S. 1299

One Hundred Third Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the twenty-fifth day of January, one thousand nine hundred and ninety-four

An Act

To amend section 203 of the Housing and Community Development Amendments of 1978 to provide for the disposition of multifamily properties owned by the Secretary of Housing and Urban Development, to provide for other reforms in programs administered by the Secretary, and to make certain technical amendments, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Multifamily Housing Property Disposition Reform Act of 1994".

(b) TABLE OF CONTENTS.—

TITLE I—MULTIFAMILY PROPERTY DISPOSITION REFORM

SEC. 101. MULTIFAMILY PROPERTY DISPOSITION.

(a) FINDINGS.—The Congress finds that—

(1) the portfolio of multifamily housing project mortgages insured by the FHA is severely troubled and at risk of default, requiring the Secretary to increase loss reserves from $5,500,000,000 in 1991 to $11,900,000,000 in 1992 to cover estimated future losses;

(2) the inventory of multifamily housing projects owned by the Secretary has more than quadrupled since 1989, and, by the end of 1994, may exceed 69,000 units;

(3) the cost to the Federal Government of owning and maintaining multifamily housing projects escalated to $288,000,000 in fiscal year 1993;

(4) the inventory of multifamily housing projects subject to mortgages held by the Secretary has increased dramatically, to more than 2,400 mortgages, and approximately half of these mortgages, with approximately 219,000 units, are delinquent;

(5) the inventory of insured and formerly insured multifamily housing projects is deteriorating, potentially endangering tenants and neighborhoods; and

(6) the current statutory framework governing the disposition of multifamily housing projects effectively impedes the Government's ability to dispose of properties, protect tenants, and ensure that projects are maintained over time.

(b) MANAGEMENT AND DISPOSITION OF MULTIFAMILY HOUSING PROJECTS.—Section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11) is amended to read as follows:

"SEC. 203. MANAGEMENT AND DISPOSITION OF MULTIFAMILY HOUSING PROJECTS.

"(a) GOALS.—The Secretary of Housing and Urban Development shall manage or dispose of multifamily housing projects that are owned by the Secretary or that are subject to a mortgage held by the Secretary in a manner that—

"(1) is consistent with the National Housing Act and this section;

"(2) will protect the financial interests of the Federal Government; and

"(3) will, in the least costly fashion among reasonable available alternatives, address the goals of—

"(A) preserving certain housing so that it can remain available to and affordable by low-income persons;

"(B) preserving and revitalizing residential neighborhoods;

"(C) maintaining existing housing stock in a decent, safe, and sanitary condition;

"(D) minimizing the involuntary displacement of tenants;

"(E) maintaining housing for the purpose of providing rental housing, cooperative housing, and homeownership opportunities for low-income persons;

"(F) minimizing the need to demolish multifamily housing projects;

"(G) supporting fair housing strategies; and

"(H) disposing of such projects in a manner consistent with local housing market conditions.

In determining the manner in which a project is to be managed or disposed of, the Secretary may balance competing goals relating to individual projects in a manner that will further the purposes of this section.

"(b) DEFINITIONS.—For purposes of this section:

"(1) MULTIFAMILY HOUSING PROJECT.—The term 'multifamily housing project' means any multifamily rental housing project which is, or prior to acquisition by the Secretary was, assisted or insured under the National Housing Act, or was subject to a loan under section 202 of the Housing Act of 1959.

"(2) SUBSIDIZED PROJECT.—The term 'subsidized project' means a multifamily housing project that, immediately prior to the assignment of the mortgage on such project to, or the acquisition of such mortgage by, the Secretary, was receiving any of the following types of assistance:

"(A) Below market interest rate mortgage insurance under the proviso of section 221(d)(5) of the National Housing Act.

"(B) Interest reduction payments made in connection with mortgages insured under section 236 of the National Housing Act.

"(C) Direct loans made under section 202 of the Housing Act of 1959.

"(D) Assistance in the form of—

"(i) rent supplement payments under section 101 of the Housing and Urban Development Act of 1965,

"(ii) additional assistance payments under section 236(f)(2) of the National Housing Act,

"(iii) housing assistance payments made under section 23 of the United States Housing Act of 1937 (as in effect before January 1, 1975), or

"(iv) housing assistance payments made under section 8 of the United States Housing Act of 1937 (excluding payments made for tenant-based assistance under section 8),

if (except for purposes of section 183(c) of the Housing and Community Development Act of 1987) such assistance payments are made to more than 50 percent of the units in the project.

"(3) FORMERLY SUBSIDIZED PROJECT.—The term 'formerly subsidized project' means a multifamily housing project owned by the Secretary that was a subsidized project immediately prior to its acquisition by the Secretary.

"(4) UNSUBSIDIZED PROJECT.—The term 'unsubsidized project' means a multifamily housing project owned by the Secretary that is not a subsidized project or a formerly subsidized project.

"(5) AFFORDABLE.—A unit shall be considered affordable if—

"(A) for units occupied—

"(i) by very low-income families, the rent does not exceed 30 percent of 50 percent of the area median income, as determined by the Secretary, with adjustments for smaller and larger families; and

"(ii) by low-income families other than very low-income families, the rent does not exceed 30 percent of 80 percent of the area median income, as determined by the Secretary, with adjustments for smaller and larger families; or

"(B) the unit, or the family residing in the unit, is receiving assistance under section 8 of the United States Housing Act of 1937.

