

105TH CONGRESS
1ST SESSION

S. 513

To reform the multifamily rental assisted housing programs of the Federal Government, maintain the affordability and availability of low-income housing, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 21, 1997

Mr. MACK (for himself, Mr. D'AMATO, Mr. BOND, and Mr. BENNETT) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To reform the multifamily rental assisted housing programs of the Federal Government, maintain the affordability and availability of low-income housing, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Multifamily Assisted Housing Reform and Affordability
6 Act of 1997”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FHA-INSURED MULTIFAMILY HOUSING MORTGAGE AND HOUSING ASSISTANCE RESTRUCTURING

- Sec. 101. Findings and purposes.
- Sec. 102. Definitions.
- Sec. 103. Authority of participating administrative entities.
- Sec. 104. Mortgage restructuring and rental assistance sufficiency plan.
- Sec. 105. Section 8 renewals and long-term affordability commitment by owner of project.
- Sec. 106. Prohibition on restructuring.
- Sec. 107. Restructuring tools.
- Sec. 108. Shared savings incentive.
- Sec. 109. Management standards.
- Sec. 110. Monitoring of compliance.
- Sec. 111. Review.
- Sec. 112. GAO audit and review.
- Sec. 113. Regulations.
- Sec. 114. Technical and conforming amendments.
- Sec. 115. Termination of authority.

TITLE II—ENFORCEMENT PROVISIONS

Sec. 201. Implementation.

Subtitle A—FHA Single Family and Multifamily Housing

- Sec. 211. Authorization to immediately suspend mortgagees.
- Sec. 212. Extension of equity skimming to other single family and multifamily housing programs.
- Sec. 213. Civil money penalties against mortgagees, lenders, and other participants in FHA programs.

Subtitle B—FHA Multifamily

- Sec. 220. Civil money penalties against general partners, officers, directors, and certain managing agents of multifamily projects.
- Sec. 221. Civil money penalties for noncompliance with section 8 HAP contracts.
- Sec. 222. Extension of double damages remedy.
- Sec. 223. Obstruction of Federal audits.

1 **TITLE I—FHA-INSURED MULTI-** 2 **FAMILY HOUSING MORTGAGE** 3 **AND HOUSING ASSISTANCE** 4 **RESTRUCTURING**

5 **SEC. 101. FINDINGS AND PURPOSES.**

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

1 (1) there exists throughout the Nation a need
2 for decent, safe, and affordable housing;

3 (2) as of the date of enactment of this Act, it
4 is estimated that—

5 (A) the insured multifamily housing port-
6 folio of the Federal Housing Administration
7 consists of 14,000 rental properties, with an ag-
8 gregate unpaid principal mortgage balance of
9 \$38,000,000,000; and

10 (B) approximately 10,000 of these prop-
11 erties contain housing units that are assisted
12 with project-based rental assistance under sec-
13 tion 8 of the United States Housing Act of
14 1937;

15 (3) FHA-insured multifamily rental properties
16 are a major Federal investment, providing affordable
17 rental housing to an estimated 2,000,000 low- and
18 very low-income families;

19 (4) approximately 1,600,000 of these families
20 live in dwelling units that are assisted with project-
21 based rental assistance under section 8 of the Unit-
22 ed States Housing Act of 1937;

23 (5) a substantial number of housing units re-
24 ceiving project-based assistance have rents that are

1 higher than the rents of comparable, unassisted
2 rental units in the same housing rental market;

3 (6) many of the contracts for project-based as-
4 sistance will expire during the several years following
5 the date of enactment of this Act;

6 (7) it is estimated that—

7 (A) if no changes in the terms and condi-
8 tions of the contracts for project-based assist-
9 ance are made before fiscal year 2000, the cost
10 of renewing all expiring rental assistance con-
11 tracts under section 8 of the United States
12 Housing Act of 1937 for both project-based and
13 tenant-based rental assistance will increase
14 from approximately \$3,600,000,000 in fiscal
15 year 1997 to over \$14,300,000,000 by fiscal
16 year 2000 and some \$22,400,000,000 in fiscal
17 year 2006;

18 (B) of those renewal amounts, the cost of
19 renewing project-based assistance will increase
20 from \$1,200,000,000 in fiscal year 1997 to al-
21 most \$7,400,000,000 by fiscal year 2006; and

22 (C) without changes in the manner in
23 which project-based rental assistance is pro-
24 vided, renewals of expiring contracts for
25 project-based rental assistance will require an

1 increasingly larger portion of the discretionary
2 budget authority of the Department of Housing
3 and Urban Development in each subsequent fis-
4 cal year for the foreseeable future;

5 (8) absent new budget authority for the renewal
6 of expiring rental contracts for project-based assist-
7 ance, many of the FHA-insured multifamily housing
8 projects that are assisted with project-based assist-
9 ance will likely default on their FHA-insured mort-
10 gage payments, resulting in substantial claims to the
11 FHA General Insurance Fund and Special Risk In-
12 surance Funds;

13 (9) more than 15 percent of federally assisted
14 multifamily housing projects are physically or finan-
15 cially distressed, including a number which suffer
16 from mismanagement;

17 (10) due to Federal budget constraints, the
18 downsizing of the Department of Housing and
19 Urban Development, and diminished administrative
20 capacity, the Department lacks the ability to ensure
21 the continued economic and physical well-being of
22 the stock of federally insured and assisted multifam-
23 ily housing projects; and

24 (11) the economic, physical, and management
25 problems facing the stock of federally insured and

1 assisted multifamily housing projects will be best
 2 served by reforms that—

3 (A) reduce the cost of Federal rental as-
 4 sistance, including project-based assistance, to
 5 these projects by reducing the debt service and
 6 operating costs of these projects while retaining
 7 the low-income affordability and availability of
 8 this housing;

9 (B) address physical and economic distress
 10 of this housing and the failure of some project
 11 managers and owners of projects to comply
 12 with management and ownership rules and re-
 13 quirements; and

14 (C) transfer and share many of the loan
 15 and contract administration functions and re-
 16 sponsibilities of the Secretary with capable
 17 State, local, and other entities.

18 (b) PURPOSES.—The purposes of this title are—

19 (1) to preserve low-income rental housing af-
 20 fordability and availability while reducing the long-
 21 term costs of project-based assistance;

22 (2) to reform the design and operation of Fed-
 23 eral rental housing assistance programs, adminis-
 24 tered by the Secretary, to promote greater multifam-
 25 ily housing project operating and cost efficiencies;

1 (3) to encourage owners of eligible multifamily
2 housing projects to restructure their FHA-insured
3 mortgages and project-based assistance contracts in
4 a manner which is consistent with this title before
5 the year in which the contract expires;

6 (4) to streamline and improve federally insured
7 and assisted multifamily housing project oversight
8 and administration;

9 (5) to resolve the problems affecting financially
10 and physically troubled federally insured and as-
11 sisted multifamily housing projects through coopera-
12 tion with residents, owners, State and local govern-
13 ments, and other interested entities and individuals;
14 and

15 (6) to grant additional enforcement tools to use
16 against those who violate agreements and program
17 requirements, in order to ensure that the public in-
18 terest is safeguarded and that Federal multifamily
19 housing programs serve their intended purposes.

20 **SEC. 102. DEFINITIONS.**

21 For purposes of this title, the following definitions
22 shall apply:

23 (1) **COMPARABLE PROPERTIES.**—The term
24 “comparable properties” means properties that
25 are—

1 (A) similar to the eligible multifamily
 2 housing project in neighborhood (including risk
 3 of crime), location, access, street appeal, age,
 4 property size, apartment mix, physical configu-
 5 ration, property and unit amenities, and utili-
 6 ties;

7 (B) unregulated by contractual encum-
 8 brances or local rent-control laws; and

9 (C) occupied predominantly by renters who
 10 receive no rent supplements or rental assist-
 11 ance.

12 (2) ELIGIBLE MULTIFAMILY HOUSING
 13 PROJECT.—The term “eligible multifamily housing
 14 project” means a property consisting of more than
 15 4 dwelling units—

16 (A) with rents which, on an average per
 17 unit or per room basis, exceed the rent of com-
 18 parable properties in the same market area, as
 19 determined by the Secretary;

20 (B) that is covered in whole or in part by
 21 a contract for project-based assistance under—

22 (i) the new construction and substan-
 23 tial rehabilitation program under section
 24 8(b)(2) of the United States Housing Act

1 of 1937 (as in effect before October 1,
2 1983);

3 (ii) the property disposition program
4 under section 8(b) of the United States
5 Housing Act of 1937;

6 (iii) the moderate rehabilitation pro-
7 gram under section 8(e)(2) of the United
8 States Housing Act of 1937;

9 (iv) the project-based certificate pro-
10 gram under section 8 of the United States
11 Housing Act of 1937;

12 (v) section 23 of the United States
13 Housing Act of 1937 (as in effect before
14 January 1, 1975);

15 (vi) the rent supplement program
16 under section 101 of the Housing and
17 Urban Development Act of 1965; or

18 (vii) section 8 of the United States
19 Housing Act of 1937, following conversion
20 from assistance under section 101 of the
21 Housing and Urban Development Act of
22 1965; and

23 (C) financed by a mortgage insured under
24 the National Housing Act.

