requirements of the Secretary and in reasonable condition for proper audit.

(2) For purposes of a mortgage insured or held by the Secretary under title II of the National Housing Act, under section 202 of the Housing Act of 1959 (including section 202 of such Act as it existed before enactment of the Cranston-Gonzalez National Affordable Housing Act of 1990) and under section 542 of the Housing and Community Development Act of 1992, the term “any person” shall mean any person or entity that

owns or operates a property, as identified in the regulatory agreement, including but not limited to—

(A) any stockholder holding 25 percent or more interest of a corporation that owns that property;

(B) any beneficial owner of the property under any business or trust;

(C) any officer, director, or partner of an entity owning or controlling the property;

(D) any nursing home lessee or operator;

(E) any hospital lessee or operator;

(F) any other person or entity that controls the property regardless of that person or entity's official relationship to the property; and

(G) any heir, assignee, successor in interest, or agent of any person or entity described in the preceding subparagraphs.

(b) INITIATION OF PROCEEDINGS AND TEMPORARY RELIEF.—The Attorney General, upon request of the Secretary, shall have the exclusive authority to authorize the initiation of proceedings under this section. Pending final resolution of any action under this section, the court may grant appropriate temporary or preliminary relief, including restraining orders, injunctions, and acceptance of satisfactory performance bonds, to protect the interests of the Secretary and to prevent use of assets or income in violation of the regulatory agreement, or such other form of regulatory control as may be imposed by the Secretary, and any applicable regulation and to prevent loss of value of the realty and personalty involved.

(c) AMOUNT RECOVERABLE.—In any judgment favorable to the United States entered under this section, the Attorney General may recover double the value of the assets and income of the property that the court determines to have been used in violation of the regulatory agreement, or such other form of regulatory control as may be imposed by the Secretary, or any applicable regulation, plus all costs relating to the action, including but not limited to reasonable attorney and auditing fees. Notwithstanding any other provision of law, the Secretary may apply the recovery, or any portion of the recovery, to the property or to the applicable insurance fund under the National Housing Act or, in the case of any project for which the mortgage is held by the Secretary under section 202 of the Housing Act of 1959 (including property subject to section 202 of such Act as it existed before enactment of the Cranston-Gonzalez National Affordable Housing Act of 1990), to the project or to the Department for use by the appropriate office within the Department for administrative costs related to enforcement of the requirements of the various programs administered by the Secretary, as appropriate.

(d) TIME LIMITATION.—Notwithstanding any other statute of limitations, the Secretary may request the Attorney General to bring an action under this section at any time up to and including 6 years after the latest date that the Secretary discovers any use of a property's assets and income in violation of the regulatory agreement, or such other form of regulatory control as may be imposed by the Secretary, or any applicable regulation.

(e) CONTINUED AVAILABILITY OF OTHER REMEDIES.—The remedy provided by this section is in addition to any other remedies available to the Secretary or the United States.

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SEC. 424. [12 U.S.C. 1701z-15] APPROVAL OF INDIVIDUAL RESIDENTIAL WATER PURIFICATION OR TREATMENT UNITS.

(a) IN GENERAL.—When the existing water supply does not meet the minimum property standards established by the Department of Housing and Urban Development and a permanent alternative acceptable water supply is not available, a continuous supply of water may be provided through the use of approved residential water treatment equipment or a water purification unit that provides bacterially and chemically safe drinking water.

(b) APPROVAL PROCESS.—A performance-based approval of the equipment or unit and the maintenance, monitoring, and replacement plan for such equipment or unit shall be certified by field offices of the Department of Housing and Urban Development based upon general standards recognized by the Department as modified for local or regional conditions. As a part of such approved plan, a separate monthly escrow account may be required to be established through the lender to cover the cost of the approved yearly maintenance and monitoring schedule and projected replacement of the equipment or unit.

SEC. 425. [12 U.S.C. 1715z-1c] REGULATION OF RENTS IN INSURED PROJECTS.