"(6) LOW-INCOME FAMILIES AND VERY LOW-INCOME FAMILIES.—The terms 'low-income families' and 'very low-income families' shall have the meanings given the terms in section 3(b) of the United States Housing Act of 1937.

"(7) PREEXISTING TENANT.—The term 'preexisting tenant' means, with respect to a multifamily housing project acquired pursuant to this section by a purchaser other than the Secretary at foreclosure or after sale by the Secretary, a family that resides in a unit in the project immediately before the acquisition of the project by the purchaser.

"(8) MARKET AREA.—The term 'market area' means a market area determined by the Secretary.

"(9) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development.

"(c) DISPOSITION OF PROPERTY.—

"(1) DISPOSITION TO PURCHASERS.—In carrying out this section, the Secretary may dispose of a multifamily housing project owned by the Secretary on a negotiated, competitive bid, or other basis, on such terms as the Secretary deems appropriate considering the low-income character of the project and consistent with the goals in subsection (a), only to a purchaser determined by the Secretary to be capable of—

"(A) satisfying the conditions of the disposition plan developed under paragraph (2) for the project;

"(B) implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and repair expenses to ensure that the project will remain in decent, safe, and sanitary condition and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the physical condition of the housing and any such standards established by the Secretary;

"(C) responding to the needs of the tenants and working cooperatively with tenant organizations;

"(D) providing adequate organizational, staff, and financial resources to the project; and

"(E) meeting such other requirements as the Secretary may determine.

"(2) DISPOSITION PLAN.—

"(A) IN GENERAL.—Prior to the sale of a multifamily housing project that is owned by the Secretary, the Secretary shall develop an initial disposition plan for the

project that specifies the minimum terms and conditions of the Secretary for disposition of the project, the initial sales price that is acceptable to the Secretary, and the assistance that the Secretary plans to make available to a prospective purchaser in accordance with this section.

"(B) MARKET-WIDE PLANS.—In developing the initial disposition plan under this subsection for a multifamily housing project located in a market area in which at least 1 other multifamily housing project owned by the Secretary is located, the Secretary may coordinate the disposition of all such multifamily housing projects located within the same market area to the extent and in such manner as the Secretary determines appropriate to carry out the goals under subsection (a).

"(C) SALES PRICE.—The initial sales price shall be reasonably related to the intended use of the project after sale, any rehabilitation requirements for the project, the rents for units in the project that can be supported by the market, the amount of rental assistance available for the project under section 8 of the United States Housing Act of 1937, the occupancy profile of the project (including family size and income levels for tenant families), and any other factors that the Secretary considers appropriate.

"(D) COMMUNITY AND TENANT INPUT.—In carrying out this section, the Secretary shall develop procedures—

"(i) to obtain appropriate and timely input into disposition plans from officials of the unit of general local government affected, the community in which the project is situated, and the tenants of the project; and

"(ii) to facilitate, where feasible and appropriate, the sale of multifamily housing projects to existing tenant organizations with demonstrated capacity, to public or nonprofit entities that represent or are affiliated with existing tenant organizations, or to other public or nonprofit entities.

"(E) TECHNICAL ASSISTANCE.—To carry out the procedures developed under subparagraph (D), the Secretary may provide technical assistance, directly or indirectly, and may use amounts available for technical assistance under the Emergency Low Income Housing Preservation Act of 1987, subtitle C of the Low-Income Housing Preservation and Resident Homeownership Act of 1990, subtitle B of title IV of the Cranston-Gonzalez National Affordable Housing Act, or this section, for the provision of technical assistance under this paragraph. Recipients of technical assistance funding under the provisions referred to in this subparagraph shall be permitted to provide technical assistance to the extent of such funding under any of such provisions or under this subparagraph, notwithstanding the source of the funding.

"(3) FORECLOSURE SALE.—In carrying out this section, the Secretary shall—

"(A) prior to foreclosing on any mortgage held by the Secretary on any multifamily housing project, notify both the unit of general local government in which the property

is located and the tenants of the property of the proposed foreclosure sale; and

"(B) dispose of a multifamily housing project through a foreclosure sale only to a purchaser that the Secretary determines is capable of implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and repair expenses to ensure that the project will remain in decent, safe, and sanitary condition and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the physical condition of the housing and any such standards established by the Secretary.

"(d) MANAGEMENT AND MAINTENANCE OF PROPERTIES.—

"(1) CONTRACTING FOR MANAGEMENT SERVICES.—In carrying out this section, the Secretary may—

"(A) contract for management services for a multifamily housing project that is owned by the Secretary (or for which the Secretary is mortgagee in possession) with for-profit and nonprofit entities and public agencies (including public housing authorities) on a negotiated, competitive bid, or other basis at a price determined by the Secretary to be reasonable, with a manager the Secretary has determined is capable of—

"(i) implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and maintenance expenses to ensure that the project will remain in decent, safe, and sanitary condition and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the physical condition of the project and any such standards established by the Secretary;

"(ii) responding to the needs of the tenants and working cooperatively with tenant organizations;

"(iii) providing adequate organizational, staff, and financial resources to the project; and

"(iv) meeting such other requirements as the Secretary may determine; and

"(B) require the owner of a multifamily housing project that is subject to a mortgage held by the Secretary to contract for management services for the project in the manner described in subparagraph (A).