1 (3) EXPIRING CONTRACT.—The term “expiring
2 contract” means a project-based assistance contract
3 attached to an eligible multifamily housing project
4 which, under the terms of the contract, will expire.

5 (4) EXPIRATION DATE.—The term “expiration
6 date” means the date on which an expiring contract
7 expires.

8 (5) FAIR MARKET RENT.—The term “fair mar-
9 ket rent” means the fair market rental established
10 under section 8(c) of the United States Housing Act
11 of 1937.

12 (6) KNOWING OR KNOWINGLY.—The term
13 “knowing” or “knowingly” means having actual
14 knowledge of or acting with deliberate ignorance or
15 reckless disregard.

16 (7) LOW-INCOME FAMILIES.—The term “low-in-
17 come families” has the same meaning as provided
18 under section 3(b)(2) of the United States Housing
19 Act of 1937.

20 (8) PORTFOLIO RESTRUCTURING AGREE-
21 MENT.—The term “Portfolio restructuring agree-
22 ment” means the agreement entered into between
23 the Secretary and a participating administrative en-
24 tity, as provided under section 103 of the title.

1 (9) PARTICIPATING ADMINISTRATIVE ENTITY.—

2 The term “participating administrative entity”
3 means a public agency, including a State housing fi-
4 nance agency or local housing agency, which meets
5 the requirements under section 103(b).

6 (10) PROJECT-BASED ASSISTANCE.—The term
7 “project-based assistance” means rental assistance
8 under section 8 of the United States Housing Act of
9 1937 that is attached to a multifamily housing
10 project.

11 (11) RENEWAL.—The term “renewal” means
12 the replacement of an expiring Federal rental con-
13 tract with a new contract under section 8 of the
14 United States Housing Act of 1937, consistent with
15 the requirements of this title.

16 (12) SECRETARY.—The term “Secretary”
17 means the Secretary of Housing and Urban Develop-
18 ment.

19 (13) STATE.—The term “State” has the same
20 meaning as in section 104 of the Cranston-Gonzalez
21 National Affordable Housing Act.

22 (14) TENANT-BASED ASSISTANCE.—The term
23 “tenant-based assistance” has the same meaning as
24 in section 8(f) of the United States Housing Act of
25 1937.

1 (15) UNIT OF GENERAL LOCAL GOVERN-
 2 MENT.—The term “unit of general local govern-
 3 ment” has the same meaning as in section 104 of
 4 the Cranston-Gonzalez National Affordable Housing
 5 Act.

6 (16) VERY LOW-INCOME FAMILY.—The term
 7 “very low-income family” has the same meaning as
 8 in section 3(b) of the United States Housing Act of
 9 1937.

10 **SEC. 103. AUTHORITY OF PARTICIPATING ADMINISTRATIVE**
 11 **ENTITIES.**

12 (a) PARTICIPATING ADMINISTRATIVE ENTITIES.—

13 (1) IN GENERAL.—The Secretary shall enter
 14 into portfolio restructuring agreements with partici-
 15 pating administrative entities for the implementation
 16 of mortgage restructuring and rental assistance suf-
 17 ficiency plans to restructure FHA-insured multifam-
 18 ily housing mortgages, in order to—

19 (A) reduce the costs of current and expir-
 20 ing contracts for assistance under section 8 of
 21 the United States Housing Act of 1937;

22 (B) address financially and physically trou-
 23 bled projects; and

24 (C) correct management and ownership de-
 25 ficiencies.

1 (2) PORTFOLIO RESTRUCTURING AGREE-
2 MENTS.—Each portfolio restructuring agreement en-
3 tered into under this subsection shall—

4 (A) be a cooperative agreement to establish
5 the obligations and requirements between the
6 Secretary and the participating administrative
7 entity;

8 (B) identify the eligible multifamily hous-
9 ing projects or groups of projects for which the
10 participating administrative entity is responsible
11 for assisting in developing and implementing
12 approved mortgage restructuring and rental as-
13 sistance sufficiency plans under section 104;

14 (C) require the participating administrative
15 entity to review and certify to the accuracy and
16 completeness of a comprehensive needs assess-
17 ment submitted by the owner of an eligible mul-
18 tifamily housing project, in accordance with the
19 information and data requirements of section
20 403 of the Housing and Community Develop-
21 ment Act of 1992, including such other data,
22 information, and requirements as the Secretary
23 may require to be included as part of the com-
24 prehensive needs assessment;

1 (D) identify the responsibilities of both the
2 participating administrative entity and the Sec-
3 retary in implementing a mortgage restructur-
4 ing and rental assistance sufficiency plan, in-
5 cluding any actions proposed to be taken under
6 section 106 or 107;

7 (E) require each mortgage restructuring
8 and rental assistance sufficiency plan to be pre-
9 pared in accordance with the requirements of
10 section 104 for each eligible multifamily hous-
11 ing project;

12 (F) indemnify the participating adminis-
13 trative entity against lawsuits and penalties for
14 actions taken pursuant to the agreement, ex-
15 cluding actions involving gross negligence or
16 willful misconduct; and

17 (G) include compensation for all reasonable
18 expenses incurred by the participating adminis-
19 trative entity necessary to perform its duties
20 under this Act, including such incentives as
21 may be authorized under section 108.

22 (b) SELECTION OF PARTICIPATING ADMINISTRATIVE
23 ENTITY.—

1 (1) SELECTION CRITERIA.—The Secretary shall
2 select a participating administrative entity based on
3 the following criteria—

4 (A) is located in the State or local jurisdic-
5 tion in which the eligible multifamily housing
6 project or projects are located;

7 (B) has demonstrated expertise in the de-
8 velopment or management of low-income afford-
9 able rental housing;

10 (C) has a history of stable, financially
11 sound, and responsible administrative perform-
12 ance;

13 (D) has demonstrated financial strength in
14 terms of asset quality, capital adequacy, and li-
15 quidity; and

16 (E) is otherwise qualified, as determined
17 by the Secretary, to carry out the requirements
18 of this title.

19 (2) SELECTION OF MORTGAGE RISK-SHARING
20 ENTITIES.—Any State housing finance agency or
21 local housing agency which is designated as a quali-
22 fied participating entity under section 542 of the
23 Housing and Community Development Act of 1992
24 shall automatically qualify as a participating admin-
25 istrative entity under this section.

(3) ALTERNATIVE ADMINISTRATORS.—With respect to any eligible multifamily housing project that is located in a State or local jurisdiction in which the Secretary determines that a participating administrative entity is not located, is unavailable, or does not qualify, the Secretary shall either—

(A) carry out the requirements of this title with respect to that eligible multifamily housing project; or

(B) contract with other qualified entities that meet the requirements of subsection (b), with the exception of subsection (b)(1)(A), the authority to carry out all or a portion of the requirements of this title with respect to that eligible multifamily housing project.

(4) PREFERENCE FOR STATE HOUSING FINANCE AGENCIES AS PARTICIPATING ADMINISTRATIVE ENTITIES.—For each State in which eligible multifamily housing projects are located, the Secretary shall give preference to the housing finance agency of that State or, if a State housing finance agency is unqualified or has declined to participate, a local housing agency to act as the participating administrative entity for that State or for the jurisdiction in which the agency located.

1 (5) STATE PORTFOLIO REQUIREMENTS.—

2 (A) IN GENERAL.—If the housing finance
3 agency of a State is selected as the participat-
4 ing administrative entity, that agency shall be
5 responsible for all eligible multifamily housing
6 projects in that State, except that a local hous-
7 ing agency selected as a participating adminis-
8 trative entity shall be responsible for all eligible
9 multifamily housing projects in the jurisdiction
10 of the agency.

11 (B) DELEGATION.—A participating admin-
12 istrative entity may delegate or transfer respon-
13 sibilities and functions under this title to one or
14 more interested and qualified public entities.

15 (C) WAIVER.—A State housing finance
16 agency or local housing agency may request a
17 waiver from the Secretary from the require-
18 ments of this paragraph for good cause.

19 **SEC. 104. MORTGAGE RESTRUCTURING AND RENTAL AS-**
20 **SISTANCE SUFFICIENCY PLAN.**

21 (a) IN GENERAL.—

22 (1) DEVELOPMENT OF PROCEDURES AND RE-
23 QUIREMENTS.—The Secretary shall develop proce-
24 dures and requirements for the submission of a
25 mortgage restructuring and rental assistance suffi-

1 ciency plan for each eligible multifamily housing
2 project with an expiring contract.

3 (2) TERMS AND CONDITIONS.—Each mortgage
4 restructuring and rental assistance sufficiency plan
5 submitted under this subsection shall be developed
6 at the initiative of an owner of an eligible multifam-
7 ily housing project with a participating administra-
8 tive entity, under such terms and conditions as the
9 Secretary shall require.