After December 1, 1987, the Secretary of Housing and Urban Development shall control rents and charges as they were controlled prior to April 19, 1983, for any multifamily housing project insured under the National Housing Act if—

(1) during the period of April 19, 1983, through December 1, 1987, the project owner and the Secretary have not executed, and the project owner has not filed a written request with the Secretary to enter into, an amendment to the regulatory agreement pursuant to regulations published by the Secretary on April 19, 1983, or June 4, 1986, electing to deregulate rents or utilize an alternative formula for determining the maximum allowable rents pursuant to regulations published by the Secretary on April 19, 1983, or June 4, 1986; and

(2)(A) the project was, as of December 1, 1987, receiving a housing assistance payment under a contract pursuant to section 8 of the United States Housing Act of 1937 (other than under the existing housing certificate program of section 8(b)(1) of such Act); or

(B) not less than 50 percent of the units in the project are occupied by lower income families (as defined in section 3(a)(2) of the United States Housing Act of 1937).

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TITLE V—COMMUNITY DEVELOPMENT AND MISCELLANEOUS PROGRAMS

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SEC. 561. [42 U.S.C. 3616a] FAIR HOUSING INITIATIVES PROGRAM.

(a) **IN GENERAL.**—The Secretary of Housing and Urban Development (in this section referred to as the “Secretary”) may make grants to, or (to the extent of amounts provided in appropriation Acts) enter into contracts or cooperative agreements with, State or local governments or their agencies, public or private nonprofit organizations or institutions, or other public or private entities that are formulating or carry out programs to prevent or eliminate discriminatory housing practices, to develop, implement, carry out, or coordinate—

(1) programs or activities designed to obtain enforcement of the rights granted by title VIII of the Act of April 11, 1968 (commonly referred to as the Civil Rights Act of 1968), or by State or local laws that provide rights and remedies for alleged discriminatory housing practices that are substantially equivalent to the rights and remedies provided in such title VIII, through such appropriate judicial or administrative proceedings (including informal methods of conference, conciliation, and persuasion) as are available therefore; and

(2) education and outreach programs designed to inform the public concerning rights and obligations under the laws referred to in paragraph (1).

(b) **PRIVATE ENFORCEMENT INITIATIVES.**—

(1) **IN GENERAL.**—The Secretary shall use funds made available under this subsection to conduct, through contracts with private nonprofit fair housing enforcement organizations, investigations of violations of the rights granted under title VIII of the Civil Rights Act of 1968, and such enforcement activities as appropriate to remedy such violations. The Secretary may enter into multiyear contracts and take such other action as is appropriate to enhance the effectiveness of such investigations and enforcement activities.

(2) **ACTIVITIES.**—The Secretary shall use funds made available under this subsection to conduct, through contracts with private nonprofit fair housing enforcement organizations, a range of investigative and enforcement activities designed to—

(A) carry out testing and other investigative activities in accordance with subsection (b)(1), including building the capacity for housing investigative activities in unserved or underserved areas;

(B) discover and remedy discrimination in the public and private real estate markets and real estate-related transactions, including, but not limited to, the making or purchasing of loans or the provision of other financial assistance sales and rentals of housing and housing advertising;

(C) carry out special projects, including the development of prototypes to respond to new or sophisticated forms of discrimination against persons protected under title VIII of the Civil Rights Act of 1968;

(D) provide technical assistance to local fair housing organizations, and assist in the formation and development of new fair housing organizations; and

(E) provide funds for the costs and expenses of litigation, including expert witness fees.

(c) FUNDING OF FAIR HOUSING ORGANIZATIONS.—

(1) IN GENERAL.—The Secretary shall use funds made available under this section to enter into contracts or cooperative agreements with qualified fair housing enforcement organizations, other private nonprofit fair housing enforcement organizations, and nonprofit groups organizing to build their capacity to provide fair housing enforcement, for the purpose of supporting the continued development or implementation of initiatives which enforce the rights granted under title VIII of the Civil Rights Act of 1968, as amended. Contracts or cooperative agreements may not provide more than 50 percent of the operating budget of the recipient organization for any one year.

(2) CAPACITY ENHANCEMENT.—The Secretary shall use funds made available under this section to help establish, organize, and build the capacity of fair housing enforcement organizations, particularly in those areas of the country which are currently underserved by fair housing enforcement organizations as well as those areas where large concentrations of protected classes exist. For purposes of meeting the objectives of this paragraph, the Secretary may enter into contracts or cooperative agreements with qualified fair housing enforcement organizations. The Secretary shall establish annual goals which reflect the national need for private fair housing enforcement organizations.