"(2) MAINTENANCE OF PROJECTS OWNED BY SECRETARY.—In the case of multifamily housing projects that are owned by the Secretary (or for which the Secretary is mortgagee in possession), the Secretary shall—

"(A) to the greatest extent possible, maintain all such occupied projects in a decent, safe, and sanitary condition and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the physical condition of the housing and any such standards established by the Secretary;

"(B) to the greatest extent possible, maintain full occupancy in all such projects; and

"(C) maintain all such projects for purposes of providing rental or cooperative housing.

"(3) PROJECTS SUBJECT TO A MORTGAGE HELD BY SECRETARY.—In the case of any multifamily housing project that is subject to a mortgage held by the Secretary, the Secretary shall require the owner of the project to carry out the requirements of paragraph (2).

"(e) REQUIRED ASSISTANCE.—In disposing of multifamily housing property under this section, consistent with the goal of section 203(a)(3)(A), the Secretary shall take, separately or in combination with other actions under this subsection or subsection (f), one or more of the following actions:

"(1) CONTRACT WITH OWNER FOR PROJECT-BASED ASSISTANCE.—In the case of multifamily housing projects that are acquired by a purchaser other than the Secretary at foreclosure or after sale by the Secretary, the Secretary may enter into contracts under section 8 of the United States Housing Act of 1937 (to the extent budget authority is available) with owners of the projects, subject to the following requirements:

"(A) SUBSIDIZED OR FORMERLY SUBSIDIZED PROJECTS RECEIVING MORTGAGE-RELATED ASSISTANCE.—In the case of a subsidized or formerly subsidized project referred to in subparagraphs (A) through (C) of subsection (b)(2)—

"(i) the contract shall be sufficient to assist at least all units covered by an assistance contract under any of the authorities referred to in subsection (b)(2)(D) before acquisition or foreclosure, unless the Secretary acts pursuant to the provisions of subparagraph (C);

"(ii) the contract shall provide that, when a vacancy occurs in any unit in the project requiring project-based rental assistance pursuant to this subparagraph that is occupied by a family who is not eligible for assistance under such section 8, the owner shall lease the available unit to a family eligible for assistance under such section 8; and

"(iii) the Secretary shall take actions to ensure that any unit in any such project that does not otherwise receive project-based assistance under this subparagraph remains available and affordable for the remaining useful life of the project, as defined by the Secretary; to carry out this clause, the Secretary may require purchasers to establish use or rent restrictions maintaining the affordability of such units.

"(B) SUBSIDIZED OR FORMERLY SUBSIDIZED PROJECTS RECEIVING RENTAL ASSISTANCE.—In the case of a subsidized or formerly subsidized project referred to in subsection (b)(2)(D) that is not subject to subparagraph (A)—

"(i) the contract shall be sufficient to assist at least all units in the project that are covered, or were covered immediately before foreclosure on or acquisition of the project by the Secretary, by an assistance contract under any of the provisions referred to in such subsection, unless the Secretary acts pursuant to provisions of subparagraph (C); and

"(ii) the contract shall provide that, when a vacancy occurs in any unit in the project requiring project-based rental assistance pursuant to this subparagraph that is occupied by a family who is not eligible for assistance under such section 8, the owner

shall lease the available unit to a family eligible for assistance under such section 8.

"(C) EXCEPTIONS.—

"(i) AUTHORITY.—In lieu of providing project-based assistance under section 8 of the United States Housing Act of 1937 in accordance with subparagraph (A)(i) or (B)(i) for a project, the Secretary may, for certain units in unsubsidized projects located within the same market area as the project otherwise required to be assisted with such project-based assistance—

"(I) require use and rent restrictions providing that such units shall be available to and affordable by very low-income families for the remaining useful life of the project (as defined by the Secretary), or

"(II) provide project-based assistance under section 8 for such units to be occupied by only very low-income persons,

but only if the requirements under clause (ii) are met.

"(ii) REQUIREMENTS.—The requirements under this clause are that—

"(I) upon the disposition of the project otherwise required to be assisted with project-based assistance under subparagraph (A)(i) or (B)(i), the Secretary shall make available tenant-based assistance under section 8 to low-income families residing in units otherwise required to be assisted with such project-based assistance; and

"(II) the number of units subject to use restrictions or provided assistance under clause (i) shall be at least equivalent to the number of units otherwise required to be assisted with project-based assistance under section 8 in accordance with subparagraph (A)(i) or (B)(i).