10 (3) CONSOLIDATION.—Mortgage restructuring
11 and rental assistance sufficiency plans submitted
12 under this subsection may be consolidated as part of
13 an overall strategy for more than one property.

14 (b) NOTICE REQUIREMENTS.—The Secretary shall
15 establish notice procedures and hearing requirements for
16 tenants and owners concerning the dates for the expiration
17 of project-based assistance contracts for any eligible multi-
18 family housing project.

19 (c) EXTENSION OF CONTRACT TERM.—Subject to
20 agreement by a project owner, the Secretary may extend
21 the term of any expiring contract or provide a section 8
22 contract with rent levels set in accordance with subsection
23 (g) for a period sufficient to facilitate the implementation
24 of a mortgage restructuring and rental assistance suffi-
25 ciency plan, as determined by the Secretary.

1 (d) TENANT RENT PROTECTION.—If the owner of a
 2 project with an expiring Federal rental assistance contract
 3 does not agree to extend the contract, the Secretary shall
 4 make tenant-based assistance available to tenants residing
 5 in units assisted under the expiring contract at the time
 6 of expiration.

7 (e) MORTGAGE RESTRUCTURING AND RENTAL AS-
 8 SISTANCE SUFFICIENCY PLAN.—Each mortgage restruc-
 9 turing and rental assistance sufficiency plan shall—

10 (1) except as otherwise provided, restructure
 11 the project-based assistance rents for the eligible
 12 multifamily housing project in a manner consistent
 13 with subsection (g);

14 (2) require the owner or purchaser of an eligible
 15 multifamily housing project with an expiring con-
 16 tract to submit to the participating administrative
 17 entity a comprehensive needs assessment, in accord-
 18 ance with the information and data requirements of
 19 section 403 of the Housing and Community Devel-
 20 opment Act of 1992, including such other data, in-
 21 formation, and requirements as the Secretary may
 22 require to be included as part of the comprehensive
 23 needs assessment;

1 (3) require the owner or purchaser of the
2 project to provide or contract for competent manage-
3 ment of the project;

4 (4) require the owner or purchaser of the
5 project to take such actions as may be necessary to
6 rehabilitate, maintain adequate reserves, and to
7 maintain the project in decent and safe condition,
8 based on housing quality standards established by—

9 (A) the Secretary; or

10 (B) local housing codes or codes adopted
11 by public housing agencies that—

12 (i) meet or exceed housing quality
13 standards established by the Secretary;

14 and

15 (ii) do not severely restrict housing
16 choice;

17 (5) require the owner or purchaser of the
18 project to maintain affordability and use restrictions
19 for 20 years, as the participating administrative en-
20 tity determines to be appropriate, which restrictions
21 shall be consistent with the long-term physical and
22 financial viability character of the project as afford-
23 able housing;

24 (6) meet subsidy layering requirements under
25 guidelines established by the Secretary; and

1 (7) require the owner or purchaser of the
 2 project to meet such other requirements as the Sec-
 3 retary determines to be appropriate.

4 (f) TENANT AND COMMUNITY PARTICIPATION AND
 5 CAPACITY BUILDING.—

6 (1) PROCEDURES.—

7 (A) IN GENERAL.—The Secretary shall es-
 8 tablish procedures to provide an opportunity for
 9 tenants of the project and other affected par-
 10 ties, including local government and the com-
 11 munity in which the project is located, to par-
 12 ticipate effectively in the restructuring process
 13 established by this title.

14 (B) CRITERIA.—These procedures shall in-
 15 clude—

16 (i) the rights to timely and adequate
 17 written notice of the proposed decisions of
 18 the owner or the Secretary or participating
 19 administrative entity;

20 (ii) timely access to all relevant infor-
 21 mation (except for information determined
 22 to be proprietary under standards estab-
 23 lished by the Secretary);

24 (iii) an adequate period to analyze
 25 this information and provide comments to

the Secretary or participating administrative entity (which comments shall be taken into consideration by the participating administrative entity); and

(iv) if requested, a meeting with a representative of the participating administrative entity and other affected parties.

(2) PROCEDURES REQUIRED.—The procedures established under paragraph (1) shall permit tenant, local government, and community participation in at least the following decisions or plans specified in this title:

(A) The Portfolio Restructuring Agreement.

(B) Any proposed expiration of the section 8 contract.

(C) The project's eligibility for restructuring pursuant to section 106 and the mortgage restructuring and rental assistance sufficiency plan pursuant to section 104.

(D) Physical inspections.

(E) Capital needs and management assessments, whether before or after restructuring.

(F) Any proposed transfer of the project.

(3) FUNDING.—

1 (A) IN GENERAL.—The Secretary may
2 provide not more than \$10,000,000 annually in
3 funding to tenant groups, nonprofit organiza-
4 tions, and public entities for building the capac-
5 ity of tenant organizations, for technical assist-
6 ance in furthering any of the purposes of this
7 title (including transfer of developments to new
8 owners) and for tenant services, from those
9 amounts made available under appropriations
10 Acts for implementing this title.

11 (B) ALLOCATION.—The Secretary may al-
12 locate any funds made available under subpara-
13 graph (A) through existing technical assistance
14 programs and procedures developed pursuant to
15 any other Federal law, including the Low-In-
16 come Housing Preservation and Resident
17 Homeownership Act of 1990 and the Multifam-
18 ily Property Disposition Reform Act of 1994.

19 (C) PROHIBITION.—None of the funds
20 made available under subparagraph (A) may be
21 used directly or indirectly to pay for any per-
22 sonal service, advertisement, telegram, tele-
23 phone, letter, printed or written matter, or
24 other device, intended or designed to influence
25 in any manner a Member of Congress, to favor

1 or oppose, by vote or otherwise, any legislation
 2 or appropriation by the Congress, whether be-
 3 fore or after the introduction of any bill or reso-
 4 lution proposing such legislation or appropria-
 5 tion.

6 (g) RENT LEVELS.—

7 (1) IN GENERAL.—Except as provided in para-
 8 graph (2), each mortgage restructuring and rental
 9 assistance sufficiency plan pursuant to the terms,
 10 conditions, and requirements of this title shall estab-
 11 lish for units assisted with project-based assistance
 12 in eligible multifamily housing projects adjusted rent
 13 levels that—

14 (A) are equivalent to rents derived from
 15 comparable properties, if—

16 (i) the participating administrative en-
 17 tity makes the rent determination not later
 18 than 120 days after the owner submits a
 19 mortgage restructuring and rental assist-
 20 ance sufficiency plan; and

21 (ii) the market rent determination is
 22 based on not less than 2 comparable prop-
 23 erties; or

1 (B) if those rents cannot be determined,
 2 are equal to 90 percent of the fair market rents
 3 for the relevant market area.

4 (2) EXCEPTIONS.—

5 (A) IN GENERAL.—A contract under this
 6 section may include rent levels that exceed the
 7 rent level described in paragraph (1) at rent
 8 levels that do not exceed 120 percent of the
 9 local fair market rent if the participating ad-
 10 ministrative entity—

11 (i) determines, that the housing needs
 12 of the tenants and the community cannot
 13 be adequately addressed through imple-
 14 mentation of the rent limitation required
 15 to be established through a mortgage re-
 16 structuring and rental assistance suffi-
 17 ciency plan under paragraph (1); and

18 (ii) follows the procedures under para-
 19 graph (3).

20 (B) EXCEPTION RENTS.—In any fiscal
 21 year, a participating administrative entity may
 22 approve exception rents on not more than 20
 23 percent of all units in the geographic jurisdic-
 24 tion of the entity with expiring contracts in that
 25 fiscal year, except that the Secretary may waive

1 this ceiling upon a finding of special need in the
 2 geographic area served by the participating ad-
 3 ministrative entity.

4 (3) RENT LEVELS FOR EXCEPTION
 5 PROJECTS.—For purposes of this section, a project
 6 eligible for an exception rent shall receive a rent cal-
 7 culation on the actual and projected costs of operat-
 8 ing the project, at a level that provides income suffi-
 9 cient to support a budget-based rent that consists
 10 of—

11 (A) the debt service of the project;
 12 (B) the operating expenses of the project,
 13 as determined by the participating administra-
 14 tive entity, including—

15 (i) contributions to adequate reserves;
 16 (ii) the costs of maintenance and nec-
 17 essary rehabilitation; and

18 (iii) other eligible costs permitted
 19 under section 8 of the United States Hous-
 20 ing Act of 1937;

21 (C) an adequate allowance for potential op-
 22 erating losses due to vacancies and failure to
 23 collect rents, as determined by the participating
 24 administrative entity;

1 (D) an allowance for a reasonable rate of
 2 return to the owner or purchaser of the project,
 3 as determined by the participating administra-
 4 tive entity, which may be established to provide
 5 incentives for owners or purchasers to meet
 6 benchmarks of quality for management and
 7 housing quality; and

8 (E) other expenses determined by the par-
 9 ticipating administrative entity to be necessary
 10 for the operation of the project.