(d) EDUCATION AND OUTREACH.—

(1) IN GENERAL.—The Secretary, through contracts with one or more qualified fair housing enforcement organizations, other fair housing enforcement organizations, and other nonprofit organizations representing groups of persons protected under title VIII of the Civil Rights Act of 1968, shall establish a national education and outreach program. The national program shall be designed to provide a centralized, coordinated effort for the development and dissemination of fair housing media products, including—

- (A) public service announcements, both audio and video;
- (B) television, radio and print advertisements;
- (C) posters; and
- (D) pamphlets and brochures.

The Secretary shall designate a portion of the amounts provided in subsection (g)(4) for a national program specifically for activities related to the annual national fair housing month. The Secretary shall encourage cooperation with real estate industry organizations in the national education and outreach program. The Secretary shall also encourage the dissemination of educational information and technical assistance to support compliance with the housing adaptability and accessibility guidelines contained in the Fair Housing Act Amendments of 1988.¹⁷

¹⁷So in law. Probably intended to refer to the Fair Housing Amendments Act of 1988.

(2) REGIONAL AND LOCAL PROGRAMS.—The Secretary, through contracts with fair housing enforcement organizations, other nonprofit organizations representing groups of persons protected under title VIII of the Civil Rights Act of 1968, State and local agencies certified by the Secretary under section 810(f) of the Fair Housing Act, or other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices, shall establish or support education and outreach programs at the regional and local levels.

(3) COMMUNITY-BASED PROGRAMS.—The Secretary shall provide funding to fair housing organizations and other nonprofit organizations representing groups of persons protected under title VIII of the Civil Rights Act of 1968, or other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices, to support community-based education and outreach activities, including school, church, and community presentations, conferences, and other educational activities.

(e) PROGRAM ADMINISTRATION.—

(1) Not less than 30 days before providing a grant or entering into any contract or cooperative agreement to carry out activities authorized by this section, the Secretary shall submit notification of such proposed grant, contract, or cooperative agreement (including a description of the geographical distribution of such contracts) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives¹⁸.

[(2) [Repealed.]

(f) REGULATIONS.—

(1) The Secretary shall issue such regulations as may be necessary to carry out the provisions of this section.

(2) The Secretary shall, for use during the demonstration authorized in this section, establish guidelines for testing activities funded under the private enforcement initiative of the fair housing initiatives program. The purpose of such guidelines shall be to ensure that investigations in support of fair housing enforcement efforts described in subsection (a)(1) shall develop credible and objective evidence of discriminatory housing practices. Such guidelines shall apply only to activities funded under this section, shall not be construed to limit or otherwise restrict the use of facts secured through testing not funded under this section in any legal proceeding under Federal fair housing laws, and shall not be used to restrict individuals or entities, including those participating in the fair housing initiatives program, from pursuing any right or remedy

¹⁸Section 1(a) of Public Law 104-14, 109 Stat. 186, provides, in part, that “any reference in any provision of law enacted before January 4, 1995, to... the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives”. However, H. Res. 5, 107th Congress, agreed to on January 3, 2001, abolished the Committee on Banking and Financial Services and established the Committee on Financial Services, which has jurisdiction over many of the areas previously under the jurisdiction of the Committee on Banking and Financial Services.

guaranteed by Federal law. Not later than 6 months after the end of the demonstration period authorized in this section, the Secretary shall submit to Congress the evaluation of the Secretary of the effectiveness of such guidelines in achieving the purposes of this section.

(3) Such regulations shall include provisions governing applications for assistance under this section, and shall require each such application to contain—

(A) a description of the assisted activities proposed to be undertaken by the applicant, together with the estimated costs and schedule for completion of such activities;

(B) a description of the experience of the applicant in formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

(C) available information, including studies made by or available to the applicant, indicating the nature and extent of discriminatory housing practices occurring in the general location where the applicant proposes to conduct its assisted activities, and the relationship of such activities to such practices;

(D) an estimate of such other public or private resources as may be available to assist the proposed activities;

(E) a description of proposed procedures to be used by the applicant for monitoring conduct and evaluating results of the proposed activities; and

(F) any additional information required by the Secretary.

(4) Regulations issued under this subsection shall not become effective prior to the expiration of 90 days after the Secretary transmits such regulations, in the form such regulations are intended to be published, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives¹⁹.