"(D) UNSUBSIDIZED PROJECTS.—Notwithstanding actions taken pursuant to subparagraph (C), in the case of unsubsidized projects, the contract shall be sufficient to provide—

"(i) project-based rental assistance for all units that are covered, or were covered immediately before foreclosure or acquisition, by an assistance contract under—

"(I) the new construction and substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937 (as in effect before October 1, 1983);

"(II) the property disposition program under section 8(b) of such Act;

"(III) the project-based certificate program under section 8 of such Act;

"(IV) the moderate rehabilitation program under section 8(e)(2) of such Act;

"(V) section 23 of such Act (as in effect before January 1, 1975);

"(VI) the rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

"(VII) section 8 of the United States Housing Act of 1937, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965; and

"(ii) tenant-based assistance under section 8 of the United States Housing Act of 1937 for families that are preexisting tenants of the project in units that, immediately before foreclosure or acquisition of the project by the Secretary, were covered by an assistance contract under the loan management set-aside program under section 8(b) of the United States Housing Act of 1937.

"(2) ANNUAL CONTRIBUTION CONTRACTS FOR TENANT-BASED ASSISTANCE.—In the case of multifamily housing projects that are acquired by a purchaser other than the Secretary at foreclosure or after sale by the Secretary, the Secretary may enter into annual contribution contracts with public housing agencies to provide tenant-based assistance under section 8 of the United States Housing Act of 1937 on behalf of all low-income families who are otherwise eligible for assistance in accordance with subparagraph (A), (B), or (D) of paragraph (1) on the date that the project is acquired by the purchaser, subject to the following requirements:

"(A) REQUIREMENT OF SUFFICIENT AFFORDABLE HOUSING IN AREA.—The Secretary may not take action under this paragraph unless the Secretary determines that there is available in the area an adequate supply of habitable, affordable housing for very low-income families and other low-income families using tenant-based assistance.

"(B) LIMITATION FOR SUBSIDIZED AND FORMERLY SUBSIDIZED PROJECTS.—The Secretary may not take actions under this paragraph in connection with units in subsidized or formerly subsidized projects for more than 10 percent of the aggregate number of units in such projects disposed of by the Secretary in any fiscal year.

"(3) OTHER ASSISTANCE.—

"(A) IN GENERAL.—In accordance with the authority provided under the National Housing Act, the Secretary may provide other assistance pursuant to subsection (f) to the owners of multifamily housing projects that are acquired by a purchaser other than the Secretary at foreclosure, or after sale by the Secretary, on terms that ensure that—

"(i) at least the units in the project otherwise required to receive project-based assistance pursuant to subparagraphs (A), (B), or (D) of paragraph (1) are available to and affordable by low-income persons; and

"(ii) for the remaining useful life of the project, as defined by the Secretary, there shall be in force such use or rent restrictions as the Secretary may prescribe.

"(B) VERY LOW-INCOME TENANTS.—If, as a result of actions taken pursuant to this paragraph, the rents charged to any very low-income families residing in the project who are otherwise required (pursuant to subparagraph (A), (B), or (D) of paragraph (1)) to receive project-based assistance under section 8 of the United States Housing Act

of 1937 exceed the amount payable as rent under section 3(a) of the United States Housing Act of 1937, the Secretary shall provide tenant-based assistance under section 8 of such Act to such families.

"(f) DISCRETIONARY ASSISTANCE.—In addition to the actions required under subsection (e) for a subsidized, formerly subsidized, or unsubsidized multifamily housing project, the Secretary may, pursuant to the disposition plan and the goals in subsection (a), take one or more of the following actions:

"(1) DISCOUNTED SALES PRICE.—In accordance with the authority provided under the National Housing Act, the Secretary may reduce the selling price of the project. Such reduced sales price shall be reasonably related to the intended use of the property after sale, any rehabilitation requirements for the project, the rents for units in the project that can be supported by the market, the amount of rental assistance available for the project under section 8 of the United States Housing Act of 1937, the occupancy profile of the project (including family size and income levels for tenant families), and any other factors that the Secretary considers appropriate.

"(2) USE AND RENT RESTRICTIONS.—The Secretary may require certain units in a project to be subject to use or rent restrictions providing that such units will be available to and affordable by low- and very low-income persons for the remaining useful life of the property, as defined by the Secretary.

"(3) SHORT-TERM LOANS.—The Secretary may provide short-term loans to facilitate the sale of a multifamily housing project if—

"(A) authority for such loans is provided in advance in an appropriation Act;

"(B) such loan has a term of not more than 5 years;

"(C) the Secretary determines, based upon documentation provided to the Secretary, that the borrower has obtained a commitment of permanent financing to replace the short-term loan from a lender who meets standards established by the Secretary; and

"(D) the terms of such loan are consistent with prevailing practices in the marketplace or the provision of such loan results in no cost to the Government, as defined in section 502 of the Congressional Budget Act of 1974.

"(4) UP-FRONT GRANTS.—If the Secretary determines that action under this paragraph is more cost-effective than establishing rents pursuant to subsection (h)(2), the Secretary may utilize the budget authority provided for contracts issued under this section for project-based assistance under section 8 of the United States Housing Act of 1937 to (in addition to providing project-based section 8 rental assistance) provide up-front grants for the necessary cost of rehabilitation and other related development costs.

"(5) TENANT-BASED ASSISTANCE.—The Secretary may make available tenant-based assistance under section 8 of the United States Housing Act of 1937 to families residing in a multifamily housing project that do not otherwise qualify for project-based assistance.