11 (h) EXEMPTIONS FROM RESTRUCTURING.—Subject
 12 to section 106, the Secretary shall renew project-based as-
 13 sistance sufficiency contracts at existing rents if—

14 (1) the project was financed through obligations
 15 such that the implementation of a mortgage restruc-
 16 turing and rental assistance sufficiency plan under
 17 this section is inconsistent with applicable law or
 18 agreements governing such financing;

19 (2) in the determination of the Secretary or the
 20 participating administrative entity, the restructuring
 21 would not result in significant savings to the Sec-
 22 retary; or

23 (3) the project has an expiring contract under
 24 section 8 of the United States Housing Act of 1937

1 but does not qualify as an eligible multifamily hous-
2 ing project pursuant to section 102(2) of this title.

3 **SEC. 105. SECTION 8 RENEWALS AND LONG-TERM AFFORD-**
4 **ABILITY COMMITMENT BY OWNER OF**
5 **PROJECT.**

6 (a) SECTION 8 RENEWALS OF RESTRUCTURED
7 PROJECTS.—Subject to the availability of amounts pro-
8 vided in advance in appropriations Acts, the Secretary
9 shall enter into contracts with participating administrative
10 entities pursuant to which the participating administrative
11 entity shall offer to renew or extend an expiring section
12 8 contract on an eligible multifamily housing project, and
13 the owner of the project shall accept the offer, provided
14 the initial renewal is in accordance with the terms and
15 conditions specified in the mortgage restructuring and
16 rental assistance sufficiency plan.

17 (b) REQUIRED COMMITMENT.—After the initial re-
18 newal of a section 8 contract pursuant to this section, the
19 owner shall accept each offer made pursuant to subsection
20 (a) to renew the contract, for a period of 20 years from
21 the date of the initial renewal, if the offer to renew is on
22 terms and conditions specified in the mortgage restructur-
23 ing and rental assistance sufficiency plan.

1 **SEC. 106. PROHIBITION ON RESTRUCTURING.**

2 (a) PROHIBITION ON RESTRUCTURING.—The Sec-
3 retary shall not consider any mortgage restructuring and
4 rental assistance sufficiency plan or request for contract
5 renewal if the participating administrative entity deter-
6 mines that—

7 (1) the owner or purchaser of the project has
8 engaged in material adverse financial or managerial
9 actions or omissions with regard to this project (or
10 with regard to other similar projects if the Secretary
11 determines that those actions or omissions constitute
12 a pattern of mismanagement that would warrant
13 suspension or debarment by the Secretary), includ-
14 ing—

15 (A) knowingly and materially violating any
16 Federal, State, or local law or regulation with
17 regard to this project or any other federally as-
18 sisted project;

19 (B) knowingly and materially breaching a
20 contract for assistance under section 8 of the
21 United States Housing Act of 1937;

22 (C) knowingly and materially violating any
23 applicable regulatory or other agreement with
24 the Secretary or a participating administrative
25 entity;

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

4 (E) materially failing to maintain the prop-
 5 erty according to housing quality standards
 6 after receipt of notice and a reasonable oppor-
 7 tunity to cure; or

8 (F) committing any actions or omissions
 9 that would warrant suspension or debarment by
 10 the Secretary;

11 (2) the owner or purchaser of the property ma-
 12 terially failed to follow the procedures and require-
 13 ments of this title, after receipt of notice and an op-
 14 portunity to cure; or

15 (3) the poor condition of the project cannot be
 16 remedied in a cost effective manner, as determined
 17 by the participating administrative entity.

18 (b) OPPORTUNITY TO DISPUTE FINDINGS.—

19 (1) IN GENERAL.—During the 30-day period
 20 beginning on the date on which the owner or pur-
 21 chaser of an eligible multifamily housing project re-
 22 ceives notice of a rejection under subsection (a) or
 23 of a mortgage restructuring and rental assistance
 24 sufficiency plan under section 104, the Secretary or
 25 participating administrative entity shall provide that

1 owner or purchaser with an opportunity to dispute
2 the basis for the rejection and an opportunity to
3 cure.

4 (2) AFFIRMATION, MODIFICATION, OR REVER-
5 SAL.—

6 (A) IN GENERAL.—After providing an op-
7 portunity to dispute under paragraph (1), the
8 Secretary or the participating administrative
9 entity may affirm, modify, or reverse any rejec-
10 tion under subsection (a) or rejection of a mort-
11 gage restructuring and rental assistance suffi-
12 ciency plan under section 104.

13 (B) REASONS FOR DECISION.—The Sec-
14 retary or the participating administrative en-
15 tity, as applicable, shall identify the reasons for
16 any final decision under this paragraph.

17 (C) REVIEW PROCESS.—The Secretary
18 shall establish an administrative review process
19 to appeal any final decision under this para-
20 graph.

21 (c) FINAL DETERMINATION.—Any final determina-
22 tion under this section shall not be subject to judicial re-
23 view.

24 (d) DISPLACED TENANTS.—Subject to the availabil-
25 ity of amounts provided in advance in appropriations Acts,

1 for any low-income tenant that is residing in a project or
 2 receiving assistance under section 8 of the United States
 3 Housing Act of 1937 at the time of rejection under this
 4 section, that tenant shall be provided with tenant-based
 5 assistance and reasonable moving expenses, as determined
 6 by the Secretary.

7 (e) TRANSFER OF PROPERTY.—For properties dis-
 8 qualified from the consideration of a mortgage restructur-
 9 ing and rental assistance sufficiency plan under this sec-
 10 tion because of actions by an owner or purchaser in ac-
 11 cordance with paragraph (1) or (2) of subsection (a), the
 12 Secretary shall establish procedures to facilitate the vol-
 13 untary sale or transfer of a property as part of a mortgage
 14 restructuring and rental assistance sufficiency plan, with
 15 a preference for tenant organizations and tenant-endorsed
 16 community-based nonprofit and public agency purchasers
 17 meeting such reasonable qualifications as may be estab-
 18 lished by the Secretary.

19 **SEC. 107. RESTRUCTURING TOOLS.**

20 (a) RESTRUCTURING TOOLS.—For purposes of this
 21 title, and to the extent these actions are consistent with
 22 this section, an approved mortgage restructuring and rent-
 23 al assistance sufficiency plan may include one or more of
 24 the following:

1 (1) FULL OR PARTIAL PAYMENT OF CLAIM.—

2 Making a full payment of claim or partial payment
3 of claim under section 541(b) of the National Hous-
4 ing Act. Any payment under this paragraph shall
5 not require the approval of a mortgage.

6 (2) REFINANCING OF DEBT.—Refinancing of all
7 or part of the debt on a project, if the refinancing
8 would result in significant subsidy savings under
9 section 8 of the United States Housing Act of 1937.

10 (3) MORTGAGE INSURANCE.—Providing FHA
11 multifamily mortgage insurance, reinsurance or
12 other credit enhancement alternatives, including
13 multifamily risk-sharing mortgage programs, as pro-
14 vided under section 542 of the Housing and Commu-
15 nity Development Act of 1992. Any limitations on
16 the number of units available for mortgage insur-
17 ance under section 542 shall not apply to eligible
18 multifamily housing projects. Any credit subsidy
19 costs of providing mortgage insurance shall be paid
20 from the General Insurance Fund and the Special
21 Risk Insurance Fund.

22 (4) CREDIT ENHANCEMENT.—Any additional
23 State or local mortgage credit enhancements and
24 risk-sharing arrangements may be established with
25 State or local housing finance agencies, the Federal

1 Housing Finance Board, the Federal National Mort-
2 gage Association, and the Federal Home Loan Mort-
3 gage Corporation, to a modified first mortgage.

4 (5) COMPENSATION OF THIRD PARTIES.—En-
5 tering into agreements, incurring costs, or making
6 payments, as may be reasonably necessary, to com-
7 pensate the participation of participating adminis-
8 trative entities and other parties in undertaking ac-
9 tions authorized by this title. Upon request, partici-
10 pating administrative entities shall be considered to
11 be contract administrators under section 8 of the
12 United States Housing Act of 1937 for purposes of
13 any contracts entered into as part of an approved
14 mortgage restructuring and rental assistance suffi-
15 ciency plan.

16 (6) RESIDUAL RECEIPTS.—Applying any ac-
17 quired residual receipts to maintain the long-term
18 affordability and physical condition of the property.
19 The participating administrative entity may expedite
20 the acquisition of residual receipts by entering into
21 agreements with owners of housing covered by an
22 expiring contract to provide an owner with a share
23 of the receipts, not to exceed 10 percent.

24 (7) REHABILITATION NEEDS.—Assisting in ad-
25 dressing the necessary rehabilitation needs of the

1 project, except that assistance under this paragraph
2 shall not exceed the equivalent of \$5,000 per unit
3 for those units covered with project-based assistance.
4 Rehabilitation may be paid from the provision of
5 grants from residual receipts or, as provided in ap-
6 propriations Acts, from budget authority provided
7 for increases in the budget authority for assistance
8 contracts under section 8 of the United States
9 Housing Act of 1937, or through the debt restruc-
10 turing transaction. Each owner that receives reha-
11 bilitation assistance shall contribute not less than 25
12 percent of the amount of rehabilitation assistance re-
13 ceived.