(5) The Secretary shall not obligate or expend any amount under this section before the effective date of the regulations required under this subsection.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the provisions of this section, \$21,000,000 for fiscal year 1993 and \$26,000,000 for fiscal year 1994, of which—

(1) not less than \$3,820,000 for fiscal year 1993 and \$8,500,000 for fiscal year 1994 shall be for private enforcement initiatives authorized under subsection (b), divided equally between activities specified under subsection (b)(1) and those specified under subsection (b)(2);

¹⁹Section 1(a) of Public Law 104-14, 109 Stat. 186, provides, in part, that “any reference in any provision of law enacted before January 4, 1995, to... the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives”. However, H. Res. 5, 107th Congress, agreed to on January 3, 2001, abolished the Committee on Banking and Financial Services and established the Committee on Financial Services, which has jurisdiction over many of the areas previously under the jurisdiction of the Committee on Banking and Financial Services.

(2) not less than \$2,230,000 for fiscal year 1993 and \$8,500,000 for fiscal year 1994 shall be for qualified fair housing enforcement organizations authorized under subsection (c)(1);

(3) not less than \$2,010,000 for fiscal year 1993 and \$4,000,000 for fiscal year 1994 shall be for the creation of new fair housing enforcement organizations authorized under subsection (c)(2); and

(4) not less than \$2,540,000 for fiscal year 1993 and \$5,000,000 for fiscal year 1994 shall be for education and outreach programs authorized under subsection (d), to be divided equally between activities specified under subsection (d)(1) and those specified under subsections (d)(2) and (d)(3). Any amount appropriated under this section shall remain available until expended.

(h) QUALIFIED FAIR HOUSING ENFORCEMENT ORGANIZATION.—

(1) The term “qualified fair housing enforcement organization” means any organization that—

(A) is organized as a private, tax-exempt, nonprofit, charitable organization;

(B) has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(C) is engaged in all the activities listed in paragraph (1)(B) at the time of application for assistance under this section.

An organization which is not solely engaged in fair housing enforcement activities may qualify as a qualified fair housing enforcement organization, provided that the organization is actively engaged in each of the activities listed in subparagraph (B).

(2) The term “fair housing enforcement organization” means any organization that—

(A) meets the requirements specified in paragraph (1)(A);

(B) is currently engaged in the activities specified in paragraph (1)(B);

(C) upon the receipt of funds under this section will become engaged in all of the activities specified in paragraph (1)(B); and

(D) for purposes of funding under subsection (b), has at least 1 year of experience in the activities specified in paragraph (1)(B).

(i) PROHIBITION ON USE OF FUNDS.—None of the funds authorized under this section may be used by the Secretary for purposes of settling claims, satisfying judgments or fulfilling court orders in any litigation action involving either the Department or housing providers funded by the Department. None of the funds authorized under this section may be used by the Department for administrative costs.

(j) REPORTING REQUIREMENTS.—Not later than 180 days after the close of each fiscal year in which assistance under this section is furnished, the Secretary shall prepare and submit to the Congress a comprehensive report which shall contain—

(1) a description of the progress made in accomplishing the objectives of this section;

(2) a summary of all the private enforcement activities carried out under this section and the use of such funds during the preceding fiscal year;

(3) a list of all fair housing enforcement organizations funded under this section during the preceding fiscal year, identified on a State-by-State basis;

(4) a summary of all education and outreach activities funded under this section and the use of such funds during the preceding fiscal year; and

(5) any findings, conclusions, or recommendations of the Secretary as a result of the funded activities.

SEC. 562. [42 U.S.C. 3608a] COLLECTION OF CERTAIN DATA.

(a) IN GENERAL.—To assess the extent of compliance with Federal fair housing requirements (including the requirements established under title VI of Public Law 88–352 and title VIII of Public Law 90–284), the Secretary of Agriculture shall collect, not less than annually, data on the racial and ethnic characteristics of persons eligible for, assisted, or otherwise benefiting under each community development, housing assistance, and mortgage and loan insurance and guarantee program administered by such Secretary. Such data shall be collected on a building by building basis if the Secretary determines such collection to be appropriate.

(b) REPORTS TO CONGRESS.—The Secretary of Agriculture shall include in the annual report of such Secretary to the Congress a summary and evaluation of the data collected by such Secretary under subsection (a) during the preceding year.