"(6) ALTERNATIVE USES.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, after providing notice to and an opportunity

for comment by preexisting tenants, the Secretary may allow not more than—

"(i) 10 percent of the total number of units in multifamily housing projects that are disposed of by the Secretary during any fiscal year to be made available for uses other than rental or cooperative uses, including low-income homeownership opportunities, or in any particular project, community space, office space for tenant or housing-related service providers or security programs, or small business uses, if such uses benefit the tenants of the project; and

"(ii) 5 percent of the total number of units in multifamily housing projects that are disposed of by the Secretary during any fiscal year to be used in any manner, if the Secretary and the unit of general local government or area-wide governing body determine that such use will further fair housing, community development, or neighborhood revitalization goals.

"(B) DISPLACEMENT PROTECTION.—The Secretary may take actions under subparagraph (A) only if—

"(i) tenant-based rental assistance under section 8 of the United States Housing Act of 1937 is made available to each eligible family residing in the project that is displaced as a result of such actions; and

"(ii) the Secretary determines that sufficient habitable, affordable rental housing is available in the market area in which the project is located to ensure use of such assistance.

"(7) TRANSFER FOR USE UNDER OTHER PROGRAMS OF SECRETARY.—

"(A) IN GENERAL.—Notwithstanding the provisions of subsection (e), the Secretary may, pursuant to an agreement under subparagraph (B), transfer a multifamily housing project—

"(i) to a public housing agency for use of the project as public housing; or

"(ii) to an entity eligible to own or operate housing assisted under section 202 of the Housing Act of 1959 or under section 811 of the Cranston-Gonzalez National Affordable Housing Act for use as supportive housing under either of such sections.

"(B) REQUIREMENTS FOR AGREEMENT.—An agreement providing for the transfer of a project described in subparagraph (A) shall—

"(i) contain such terms, conditions, and limitations as the Secretary determines appropriate, including requirements to ensure use of the project as public housing, supportive housing under section 202 of the Housing Act of 1959, or supportive housing under section 811 of the Cranston-Gonzalez National Affordable Housing Act, as applicable; and

"(ii) ensure that no tenant of the project will be displaced as a result of actions taken under this paragraph.

"(8) REBUILDING.—Notwithstanding any provision of section 8 of the United States Housing Act of 1937, the Secretary may provide project-based assistance in accordance with sub-

section (e) of this section to support the rebuilding of a multifamily housing project rebuilt or to be rebuilt (in whole or in part and on-site, off-site, or in a combination of both) in connection with disposition under this section, if the Secretary determines that—

"(A) the project is not being maintained in a decent, safe, and sanitary condition;

"(B) rebuilding the project would be less expensive than substantial rehabilitation;

"(C) the unit of general local government in which the project is located approves the rebuilding and makes a financial contribution or other commitment to the project; and

"(D) the rebuilding is a part of a local neighborhood revitalization plan approved by the unit of general local government.

The provisions of subsection (j)(2) shall apply to any tenants of the project who are displaced.

"(9) EMERGENCY ASSISTANCE FUNDS.—The Secretary may make arrangements with State agencies and units of general local government of States receiving emergency assistance under part A of title IV of the Social Security Act for the provision of assistance under such Act on behalf of eligible families who would reside in any multifamily housing projects.

"(g) PROTECTION FOR UNASSISTED VERY LOW-INCOME TENANTS.—For each multifamily housing project disposed of under this section, the Secretary shall require that, for any very low-income family who is a preexisting tenant of the project who (upon disposition) would be required to pay rent in an amount in excess of 30 percent of the adjusted income (as such term is defined in section 3(b) of the United States Housing Act of 1937) of the family—

"(1) for a period of 2 years beginning upon the date of the acquisition of the project by the purchaser under such disposition, the rent for the unit occupied by the family may not be increased above the rent charged immediately before acquisition;

"(2) such family shall be considered displaced for purposes of the preferences for assistance under sections 6(c)(4)(A)(i), 8(d)(1)(A)(i), and 8(o)(3)(B) of the United States Housing Act of 1937; and

"(3) notice shall be provided to such family, not later than the date of the acquisition of the project by the purchaser—

"(A) of the requirements under paragraphs (1) and (2); and

"(B) that, after the expiration of the period under paragraph (1), the rent for the unit occupied by the family may be increased.

"(h) CONTRACT REQUIREMENTS.—Contracts for project-based rental assistance under section 8 of the United States Housing Act of 1937 provided pursuant to this section shall be subject to the following requirements:

"(1) CONTRACT TERM.—The contract shall have a term of 15 years, except that the term may be less than 15 years—

"(A) to the extent that the Secretary finds that, based on the rental charges and financing for the multifamily housing project to which the contract relates, the financial

viability of the project can be maintained under a contract having such a term; except that the Secretary shall require that the amount of rent payable by tenants of the project for units assisted under such contract shall not exceed the amount payable for rent under section 3(a) of the United States Housing Act of 1937 for a period of at least 15 years; or

"(B) if such assistance is provided—

"(i) under a contract authorized under section 6 of the HUD Demonstration Act of 1993; and

"(ii) pursuant to a disposition plan under this section for a project that is determined by the Secretary to be otherwise in compliance with this section.