14 (8) MORTGAGE RESTRUCTURING.—Restructur-
15 ing mortgages to provide a structured first mortgage
16 to cover rents at levels that are established in sec-
17 tion 104(g) and a second mortgage equal to the dif-
18 ference between the restructured first mortgage and
19 the mortgage balance of the eligible multifamily
20 housing project at the time of restructuring. The
21 second mortgage shall bear interest at a rate not to
22 exceed the applicable Federal rate for a term not to
23 exceed 50 years. If the first mortgage remains out-
24 standing, payments of interest and principal on the
25 second mortgage shall be made from all excess

1 project income only after the payment of all reason-
2 able and necessary operating expenses (including de-
3 posits in a reserve for replacement), debt service on
4 the first mortgage, and such other expenditures as
5 may be approved by the Secretary. During the pe-
6 riod in which the first mortgage remains outstand-
7 ing, no payments of interest or principal shall be re-
8 quired on the second mortgage. The second mort-
9 gage shall be assumable by any subsequent pur-
10 chaser of any multifamily housing project, pursuant
11 to guidelines established by the Secretary. The prin-
12 cipal and accrued interest due under the second
13 mortgage shall be fully payable upon disposition of
14 the property, unless the mortgage is assumed under
15 the preceding sentence. The owner shall begin repay-
16 ment of the second mortgage upon full payment of
17 the first mortgage in equal monthly installments in
18 an amount equal to the monthly principal and inter-
19 est payments formerly paid under the first mort-
20 gage. The principal and interest of a second mort-
21 gage shall be immediately due and payable upon a
22 finding by the Secretary that an owner has failed
23 to materially comply with this title or any require-
24 ments of the United States Housing Act of 1937
25 as those requirements apply to the applicable

1 project, after receipt of notice of such failure and
 2 a reasonable opportunity to cure such failure. The
 3 second mortgage may be a direct obligation of the
 4 Secretary or a loan financed through a lender, other
 5 than the Secretary. Any credit subsidy costs of pro-
 6 viding a second mortgage shall be paid from the
 7 General Insurance Fund and the Special Risk Insur-
 8 ance Fund.

9 (b) ROLE OF FNMA AND FHLMC.—Section 1335
 10 of the Federal Housing Enterprises Financial Safety and
 11 Soundness Act of 1992 (12 U.S.C. 4565) is amended—

12 (1) in paragraph (3), by striking “and” at the
 13 end;

14 (2) paragraph (4), by striking the period at the
 15 end and inserting “; and”;

16 (3) by striking “To meet” and inserting the fol-
 17 lowing:

18 “(a) IN GENERAL.—To meet”; and

19 (4) by adding at the end the following:

20 “(5) assist in maintaining the affordability of
 21 assisted units in eligible multifamily housing projects
 22 with expiring contracts, as defined under the Multi-
 23 family Assisted Housing Reform and Affordability
 24 Act of 1996.

1 “(b) AFFORDABLE HOUSING GOALS.—Actions taken
 2 under subsection (a)(5) shall constitute part of the con-
 3 tribution of each entity in meeting their affordable hous-
 4 ing goals under sections 1332, 1333, and 1334 for any
 5 fiscal year, as determined by the Secretary.”.

6 (c) PROHIBITION ON EQUITY SHARING BY THE SEC-
 7 RETARY.—The Secretary is prohibited from participating
 8 in any equity agreement or profit-sharing agreement in
 9 conjunction with any eligible multifamily housing project.

10 **SEC. 108. SHARED SAVINGS INCENTIVE.**

11 (a) IN GENERAL.—At the time a participating ad-
 12 ministrative entity is designated, the Secretary shall nego-
 13 tiate an incentive agreement with the participating admin-
 14 istrative entity, which agreement may provide such entity
 15 with a share of savings from any restructured mortgage
 16 and reduced subsidies resulting from actions under section
 17 107. The Secretary shall negotiate with participating ad-
 18 ministrative entities a savings incentive formula that pro-
 19 vides for periodic payments over a 5-year period, which
 20 is allocated as incentives to participating administrative
 21 entities.

22 (b) USE OF SAVINGS.—Notwithstanding any other
 23 provision of law, the incentive agreement under subsection
 24 (a) shall require any savings provided to a participating
 25 administrative entity under that agreement to be used only

1 for providing decent, safe, and affordable housing for very
 2 low-income families and persons with a priority for eligible
 3 multifamily housing projects.

4 **SEC. 109. MANAGEMENT STANDARDS.**

5 Each participating administrative entity shall estab-
 6 lish and implement management standards, including re-
 7 quirements governing conflicts of interest between owners,
 8 managers, contractors with an identity of interest, pursu-
 9 ant to guidelines established by the Secretary and consist-
 10 ent with industry standards.

11 **SEC. 110. MONITORING OF COMPLIANCE.**

12 (a) COMPLIANCE AGREEMENTS.—Pursuant to regu-
 13 lations issued by the Secretary after public notice and
 14 comment, each participating administrative entity,
 15 through binding contractual agreements with owners and
 16 otherwise, shall ensure long-term compliance with the pro-
 17 visions of this title. Each agreements shall, at a minimum,
 18 provide for—

- 19 (1) enforcement of the provisions of this title;
- 20 and
- 21 (2) remedies for the breach of those provisions.

22 (b) PERIODIC MONITORING.—

- 23 (1) IN GENERAL.—Not less than annually, each
- 24 participating administrative entity shall review the
- 25 status of all multifamily housing projects for which

1 a mortgage restructuring and rental assistance suffi-
2 ciency plan has been implemented.

3 (2) INSPECTIONS.—Each review under this sub-
4 section shall include onsite inspection to determine
5 compliance with housing codes and other require-
6 ments as provided in this title and the portfolio re-
7 structuring agreements.

8 (c) AUDIT BY THE SECRETARY.—The Comptroller
9 General of the United States, the Secretary, and the In-
10 spector General of the Department of Housing and Urban
11 Development may conduct an audit at any time of any
12 multifamily housing project for which a mortgage restruc-
13 turing and rental assistance sufficiency plan has been im-
14 plemented.

15 **SEC. 111. REVIEW.**

16 (a) ANNUAL REVIEW.—In order to ensure compliance
17 with this title, the Secretary shall conduct an annual re-
18 view and report to the Congress on actions taken under
19 this title and the status of eligible multifamily housing
20 projects.

21 (b) SUBSIDY LAYERING REVIEW.—The participating
22 administrative entity shall certify, pursuant to guidelines
23 issued by the Secretary, that the requirements of section
24 102(d) of the Department of Housing and Urban Develop-
25 ment Reform Act of 1989 are satisfied so that the com-

1 bination of assistance provided in connection with a prop-
 2 erty for which a mortgage is to be restructured shall not
 3 be any greater than is necessary to provide affordable
 4 housing.

5 **SEC. 112. GAO AUDIT AND REVIEW.**

6 (a) INITIAL AUDIT.—Not later than 18 months after
 7 the effective date of interim or final regulations promul-
 8 gated under this title, the Comptroller General of the
 9 United States shall conduct an audit to evaluate a rep-
 10 resentative sample of all eligible multifamily housing
 11 projects and the implementation of all mortgage restruc-
 12 turing and rental assistance sufficiency plans.

13 (b) REPORT.—

14 (1) IN GENERAL.—Not later than 18 months
 15 after the audit conducted under subsection (a), the
 16 Comptroller General of the United States shall sub-
 17 mit to the Congress a report on the status of all eli-
 18 gible multifamily housing projects and the imple-
 19 mentation of all mortgage restructuring and rental
 20 assistance sufficiency plans.

21 (2) CONTENTS.—The report submitted under
 22 paragraph (1) shall include—

23 (A) a description of the initial audit con-
 24 ducted under subsection (a); and

1 (B) recommendations for any legislative
 2 action to increase the financial savings to the
 3 Federal Government of the restructuring of eli-
 4 gible multifamily housing projects balanced with
 5 the continued availability of the maximum num-
 6 ber of affordable low-income housing units.

7 **SEC. 113. REGULATIONS.**

8 (a) RULEMAKING AND IMPLEMENTATION.—The Sec-
 9 retary shall issue interim regulations necessary to imple-
 10 ment this title not later than the expiration of the 6-month
 11 period beginning on the date of enactment of this Act. Not
 12 later than 1 year after the date of enactment of this Act,
 13 in accordance with the negotiated rulemaking procedures
 14 set forth in subchapter III of chapter 5 of title 5, United
 15 States Code, the Secretary shall implement final regula-
 16 tions implementing this title.

17 (b) REPEAL OF FHA MULTIFAMILY HOUSING DEM-
 18 ONSTRATION AUTHORITY.—

19 (1) IN GENERAL.—Beginning upon the expira-
 20 tion of the 6-month period beginning on the date of
 21 enactment of this Act, the Secretary may not exer-
 22 cise any authority or take any action under section
 23 210 of the Balanced Budget Down Payment Act, II.