* * * * *

SEC. 567. [42 U.S.C. 1437a note] MEDIAN AREA INCOME.

For purposes of calculating the median income for any area that is not within a metropolitan statistical area (as established by the Office of Management and Budget) for programs under title I of the Housing and Community Development Act of 1974, the United States Housing Act of 1937, the National Housing Act, or title V of the Housing Act of 1949, the Secretary of Housing and Urban Development or the Secretary of Agriculture (as appropriate) shall use whichever of the following is higher:

(1) the median income of the county in which the area is located; or

(2) the median income of the entire nonmetropolitan area of the State.

* * * * *

SEC. 571. [12 U.S.C. 1735e-1] USE OF AMERICAN MATERIALS AND PRODUCTS.

In the administration of housing assistance programs, the Secretary of Housing and Urban Development shall encourage the use of materials and products mined and produced in the United States.

* * * * *

TITLE VII—ENTERPRISE ZONE DEVELOPMENT

SEC. 701. [42 U.S.C. 11501] DESIGNATION OF ENTERPRISE ZONES.

(a) DESIGNATION OF ZONES.—

(1) DEFINITION.—For purposes of this section, the term “enterprise zone” means any area that—

(A) is nominated by one or more local governments and the State or States in which it is located for designation as an enterprise zone (in this section referred to as a “nominated area”); and

(B) the Secretary of Housing and Urban Development designates as an enterprise zone, after consultation with—

(i) the Secretaries of Agriculture, Commerce, Labor, and the Treasury, the Director of the Office of Management and Budget, and the Administrator of the Small Business Administration; and

(ii) in the case of an area on an Indian reservation, the Secretary of the Interior.

(2) NUMBER OF DESIGNATIONS.—

(A) IN GENERAL.—The Secretary of Housing and Urban Development may designate not more than 100 nominated areas as enterprise zones.

(B) MINIMUM DESIGNATION IN RURAL AREAS.—Of the areas designated under subparagraph (A), not less than $\frac{1}{3}$ shall be areas that—

(i) are within a local government jurisdiction or jurisdictions with a population of less than 50,000 (as determined under the most recent census data available);

(ii) are outside of a metropolitan statistical area (as designated by the Director of the Office of Management and Budget); or

(iii) that are determined by the Secretary, after consultation with the Secretary of Commerce, to be rural areas.

(3) AREAS DESIGNATED BASED SOLELY ON DEGREE OF POVERTY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall designate (i) the nominated areas with the highest average ranking with respect to the criteria set forth in subparagraphs (C) and (D) of subsection (c)(3), and the 1 criterion set forth in subparagraph (E)(i) or (E)(ii) of subsection (c)(3) that gives an area a higher ranking; and (ii) for areas described in paragraph (2)(B), the nominated areas with the highest ranking with respect to the 1 criterion set forth in subparagraph (C), (D), (E)(i), or (E)(ii) of subsection (c)(3) that gives an area a higher ranking. For purposes of the preceding sentence, an area shall be ranked within each such criterion on the basis of the amount by which the area exceeds such criterion, with the area that exceeds such criterion by the greatest amount given the highest ranking.

(B) EXCEPTION WHERE INADEQUATE COURSE OF ACTION, ETC.—An area shall not be designated under subparagraph

(A) if the Secretary determines that the course of action with respect to such area is inadequate.

(C) SEPARATE APPLICATION TO RURAL AND OTHER AREAS.—Subparagraph (A) shall be applied separately with respect to areas described in paragraph (2)(B) and to other areas.

(4) LIMITATION ON DESIGNATIONS.—

(A) PUBLICATION OF REGULATIONS.—Before designating any area as an enterprise zone, the Secretary shall prescribe by regulation not later than 4 months following the date of the enactment of this Act,²⁰ after consultation with the officials described in paragraph (1)(B)—

(i) the procedures for nominating an area under paragraph (1)(A);

(ii) the parameters relating to the size and population characteristics of an enterprise zone; and

(iii) the manner in which nominated areas will be evaluated based on the criteria specified in subsection (d).