"(2) CONTRACT RENT.—The Secretary shall establish the contract rents under such contracts at levels that, together with other resources available to the purchasers, provide sufficient amounts for the necessary costs of rehabilitating and operating the multifamily housing project and do not exceed the percentage of the existing housing fair market rentals for the market area in which the project assisted under the contract is located as determined by the Secretary under section 8(c) of the United States Housing Act of 1937.

"(i) RIGHT OF FIRST REFUSAL FOR LOCAL AND STATE GOVERNMENT AGENCIES.—

"(1) NOTIFICATION.—Not later than 30 days after the Secretary acquires title to a multifamily housing project, the Secretary shall notify the appropriate unit of general local government (including public housing agencies) and State agency or agencies designated by the chief executive officer of the State in which the project is located of such acquisition of title and that, for a period beginning upon such notification that does not exceed 90 days, such unit of general local government and agency or agencies shall have the exclusive right under this subsection to make bona fide offers to purchase the project.

"(2) RIGHT OF FIRST REFUSAL.—During the 90-day period, the Secretary may not sell or offer to sell the multifamily housing project other than to a party notified under paragraph (1), unless the unit of general local government and the designated State agency or agencies notify the Secretary that they will not make an offer to purchase the project. The Secretary shall accept a bona fide offer to purchase the project made during such period if it complies with the terms and conditions of the disposition plan for the project or is otherwise acceptable to the Secretary.

"(3) PROCEDURE.—The Secretary shall establish any procedures necessary to carry out this subsection.

"(j) DISPLACEMENT OF TENANTS AND RELOCATION ASSISTANCE.—

"(1) IN GENERAL.—Whenever tenants will be displaced as a result of the demolition of, repairs to, or conversion in the use of, a multifamily housing project that is owned by the Secretary (or for which the Secretary is mortgagee in possession), the Secretary shall identify tenants who will be displaced, and shall notify all such tenants of their pending displacement and of any relocation assistance that may be available. In the case of a multifamily housing project that is subject to a mortgage held by the Secretary, the Secretary shall require the owner of the project to carry out the requirements of this

paragraph, if the Secretary has authorized the demolition of, repairs to, or conversion in the use of such multifamily housing project.

"(2) RIGHTS OF DISPLACED TENANTS.—The Secretary shall ensure for any such tenant (who continues to meet applicable qualification standards) the right—

"(A) to return, whenever possible, to a repaired or rebuilt unit;

"(B) to occupy a unit in another multifamily housing project owned by the Secretary;

"(C) to obtain housing assistance under the United States Housing Act of 1937; or

"(D) to receive any other available similar relocation assistance as the Secretary determines to be appropriate.

"(k) MORTGAGE AND PROJECT SALES.—

"(1) IN GENERAL.—The Secretary may not approve the sale of any loan or mortgage held by the Secretary (including any loan or mortgage owned by the Government National Mortgage Association) on any subsidized project or formerly subsidized project, unless such sale is made as part of a transaction that will ensure that such project will continue to operate at least until the maturity date of such loan or mortgage, in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms required by the program under which the loan or mortgage was made or insured prior to the assignment of the loan or mortgage on such project to the Secretary.

"(2) SALE OF CERTAIN PROJECTS.—The Secretary may not approve the sale of any subsidized project—

"(A) that is subject to a mortgage held by the Secretary, or

"(B) if the sale transaction involves the provision of any additional subsidy funds by the Secretary or a recasting of the mortgage,

unless such sale is made as part of a transaction that will ensure that the project will continue to operate, at least until the maturity date of the loan or mortgage, in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms required by the program under which the loan or mortgage was made or insured prior to the proposed sale of the project.

"(3) MORTGAGE SALES TO STATE AND LOCAL GOVERNMENTS.—Notwithstanding any provision of law that requires competitive sales or bidding, the Secretary may carry out negotiated sales of mortgages held by the Secretary, without the competitive selection of purchasers or intermediaries, to units of general local government or State agencies, or groups of investors that include at least one such unit of general local government or State agency, if the negotiations are conducted with such agencies, except that—

"(A) the terms of any such sale shall include the agreement of the purchasing agency or unit of local government or State agency to act as mortgagee or owner of a beneficial interest in such mortgages, in a manner consistent with maintaining the projects that are subject to such mortgages for occupancy by the general tenant group intended to be served by the applicable mortgage insurance program,

including, to the extent the Secretary determines appropriate, authorizing such unit of local government or State agency to enforce the provisions of any regulatory agreement or other program requirements applicable to the related projects; and

"(B) the sales prices for such mortgages shall be, in the determination of the Secretary, the best prices that may be obtained for such mortgages from a unit of general local government or State agency, consistent with the expectation and intention that the projects financed will be retained for use under the applicable mortgage insurance program for the life of the initial mortgage insurance contract.

"(4) SALE OF MORTGAGES COVERING UNSUBSIDIZED PROJECTS.—Notwithstanding any other provision of law, the Secretary may sell mortgages held on projects that are not subsidized or formerly subsidized projects on such terms and conditions as the Secretary may prescribe.

"(5) MORTGAGE SALE DEMONSTRATION.—The Secretary may carry out a demonstration to test the feasibility of restructuring and disposing of troubled multifamily mortgages held by the Secretary through the establishment of partnerships with public, private, and nonprofit entities.