24 (2) UNUSED BUDGET AUTHORITY.—Any un-
 25 used budget authority under section 210(f) of the

1 Balanced Budget Down Payment Act, II, shall be
 2 available for taking actions under the requirements
 3 established through regulations issued under sub-
 4 section (a).

5 **SEC. 114. TECHNICAL AND CONFORMING AMENDMENTS.**

6 (a) CALCULATION OF LIMIT ON PROJECT-BASED AS-
 7 SISTANCE.—Section 8(d) of the United States Housing
 8 Act of 1937 (42 U.S.C. 1437f(d)) is amended by adding
 9 at the end the following new paragraph:

10 “(5) CALCULATION OF LIMIT.—Any contract
 11 entered into under section 104 of the Multifamily
 12 Assisted Housing Reform and Affordability Act of
 13 1997 shall be excluded in computing the limit on
 14 project-based assistance under this subsection.”.

15 (b) PARTIAL PAYMENT OF CLAIMS ON MULTIFAMILY
 16 HOUSING PROJECTS.—Section 541 of the National Hous-
 17 ing Act (12 U.S.C. 1735f–19) is amended—

18 (1) in subsection (a), in the subsection heading,
 19 by striking “AUTHORITY” and inserting “DE-
 20 FAULTED MORTGAGES”;

21 (2) by redesignating subsection (b) as sub-
 22 section (c); and

23 (3) by inserting after subsection (a) the follow-
 24 ing new subsection:

1 “(b) EXISTING MORTGAGES.—Notwithstanding any
 2 other provision of law, the Secretary, in connection with
 3 a mortgage restructuring under section 104 of the Multi-
 4 family Assisted Housing Reform and Affordability Act of
 5 1997, may make a one time, nondefault partial payment
 6 of the claim under the mortgage insurance contract, which
 7 shall include a determination by the Secretary or the par-
 8 ticipating administrative entity, in accordance with the
 9 Multifamily Assisted Housing Reform and Affordability
 10 Act of 1997, of the market value of the project and a re-
 11 structuring of the mortgage, under such terms and condi-
 12 tions as the Secretary may establish.”.

13 **SEC. 115. TERMINATION OF AUTHORITY.**

14 (a) IN GENERAL.—Except as provided in subsection
 15 (b), this title is repealed effective October 1, 2002.

16 (b) EXCEPTION.—The repeal under this section does
 17 not apply with respect to projects and programs for which
 18 binding commitments have been entered into before Octo-
 19 ber 1, 2002.

20 **TITLE II—ENFORCEMENT**
 21 **PROVISIONS**

22 **SEC. 201. IMPLEMENTATION.**

23 (a) ISSUANCE OF NECESSARY REGULATIONS.—Not-
 24 withstanding section 7(o) of the Department of Housing
 25 and Urban Development Act or part 10 of title 24, Code

1 of Federal Regulations (as in existence on the date of en-
 2 actment of this Act), the Secretary shall issue such regula-
 3 tions as the Secretary determines to be necessary to imple-
 4 ment this title and the amendments made by this title in
 5 accordance with section 552 or 553 of title 5, United
 6 States Code, as determined by the Secretary.

7 (b) USE OF EXISTING REGULATIONS.—In imple-
 8 menting any provision of this title, the Secretary may, in
 9 the discretion of the Secretary, provide for the use of exist-
 10 ing regulations to the extent appropriate, without rule-
 11 making.

12 **Subtitle A—FHA Single Family and** 13 **Multifamily Housing**

14 **SEC. 211. AUTHORIZATION TO IMMEDIATELY SUSPEND** 15 **MORTGAGEES.**

16 Section 202(c)(3)(C) of the National Housing Act
 17 (12 U.S.C. 1708(c)(3)(C)) is amended by inserting after
 18 the first sentence the following new sentence: “Notwith-
 19 standing paragraph (4)(A), a suspension shall be effective
 20 upon issuance by the Board if the Board determines that
 21 there exists adequate evidence that immediate action is re-
 22 quired to protect the financial interests of the Department
 23 or the public.”.

1 **SEC. 212. EXTENSION OF EQUITY SKIMMING TO OTHER SIN-**
 2 **GLE FAMILY AND MULTIFAMILY HOUSING**
 3 **PROGRAMS.**

4 Section 254 of the National Housing Act (12 U.S.C.
 5 1715z–19) is amended to read as follows:

6 **“SEC. 254. EQUITY SKIMMING PENALTY.**

7 “(a) IN GENERAL.—Whoever, as an owner, agent, or
 8 manager, or who is otherwise in custody, control, or pos-
 9 session of a multifamily project or a 1- to 4-family resi-
 10 dence that is security for a mortgage note that is described
 11 in subsection (b), willfully uses or authorizes the use of
 12 any part of the rents, assets, proceeds, income, or other
 13 funds derived from property covered by that mortgage
 14 note for any purpose other than to meet reasonable and
 15 necessary expenses that include expenses approved by the
 16 Secretary if such approval is required, in a period during
 17 which the mortgage note is in default or the project is
 18 in a nonsurplus cash position, as defined by the regulatory
 19 agreement covering the property, or the mortgagor has
 20 failed to comply with the provisions of such other form
 21 of regulatory control imposed by the Secretary, shall be
 22 fined not more than \$500,000, imprisoned not more than
 23 5 years, or both.

24 “(b) MORTGAGE NOTES DESCRIBED.—For purposes
 25 of subsection (a), a mortgage note is described in this sub-
 26 section if it—

1 “(1) is insured, acquired, or held by the Sec-
2 retary pursuant to this Act;

3 “(2) is made pursuant to section 202 of the
4 Housing Act of 1959 (including property still subject
5 to section 202 program requirements that existed
6 before the date of enactment of the Cranston-Gon-
7 zalez National Affordable Housing Act); or

8 “(3) is insured or held pursuant to section 542
9 of the Housing and Community Development Act of
10 1992, but is not reinsured under section 542 of the
11 Housing and Community Development Act of
12 1992.”.

13 **SEC. 213. CIVIL MONEY PENALTIES AGAINST MORTGAGEES,**
14 **LENDERS, AND OTHER PARTICIPANTS IN FHA**
15 **PROGRAMS.**

16 (a) CHANGE TO SECTION TITLE.—Section 536 of the
17 National Housing Act (12 U.S.C. 1735f–14) is amended
18 by striking the section heading and the section designation
19 and inserting the following:

20 **“SEC. 536. CIVIL MONEY PENALTIES AGAINST MORTGA-**
21 **GEES, LENDERS, AND OTHER PARTICIPANTS**
22 **IN FHA PROGRAMS.”.**

23 (b) EXPANSION OF PERSONS ELIGIBLE FOR PEN-
24 ALTY.—Section 536(a) of the National Housing Act (12
25 U.S.C. 1735f–14(a)) is amended—

1 (1) in paragraph (1), by striking the first sen-
2 tence and inserting the following: “If a mortgagee
3 approved under the Act, a lender holding a contract
4 of insurance under title I of this Act, or a principal,
5 officer, or employee of such mortgagee or lender, or
6 other person or entity participating in either an in-
7 sured mortgage or title I loan transaction under this
8 Act or providing assistance to the borrower in con-
9 nection with any such loan, including sellers of the
10 real estate involved, borrowers, closing agents, title
11 companies, real estate agents, mortgage brokers, ap-
12 praisers, loan correspondents and dealers, knowingly
13 and materially violates any applicable provision of
14 subsection (b), the Secretary may impose a civil
15 money penalty on the mortgagee or lender, or such
16 other person or entity, in accordance with this sec-
17 tion. The penalty under this paragraph shall be in
18 addition to any other available civil remedy or any
19 available criminal penalty, and may be imposed
20 whether or not the Secretary imposes other adminis-
21 trative sanctions.”; and

22 (2) in paragraph (2)—

23 (A) in the first sentence, by inserting “or
24 such other person or entity” after “lender”; and

1 (B) in the second sentence, by striking
2 “provision” and inserting “the provisions”.

3 (c) ADDITIONAL VIOLATIONS FOR MORTGAGEES,
4 LENDERS, AND OTHER PARTICIPANTS IN FHA PRO-
5 GRAMS.—Section 536(b) of the National Housing Act (12
6 U.S.C. 1735f–14(b)) is amended—

7 (1) by redesignating paragraph (2) as para-
8 graph (3);

9 (2) by inserting after paragraph (1) the follow-
10 ing new paragraph:

11 “(2) The Secretary may impose a civil money
12 penalty under subsection (a) for any knowing and
13 material violation by a principal, officer, or employee
14 of a mortgagee or lender, or other participants in ei-
15 ther an insured mortgage or title I loan transaction
16 under this Act or provision of assistance to the bor-
17 rower in connection with any such loan, including
18 sellers of the real estate involved, borrowers, closing
19 agents, title companies, real estate agents, mortgage
20 brokers, appraisers, loan correspondents, and dealers
21 for—

22 “(A) submission to the Secretary of infor-
23 mation that was false, in connection with any
24 mortgage insured under this Act, or any loan

1 that is covered by a contract of insurance under
2 title I of this Act;

3 “(B) falsely certifying to the Secretary or
4 submitting to the Secretary a false certification
5 by another person or entity; or

6 “(C) failure by a loan correspondent or
7 dealer to submit to the Secretary information
8 which is required by regulations or directives in
9 connection with any loan that is covered by a
10 contract of insurance under title I of this Act.”;
11 and

12 (3) in paragraph (3), as redesignated, by strik-
13 ing “or paragraph (1)(F)” and inserting “or (F), or
14 paragraph (2) (A), (B), or (C)”.