(B) TIME LIMITATIONS.—The Secretary shall designate nominated areas as enterprise zones only during the 24-month period beginning on the 1st day of the 1st month following the month in which the date of the enactment of the Housing and Community Development Act of 1992 occurs.²¹

(C) PROCEDURAL RULES.—The Secretary shall not make any designation under paragraph (1) unless—

(i) the local governments and the State in which the nominated area is located have the authority—

(I) to nominate such area for designation as an enterprise zone;

(II) to make the State and local commitments under subsection (d); and

(III) to provide assurances satisfactory to the Secretary that such commitments will be fulfilled;

(ii) a nomination therefor is submitted in such a manner and in such form, and contains such information, as the Secretary shall by regulation prescribe;

(iii) the Secretary determines that any information furnished is reasonably accurate; and

(iv) the State and local governments certify that no portion of the area nominated is already included in an enterprise zone or in an area otherwise nominated to be an enterprise zone.

(5) NOMINATION PROCESS FOR INDIAN RESERVATIONS.—In the case of a nominated area on an Indian reservation, the reservation governing body (as determined by the Secretary of the Interior) shall be deemed to be both the State and local governments with respect to such area.

(b) PERIOD FOR WHICH DESIGNATION IS IN EFFECT.—

²⁰The date of enactment was February 5, 1988.

²¹The date of enactment was October 28, 1992.

(1) IN GENERAL.—Any designation of an area as an enterprise zone shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

(A) December 31 of the 24th calendar year following the calendar year in which such date occurs;

(B) the termination date designated by the State and local governments as provided for in their nomination pursuant to subsection (a)(4)(C)(ii); or

(C) the date the Secretary revokes such designation under paragraph (2).

(2) REVOCATION OF DESIGNATION.—The Secretary, after consultation with the officials described in subsection (a)(1)(B) and a hearing on the record involving officials of the State or local government involved, may revoke the designation of an area if the Secretary determines that the local government or the State in which it is located is not complying substantially with the State and local commitments pursuant to subsection (d).

(c) AREA AND ELIGIBILITY REQUIREMENTS.—

(1) IN GENERAL.—The Secretary may make a designation of any nominated area under subsection (a)(1) only if it meets the requirements of paragraphs (2) and (3).

(2) AREA REQUIREMENTS.—A nominated area meets the requirements of this paragraph if—

(A) the area is within the jurisdiction of the local government;

(B) the boundary of the area is continuous; and

(C) the area—

(i) has a population, as determined by the most recent census data available, of not less than—

(I) 4,000 if any portion of such area (other than a rural area described in subsection (a)(2)(B)(i)) is located within a metropolitan statistical area (as designated by the Director of the Office of Management and Budget) with a population of 50,000 or more; or

(II) 1,000 in any other case; or

(ii) is entirely within an Indian reservation (as determined by the Secretary of the Interior).

(3) ELIGIBILITY REQUIREMENTS.—For purposes of paragraph (1), a nominated area meets the requirements of this paragraph if the State and local governments in which it is located certify and the Secretary, after such review of supporting data as he deems appropriate, accepts such certification, that—

(A) the area is one of pervasive poverty, unemployment, and general distress;

(B) the area is located wholly within the jurisdiction of a local government that is eligible for Federal assistance under section 119 of the Housing and Community Development Act of 1974, as in effect on the date of the enactment of the Housing and Community Development Act of 1992;²²

²² October 28, 1992.

(C) the unemployment rate, as determined by the appropriate available data, was not less than 1.5 times the national unemployment rate for that period;

(D) the poverty rate (as determined by the most recent census data available) for each populous census tract (or where not tracted, the equivalent county division as defined by the Bureau of the Census for the purpose of defining poverty areas) within the area was not less than 20 percent for the period to which such data relate; and

(E) the area meets at least one of the following criteria:

(i) Not less than 70 percent of the households living in the area have incomes below 80 percent of the median income of households of the local government (determined in the same manner as under section 119(b)(2) of the Housing and Community Development Act of 1974).

(ii) The population of the area decreased by 20 percent or more between 1970 and 1980 (as determined from the most recent census available).

(4) ELIGIBILITY REQUIREMENTS FOR RURAL AREAS.—For purposes of paragraph (1), a nominated area that is a rural area described in subsection (a)(2)(B) meets the requirements of paragraph (3) if the State and local governments in which it is located certify and the Secretary, after such review of supporting data as he deems appropriate, accepts such certification, that the area meets—

(A) the criteria set forth in subparagraphs (A) and (B) of paragraph (3); and

(B) not less than one of the criteria set forth in the other subparagraphs of paragraph (3).