"(6) PROJECT SALE DEMONSTRATION.—The Secretary may carry out a demonstration to test the feasibility of disposing of troubled multifamily housing projects that are owned by the Secretary through the establishment of partnerships with public, private, and nonprofit entities.

"(l) REPORT TO CONGRESS.—Not later than June 1 of each year, the Secretary shall submit to the Congress a report describing the status of multifamily housing projects owned by or subject to mortgages held by the Secretary, on an aggregate basis, which highlights the differences, if any, between the subsidized and the unsubsidized inventory. The report shall include—

"(1) the average and median size of the projects;

"(2) the geographic locations of the projects, by State and region;

"(3) the years during which projects were assigned to the Department, and the average and median length of time that projects remain in the HUD-held inventory;

"(4) the status of HUD-held mortgages;

"(5) the physical condition of the HUD-held and HUD-owned inventory;

"(6) the occupancy profile of the projects, including the income, family size, race, and ethnic origin of current tenants, and the rents paid by such tenants;

"(7) the proportion of units that are vacant;

"(8) the number of projects for which the Secretary is mortgagee in possession;

"(9) the number of projects sold in foreclosure sales;

"(10) the number of HUD-owned projects sold;

"(11) a description of actions undertaken pursuant to this section, including a description of the effectiveness of such actions and any impediments to the disposition or management of multifamily housing projects;

"(12) a description of the extent to which the provisions of this section and actions taken under this section have displaced tenants of multifamily housing projects;

"(13) a description of any of the functions performed in connection with this section that are contracted out to public or private entities or to States; and

"(14) a description of the activities carried out under subsection (i) during the preceding year.".

(c) CLARIFICATION OF FEDERAL PREFERENCES.—

(1) PUBLIC HOUSING TENANCY.—Section 6(c)(4)(A)(i) of the United States Housing Act of 1937 (42 U.S.C. 1437d(c)(4)(A)(i)) is amended by inserting after "displaced" the following: "(including displacement because of disposition of a multifamily housing project under section 203 of the Housing and Community Development Amendments of 1978)".

(2) SECTION 8 ASSISTANCE.—Section 8(d)(1)(A)(i) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(1)(A)(i)) is amended by inserting after "displaced" the following: "(including displacement because of disposition of a multifamily housing project under section 203 of the Housing and Community Development Amendments of 1978)".

(3) VOUCHER ASSISTANCE.—The first sentence of section 8(o)(3)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(3)(B)) is amended by inserting after "displaced" the following: "(including displacement because of disposition of a multifamily housing project under section 203 of the Housing and Community Development Amendments of 1978)".

(d) DEFINITION OF OWNER.—Section 8(f)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437f(f)(1)) is amended by inserting "an agency of the Federal Government," after "cooperative,".

(e) AMENDMENT TO NATIONAL HOUSING ACT.—Title V of the National Housing Act (12 U.S.C. 1731a et seq.) is amended by adding at the end the following new section:

"PARTIAL PAYMENT OF CLAIMS ON MULTIFAMILY HOUSING PROJECTS

"SEC. 541. (a) AUTHORITY.—Notwithstanding any other provision of law, if the Secretary is requested to accept assignment of a mortgage insured by the Secretary that covers a multifamily housing project (as such term is defined in section 203(b) of the Housing and Community Development Amendments of 1978) and the Secretary determines that partial payment would be less costly to the Federal Government than other reasonable alternatives for maintaining the low-income character of the project, the Secretary may request the mortgagee, in lieu of assignment, to—

"(1) accept partial payment of the claim under the mortgage insurance contract; and

"(2) recast the mortgage, under such terms and conditions as the Secretary may determine.

"(b) REPAYMENT.—As a condition to a partial claim payment under this section, the mortgagor shall agree to repay to the Secretary the amount of such payment and such obligation shall be secured by a second mortgage on the property on such terms and conditions as the Secretary may determine.".

(f) EFFECTIVE DATE.—The Secretary shall issue interim regulations necessary to implement the amendments made by subsections (b) through (d) not later than 90 days after the date of the enactment of this Act. Such interim regulations shall take effect upon issuance

and invite public comment on the interim regulations. The Secretary shall issue final regulations to implement such amendments after opportunity for such public comment, but not later than 12 months after the date of issuance of such interim regulations.

SEC. 102. REPEAL OF STATE AGENCY MULTIFAMILY PROPERTY DISPOSITION DEMONSTRATION.

Section 184 of the Housing and Community Development Act of 1987 (12 U.S.C. 1701z–11 note) is hereby repealed.

SEC. 103. PREVENTING MORTGAGE DEFAULTS ON MULTIFAMILY HOUSING PROJECTS.

(a) MULTIFAMILY HOUSING PLANNING AND INVESTMENT STRATEGIES.—

(1) PREPARATION OF ASSESSMENTS FOR INDEPENDENT ENTITIES.—Section 402(a) of the Housing and Community Development Act of 1992 (12 U.S.C. 1715–1a note) is amended by adding at the end the following new sentence: "The assessment shall be prepared by an entity that does not have an identity of interest with the owner.".