15 (d) CONFORMING AND TECHNICAL AMENDMENTS.—
16 Section 536 of the National Housing Act (12 U.S.C.
17 1735f–14) is amended—

18 (1) in subsection (c)(1)(B), by inserting after
19 “lender” the following: “or such other person or en-
20 tity”;

21 (2) in subsection (d)(1)—

22 (A) by inserting “or such other person or
23 entity” after “lender”; and

24 (B) by striking “part 25” and inserting
25 “parts 24 and 25”; and

(3) in subsection (e), by inserting “or such other person or entity” after “lender” each place that term appears.

Subtitle B—FHA Multifamily

SEC. 220. CIVIL MONEY PENALTIES AGAINST GENERAL PARTNERS, OFFICERS, DIRECTORS, AND CERTAIN MANAGING AGENTS OF MULTIFAMILY PROJECTS.

(a) CIVIL MONEY PENALTIES AGAINST MULTIFAMILY MORTGAGORS.—Section 537 of the National Housing Act (12 U.S.C. 1735f–15) is amended—

(1) in subsection (b)(1), by striking “on that mortgagor” and inserting the following: “on that mortgagor, on a general partner of a partnership mortgagor, or on any officer or director of a corporate mortgagor”;

(2) in subsection (c)—

(A) by striking the subsection heading and inserting the following:

“(c) OTHER VIOLATIONS.—”; and

(B) in paragraph (1)—

(i) by striking “VIOLATIONS.—The Secretary may” and all that follows through the colon and inserting the following:

1 “(A) LIABLE PARTIES.—The Secretary
2 may also impose a civil money penalty under
3 this section on—

4 “(i) any mortgagor of a property that
5 includes five or more living units and that
6 has a mortgage insured, coinsured, or held
7 pursuant to this Act;

8 “(ii) any general partner of a partner-
9 ship mortgagor of such property;

10 “(iii) any officer or director of a cor-
11 porate mortgagor;

12 “(iv) any agent employed to manage
13 the property that has an identity of inter-
14 est with the mortgagor, with the general
15 partner of a partnership mortgagor, or
16 with any officer or director of a corporate
17 mortgagor of such property; or

18 “(v) any member of a limited liability
19 company that is the mortgagor of such
20 property or is the general partner of a lim-
21 ited partnership mortgagor or is a partner
22 of a general partnership mortgagor.

23 “(B) VIOLATIONS.—A penalty may be im-
24 posed under this section upon any liable party

under subparagraph (A) that knowingly and materially takes any of the following actions:”;

(ii) in subparagraph (B), as designated by clause (i), by redesignating the subparagraph designations (A) through (L) as clauses (i) through (xii), respectively;

(iii) by adding after clause (xii), as redesignated by clause (ii), the following new clauses:

“(xiii) Failure to maintain the premises, accommodations, any living unit in the project, and the grounds and equipment appurtenant thereto in good repair and condition in accordance with regulations and requirements of the Secretary, except that nothing in this clause shall have the effect of altering the provisions of an existing regulatory agreement or federally insured mortgage on the property.

“(xiv) Failure, by a mortgagor, a general partner of a partnership mortgagor, or an officer or director of a corporate mortgagor, to provide management for the project that is acceptable to the Secretary

1 pursuant to regulations and requirements
2 of the Secretary.”; and

3 (iv) in the last sentence, by deleting
4 “of such agreement” and inserting “of this
5 subsection”;

6 (3) in subsection (d)—

7 (A) in paragraph (1)(B), by inserting after
8 “mortgagor” the following: “, general partner
9 of a partnership mortgagor, officer or director
10 of a corporate mortgagor, or identity of interest
11 agent employed to manage the property”; and

12 (B) by adding at the end the following new
13 paragraph:

14 “(5) PAYMENT OF PENALTY.—No payment of a
15 civil money penalty levied under this section shall be
16 payable out of project income.”;

17 (4) in subsection (e)(1), by deleting “a mortga-
18 gor” and inserting “an entity or person”;

19 (5) in subsection (f), by inserting after “mort-
20 gagor” each place such term appears the following:
21 “, general partner of a partnership mortgagor, offi-
22 cer or director of a corporate mortgagor, or identity
23 of interest agent employed to manage the property”;

24 (6) by striking the heading of subsection (f)
25 and inserting the following: “CIVIL MONEY PEN-

1 ALTIES AGAINST MULTIFAMILY MORTGAGORS, GEN-
 2 ERAL PARTNERS OF PARTNERSHIP MORTGAGORS,
 3 OFFICERS AND DIRECTORS OF CORPORATE MORT-
 4 GAGORS, AND CERTAIN MANAGING AGENTS”; and

5 (7) by adding at the end the following new sub-
 6 section:

7 “(k) IDENTITY OF INTEREST MANAGING AGENT.—
 8 For purposes of this section, the terms ‘agent employed
 9 to manage the property that has an identity of interest’
 10 and ‘identity of interest agent’ mean an entity—

11 “(1) that has management responsibility for a
 12 project;

13 “(2) in which the ownership entity, including its
 14 general partner or partners (if applicable) and its of-
 15 ficers or directors (if applicable), has an ownership
 16 interest; and

17 “(3) over which the ownership entity exerts ef-
 18 fective control.”.

19 (b) IMPLEMENTATION.—

20 (1) PUBLIC COMMENT.—The Secretary shall
 21 implement the amendments made by this section by
 22 regulation issued after notice and opportunity for
 23 public comment. The notice shall seek comments pri-
 24 marily as to the definitions of the terms “ownership
 25 interest in” and “effective control”, as those terms

1 are used in the definition of the terms “agent em-
 2 ployed to manage the property that has an identity
 3 of interest” and “identity of interest agent”.

4 (2) TIMING.—A proposed rule implementing the
 5 amendments made by this section shall be published
 6 not later than one year after the date of enactment
 7 of this Act.

8 (c) APPLICABILITY OF AMENDMENTS.—The amend-
 9 ments made by subsection (a) shall apply only with respect
 10 to—

11 (1) violations that occur on or after the effec-
 12 tive date of the final regulations implementing the
 13 amendments made by this section; and

14 (2) in the case of a continuing violation (as de-
 15 termined by the Secretary of Housing and Urban
 16 Development), any portion of a violation that occurs
 17 on or after that date.

18 **SEC. 221. CIVIL MONEY PENALTIES FOR NONCOMPLIANCE**

19 **WITH SECTION 8 HAP CONTRACTS.**

20 (a) BASIC AUTHORITY.—Title I of the United States
 21 Housing Act of 1937 is amended by adding at the end
 22 the following new section:

23 **“SEC. 27. CIVIL MONEY PENALTIES AGAINST SECTION 8**

24 **OWNERS.**

25 **“(a) IN GENERAL.—**

1 “(1) EFFECT ON OTHER REMEDIES.—The pen-
 2 alties set forth in this section shall be in addition to
 3 any other available civil remedy or any available
 4 criminal penalty, and may be imposed regardless of
 5 whether the Secretary imposes other administrative
 6 sanctions.

7 “(2) FAILURE OF SECRETARY.—The Secretary
 8 may not impose penalties under this section for a
 9 violation, if a material cause of the violation is the
 10 failure of the Secretary, an agent of the Secretary,
 11 or a public housing agency to comply with an exist-
 12 ing agreement.

13 “(b) VIOLATIONS OF HOUSING ASSISTANCE PAY-
 14 MENT CONTRACTS FOR WHICH PENALTY MAY BE IM-
 15 POSED.—

16 “(1) LIABLE PARTIES.—The Secretary may im-
 17 pose a civil money penalty under this section on—

18 “(A) any owner of a property receiving
 19 project-based assistance under section 8;

20 “(B) any general partner of a partnership
 21 owner of that property; and

22 “(C) any agent employed to manage the
 23 property that has an identity of interest with
 24 the owner or the general partner of a partner-
 25 ship owner of the property.

1 “(2) VIOLATIONS.—A penalty may be imposed
 2 under this section for a knowing and material
 3 breach of a housing assistance payments contract,
 4 including the following—

5 “(A) failure to provide decent, safe, and
 6 sanitary housing pursuant to section 8; or

7 “(B) knowing or willful submission of
 8 false, fictitious, or fraudulent statements or re-
 9 quests for housing assistance payments to the
 10 Secretary or to any department or agency of
 11 the United States.