(d) REQUIRED STATE AND LOCAL COMMITMENTS.—

(1) IN GENERAL.—No nominated area shall be designated as an enterprise zone unless the local government and the State in which it is located agree in writing that, during any period during which the area is an enterprise zone, such governments will follow a specified course of action designated to reduce the various burdens borne by employers or employees in such area. A course of action shall not be treated as meeting the requirements of this paragraph unless the course of action include provisions described in not less than 4 of the subparagraphs of paragraph (2).

(2) COURSE OF ACTION.—The course of action under paragraph (1) may be implemented by both such governments and private nongovernmental entities, may be funded from proceeds of any program administered by the Secretary of Housing and Urban Development or of any program administered by the Secretary of Agriculture under title V of the Housing Act of 1949, and may include, but is not limited to—

(A) a reduction of tax rates or fees applying within the enterprise zone;

(B) an increase in the level of public services, or in the efficiency of the delivery of public services, within the enterprise zone;

- (C) actions to reduce, remove, simplify, or streamline paperwork requirements within the enterprise zone;
 - (D) involvement in the program by public authorities or private entities, organizations, neighborhood associations, and community groups, particularly those within the nominated area, including a written commitment to provide jobs and job training for, and technical, financial, or other assistance to, employers, employees, and residents of the nominated area;
 - (E) the giving of special preference to contractors owned and operated by members of any minority; and
 - (F) the gift (or sale at below fair market value) of surplus land in the enterprise zone to neighborhood organizations agreeing to operate a business on the land.
- (3) RECOGNITION OF PAST EFFORTS.—In evaluating courses of action agreed to by any State or local government, the Secretary shall take into account the past efforts of such State or local government in reducing the various burdens borne by employers and employees in the area involved.
- (4) PROHIBITION OF ASSISTANCE FOR BUSINESS RELOCATIONS.—
- (A) IN GENERAL.—The course of action implemented under paragraph (1) may not include any action to assist—
 - (i) any establishment relocating from one area to another area; or
 - (ii) any subcontractor whose purpose is to divest, or whose economic success is dependent upon divesting, any other contractor or subcontractor of any contract customarily performed by such other contractor or subcontractor.
 - (B) EXCEPTION.—The limitations established in subparagraph (A) shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary if the Secretary—
 - (i) finds that the establishment of the new branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where the existing business entity conducts business operations; and
 - (ii) has no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operations.

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

(1) GOVERNMENT.—If more than one government seeks to nominate an area as an enterprise zone, any reference to, or requirement of, this section shall apply to all such governments.

(2) LOCAL GOVERNMENT.—The term “local government” means—

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(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State;

(B) any combination of political subdivisions described in subparagraph (A) recognized by the Secretary; and

(C) the District of Columbia.

(3) SECRETARY.—The term “Secretary” means the Secretary of Housing and Urban Development.

(4) STATE.—The term “State” includes Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other possession of the United States.

SEC. 702. [42 U.S.C. 11502] EVALUATION AND REPORTING REQUIREMENTS.

Not later than the close of the 4th calendar year after the year in which the Secretary of Housing and Urban Development first designates areas as enterprise zones pursuant to the amendments made by section 834 of the Housing and Community Development Act of 1992, and at the close of each 4th calendar year thereafter, the Secretary shall prepare and submit to the Congress a report on the effects of such designation in accomplishing the purposes of this title.

[42 U.S.C. 11502]**SEC. 703. [42 U.S.C. 11503] INTERACTION WITH OTHER FEDERAL PROGRAMS.**

(a) COORDINATION WITH RELOCATION ASSISTANCE.—The designation of an enterprise zone under section 701 shall not—

(1) constitute approval of a Federal or federally assisted program or project (within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.)); or

(2) entitle any person displaced from real property located in such zone to any rights or any benefits under such Act.

(b) ENTERPRISE ZONES TREATED AS LABOR SURPLUS AREAS.—Any area that is designated as an enterprise zone under section 701 shall be treated for all purposes under Federal law as a labor surplus area.

SEC. 704. [42 U.S.C. 11504] WAIVER OR MODIFICATION OF HOUSING AND COMMUNITY DEVELOPMENT RULES IN ENTERPRISE ZONES.

(a) IN GENERAL.—Upon the written request of the governments that designated and approved an area that has been designated as an enterprise zone under section 701, the Secretary of Housing and Urban Development (or, with respect to any rule issued under title V of the Housing Act of 1949, the Secretary of Agriculture) may, in order to further the job creation, community development, or economic revitalization objectives of the zone, waive or modify all or part of any rule that the Secretary has authority to promulgate, as such rule pertains to the carrying out of projects, activities, or undertakings within the zone.

(b) LIMITATION.—No provision of this section may be construed to authorize the Secretary to waive or modify any rule adopted to carry out a statute or Executive order that prohibits, or the purpose of which is to protect persons against, discrimination on the

basis of race, color, religion, sex, marital status, national origin, age, or handicap.

(c) **SUBMISSION OF REQUESTS.**—A request under subsection (a) shall specify the rule or rules to be waived or modified and the change proposed, and shall briefly describe why the change would promote the achievement of the job creation, community development, or economic revitalization objectives of the enterprise zone. If a request is made to the Secretary of Agriculture, the requesting governments shall send a copy of the request to the Secretary of Housing and Urban Development at the time the request is made.

(d) **CONSIDERATION OF REQUESTS.**—In considering a request, the Secretary shall weigh the extent to which the proposed change is likely to further job creation, community development, or economic revitalization within the enterprise zone against the effect the change is likely to have on the underlying purposes of applicable statutes in the geographic area that would be affected by the change. The Secretary shall approve the request whenever the Secretary finds, in the discretion of the Secretary, that the public interest that the proposed change would serve in furthering such job creation, community development or economic revitalization outweighs the public interest that continuation of the rule unchanged would serve in furthering such underlying purposes. The Secretary shall not approve any request to waive or modify a rule if that waiver or modification would—

- (1) directly violate a statutory requirement; or
- (2) be likely to present a significant risk to the public health, including environmental health or safety.

(e) **NOTICE OF DISAPPROVAL.**—If a request is disapproved, the Secretary shall inform the requesting governments in writing of the reasons therefor and shall, to the maximum extent possible, work with such governments to develop an alternative, consistent with the standards contained in subsection (d).

(f) **PERIOD FOR DETERMINATION.**—The Secretary shall discharge the responsibilities of the Secretary under this section in an expeditious manner, and shall make a determination on requests not later than 90 days after their receipt.

(g) **APPLICABLE PROCEDURES.**—A waiver or modification of a rule under subsection (a) shall not be considered to be a rule, rule-making, or regulation under chapter 5 of title 5, United States Code. To facilitate reaching a decision on any requested waiver or modification, the Secretary may seek the views of interested parties and, if the views are to be sought, determine how they should be obtained and to what extent, if any, they should be taken into account in considering the request. The Secretary shall publish a notice in the Federal Register stating any waiver or modification of a rule under this section.

(h) **EFFECT OF SUBSEQUENT AMENDMENT OF RULES.**—In the event that the Secretary proposes to amend a rule for which a waiver or modification under this section is in effect, the Secretary shall not change the waiver or modification to impose additional requirements unless the Secretary determines, consistent with standards contained in subsection (d), that such action is necessary.

(i) **EXPIRATION OF WAIVERS AND MODIFICATIONS.**—No waiver or modification of a rule under this section shall remain in effect for

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a longer period than the period for which the enterprise zone designation remains in effect for the area in which the waiver or modification applies.

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

(1) RULE.—The term “rule” means—

(A) any rule as defined in section 551(4) of title 5, United States Code; or

(B) any rulemaking conducted on the record after opportunity for an agency hearing pursuant to sections 556 and 557 of such title 5.

(2) SECRETARY.—The term “Secretary” means the Secretary of Housing and Urban Development or, with respect to any rule issued under title V of the Housing Act of 1949, the Secretary of Agriculture.

SEC. 705. COORDINATION OF HOUSING AND URBAN DEVELOPMENT PROGRAMS IN ENTERPRISE ZONES.

Section 3 of the Department of Housing and Urban Development Act is amended by adding at the end the following new subsection:

“(d)”

SEC. 706. [42 U.S.C. 11505] COORDINATION WITH CDBG AND UDAG PROGRAMS.

It is the policy of the Congress that amounts provided under the community development block grant and urban development action grant programs under title I of the Housing and Community Development Act of 1974 shall not be reduced in any fiscal year in which the provisions of this title are in effect.