12 “(3) AMOUNT OF PENALTY.—The amount of a
 13 penalty imposed for a violation under this sub-
 14 section, as determined by the Secretary, may not ex-
 15 ceed \$25,000 per violation.

16 “(c) AGENCY PROCEDURES.—

17 “(1) ESTABLISHMENT.—The Secretary shall
 18 issue regulations establishing standards and proce-
 19 dures governing the imposition of civil money pen-
 20 alties under subsection (b). These standards and
 21 procedures—

22 “(A) shall provide for the Secretary or
 23 other department official to make the deter-
 24 mination to impose the penalty;

1 “(B) shall provide for the imposition of a
2 penalty only after the liable party has received
3 notice and the opportunity for a hearing on the
4 record; and

5 “(C) may provide for review by the Sec-
6 retary of any determination or order, or inter-
7 locutory ruling, arising from a hearing and ju-
8 dicial review, as provided under subsection (d).

9 “(2) FINAL ORDERS.—

10 “(A) IN GENERAL.—If a hearing is not re-
11 quested before the expiration of the 15-day pe-
12 riod beginning on the date on which the notice
13 of opportunity for hearing is received, the im-
14 position of a penalty under subsection (b) shall
15 constitute a final and unappealable determina-
16 tion.

17 “(B) EFFECT OF REVIEW.—If the Sec-
18 retary reviews the determination or order, the
19 Secretary may affirm, modify, or reverse that
20 determination or order.

21 “(C) FAILURE TO REVIEW.—If the Sec-
22 retary does not review that determination or
23 order before the expiration of the 90-day period
24 beginning on the date on which the determina-

1 tion or order is issued, the determination or
2 order shall be final.

3 “(3) FACTORS IN DETERMINING AMOUNT OF
4 PENALTY.—In determining the amount of a penalty
5 under subsection (b), the Secretary shall take into
6 consideration—

7 “(A) the gravity of the offense;

8 “(B) any history of prior offenses by the
9 violator (including offenses occurring before the
10 enactment of this section);

11 “(C) the ability of the violator to pay the
12 penalty;

13 “(D) any injury to tenants;

14 “(E) any injury to the public;

15 “(F) any benefits received by the violator
16 as a result of the violation;

17 “(G) deterrence of future violations; and

18 “(H) such other factors as the Secretary
19 may establish by regulation.

20 “(4) PAYMENT OF PENALTY.—No payment of a
21 civil money penalty levied under this section shall be
22 payable out of project income.

23 “(d) JUDICIAL REVIEW OF AGENCY DETERMINA-
24 TION.—Judicial review of determinations made under this

1 section shall be carried out in accordance with section
2 537(e) of the National Housing Act.

3 “(e) REMEDIES FOR NONCOMPLIANCE.—

4 “(1) JUDICIAL INTERVENTION.—

5 “(A) IN GENERAL.—If a person or entity
6 fails to comply with the determination or order
7 of the Secretary imposing a civil money penalty
8 under subsection (b), after the determination or
9 order is no longer subject to review as provided
10 by subsections (c) and (d), the Secretary may
11 request the Attorney General of the United
12 States to bring an action in an appropriate
13 United States district court to obtain a mone-
14 tary judgment against that person or entity and
15 such other relief as may be available.

16 “(B) FEES AND EXPENSES.—Any mone-
17 tary judgment awarded in an action brought
18 under this paragraph may, in the discretion of
19 the court, include the attorney’s fees and other
20 expenses incurred by the United States in con-
21 nection with the action.

22 “(2) NONREVIEWABILITY OF DETERMINATION
23 OR ORDER.—In an action under this subsection, the
24 validity and appropriateness of the determination or

1 order of the Secretary imposing the penalty shall not
2 be subject to review.

3 “(f) SETTLEMENT BY SECRETARY.—The Secretary
4 may compromise, modify, or remit any civil money penalty
5 which may be, or has been, imposed under this section.

6 “(g) DEPOSIT OF PENALTIES.—

7 “(1) IN GENERAL.—Notwithstanding any other
8 provision of law, if the mortgage covering the prop-
9 erty receiving assistance under section 8 is insured
10 or formerly insured by the Secretary, the Secretary
11 shall apply all civil money penalties collected under
12 this section to the appropriate insurance fund or
13 funds established under this Act, as determined by
14 the Secretary.

15 “(2) EXCEPTION.—Notwithstanding any other
16 provision of law, if the mortgage covering the prop-
17 erty receiving assistance under section 8 is neither
18 insured nor formerly insured by the Secretary, the
19 Secretary shall make all civil money penalties col-
20 lected under this section available for use by the ap-
21 propriate office within the Department for adminis-
22 trative costs related to enforcement of the require-
23 ments of the various programs administered by the
24 Secretary.

1 “(h) DEFINITIONS.—For the purposes of this sec-
2 tion—

3 “(1) the term ‘agent employed to manage the
4 property that has an identity of interest’ means an
5 entity—

6 “(A) that has management responsibility
7 for a project;

8 “(B) in which the ownership entity, includ-
9 ing its general partner or partners (if applica-
10 ble), has an ownership interest; and

11 “(C) over which such ownership entity ex-
12 erts effective control; and

13 “(2) the term ‘knowing’ means having actual
14 knowledge of or acting with deliberate ignorance of
15 or reckless disregard for the prohibitions under this
16 section.”.

17 (b) APPLICABILITY.—The amendments made by sub-
18 section (a) shall apply only with respect to—

19 (1) violations that occur on or after the effec-
20 tive date of final regulations implementing the
21 amendments made by this section; and

22 (2) in the case of a continuing violation (as de-
23 termined by the Secretary of Housing and Urban
24 Development), any portion of a violation that occurs
25 on or after such date.

1 (c) IMPLEMENTATION.—

2 (1) REGULATIONS.—

3 (A) IN GENERAL.—The Secretary shall im-
 4 plement the amendments made by this section
 5 by regulation issued after notice and oppor-
 6 tunity for public comment.

7 (B) COMMENTS SOUGHT.—The notice
 8 under subparagraph (A) shall seek comments as
 9 to the definitions of the terms “ownership inter-
 10 est in” and “effective control”, as such terms
 11 are used in the definition of the term “agent
 12 employed to manage such property that has an
 13 identity of interest”.

14 (2) TIMING.—A proposed rule implementing the
 15 amendments made by this section shall be published
 16 not later than one year after the date of enactment
 17 of this Act.

18 **SEC. 222. EXTENSION OF DOUBLE DAMAGES REMEDY.**

19 Section 421 of the Housing and Community Develop-
 20 ment Act of 1987 (12 U.S.C. 1715z–4a) is amended—

21 (1) in subsection (a)(1)—

22 (A) in the first sentence, by striking “Act;
 23 or (B)” and inserting the following: “Act; (B)
 24 a regulatory agreement that applies to a multi-
 25 family project whose mortgage is insured or

1 held by the Secretary under section 202 of the
 2 Housing Act of 1959 (including property sub-
 3 ject to section 202 of such Act as it existed be-
 4 fore enactment of the Cranston-Gonzalez Na-
 5 tional Affordable Housing Act of 1990); (C) a
 6 regulatory agreement or such other form of reg-
 7 ulatory control as may be imposed by the Sec-
 8 retary that applies to mortgages insured or held
 9 by the Secretary under section 542 of the
 10 Housing and Community Development Act of
 11 1992, but not reinsured under section 542 of
 12 the Housing and Community Development Act
 13 of 1992; or (D)”; and

14 (B) in the second sentence, by inserting
 15 after “agreement” the following: “, or such
 16 other form of regulatory control as may be im-
 17 posed by the Secretary,”;

18 (2) in subsection (a)(2), by inserting after
 19 “Act,” the following: “under section 202 of the
 20 Housing Act of 1959 (including section 202 of such
 21 Act as it existed before enactment of the Cranston-
 22 Gonzalez National Affordable Housing Act of 1990)
 23 and under section 542 of the Housing and Commu-
 24 nity Development Act of 1992,”;

1 (3) in subsection (b), by inserting after “agree-
 2 ment” the following: “, or such other form of regu-
 3 latory control as may be imposed by the Secretary,”;

4 (4) in subsection (c)—

5 (A) in the first sentence, by inserting after
 6 “agreement” the following: “, or such other
 7 form of regulatory control as may be imposed
 8 by the Secretary,”; and

9 (B) in the second sentence, by inserting
 10 before the period the following: “or under the
 11 Housing Act of 1959, as appropriate”; and

12 (5) in subsection (d), by inserting after “agree-
 13 ment” the following: “, or such other form of regu-
 14 latory control as may be imposed by the Secretary,”.

15 **SEC. 223. OBSTRUCTION OF FEDERAL AUDITS.**

16 Section 1516(a) of title 18, United States Code, is
 17 amended by inserting after “under a contract or sub-
 18 contract,” the following: “or relating to any property that
 19 is security for a mortgage note that is insured, guaran-
 20 teed, acquired, or held by the Secretary of Housing and
 21 Urban Development pursuant to any Act administered by
 22 the Secretary,”.

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