(2) TIMING OF SUBMISSION OF NEEDS ASSESSMENTS.—Section 402(b) of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–1a note) is amended to read as follows:

"(b) TIMING.—To ensure that assessments for all covered multifamily housing properties will be submitted on or before the conclusion of fiscal year 1997, the Secretary shall require the owners of such properties, including covered multifamily housing properties for the elderly, to submit the assessments for the properties in accordance with the following schedule:

"(1) For fiscal year 1994, 10 percent of the aggregate number of such properties.

"(2) For each of fiscal years 1995, 1996, and 1997, an additional 30 percent of the aggregate number of such properties.".

(3) REVIEW OF COMPREHENSIVE NEEDS ASSESSMENTS.—Section 404(d) of the Housing and Community Development Act of 1992 (12 U.S.C. 1715–1a note) is amended to read as follows:

"(d) REVIEW.—

"(1) IN GENERAL.—The Secretary shall review each comprehensive needs assessment for completeness and adequacy before the expiration of the 90-day period beginning on the receipt of the assessment and shall notify the owner of the property for which the assessment was submitted of the findings of such review.

"(2) INCOMPLETE OR INADEQUATE ASSESSMENTS.—If the Secretary determines that the assessment is substantially incomplete or inadequate, the Secretary shall—

"(A) notify the owner of the portion or portions of the assessment requiring completion or other revision; and

"(B) require the owner to submit an amended assessment to the Secretary not later than 30 days after such notification.".

(4) REPEAL OF NOTICE PROVISION.—Section 404 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715–1a note) is amended by striking subsection (f).

(5) PUBLICATION.—Section 404 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–1a note), as

amended by paragraph (4) of this subsection, is further amended by inserting after subsection (e) the following new subsection:

"(f) PUBLICATION OF METHOD FOR RECEIVING CAPITAL NEEDS ASSESSMENT.—The Secretary shall cause to be published in the Federal Register the method by which the Secretary determines which capital needs assessments will be received each year in accordance with section 402(b) and subsection (d) of this section.".

(6) FUNDING.—Title IV of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–1a note) is amended by adding at the end the following new section:

"SEC. 409. FUNDING.

"(a) ALLOCATION OF ASSISTANCE.—Based upon needs identified in comprehensive needs assessments, and subject to otherwise applicable program requirements, including selection criteria, the Secretary may allocate the following assistance to owners of covered multifamily housing projects and may provide such assistance on a noncompetitive basis:

"(1) Operating assistance and capital improvement assistance for troubled multifamily housing projects pursuant to section 201 of the Housing and Community Development Amendments of 1978, except for assistance set aside under section 201(n)(1).

"(2) Loan management assistance available pursuant to section 8 of the United States Housing Act of 1937.

"(b) OPERATING ASSISTANCE AND CAPITAL IMPROVEMENT ASSISTANCE.—In providing assistance under subsection (a) the Secretary shall use the selection criteria set forth in section 201(n) of the Housing and Community Development Amendments of 1978.

"(c) AMOUNT OF ASSISTANCE.—The Secretary may fund all or only a portion of the needs identified in the capital needs assessment of an owner selected to receive assistance under this section.".

(b) FLEXIBLE SUBSIDY PROGRAM.—

(1) DELETION OF UTILITY COST REQUIREMENTS.—Section 201(i) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–1a(i)) is hereby repealed.

(2) REPEAL OF MANDATORY CONTRIBUTION FROM OWNER.—Section 201(k)(2) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–1a(k)(2)) is amended by striking ", except that" and all that follows and inserting a period.

(3) FUNDING.—Section 201(n) of the Housing and Community Development Amendments of 1978 (42 U.S.C. 1715z–1a(n)) is amended to read as follows:

"(n) ALLOCATION OF ASSISTANCE.—

"(1) SET-ASIDE.—In providing, and contracting to provide, assistance for capital improvements under this section, in each fiscal year the Secretary shall set aside an amount, as determined by the Secretary, for projects that are eligible for incentives under section 224(b) of the Emergency Low Income Housing Preservation Act of 1987, as such section existed before the date of enactment of the Cranston-Gonzalez National Affordable Housing Act. The Secretary may make such assistance available on a noncompetitive basis.

"(2) GENERAL RULES FOR ALLOCATION.—Except as provided in paragraph (3), with respect to assistance under this section not set aside for projects under paragraph (1), the Secretary—

"(A) may award assistance on a noncompetitive basis; and

"(B) shall award assistance to eligible projects on the basis of—

"(i) the extent to which the project is physically or financially troubled, as evidenced by the comprehensive needs assessment submitted in accordance with title IV of the Housing and Community Development Act of 1992; and

"(ii) the extent to which such assistance is necessary and reasonable to prevent the default of federally insured mortgages.

"(3) EXCEPTIONS.—The Secretary may make exceptions to selection criteria set forth in paragraph (2)(B) to permit the provision of assistance to eligible projects based upon—

"(A) the extent to which such assistance is necessary to prevent the imminent foreclosure or default of a project whose owner has not submitted a comprehensive needs assessment pursuant to title IV of the Housing and Community Development Act of 1992;

"(B) the extent to which the project presents an imminent threat to the life, health, and safety of project residents; or

"(C) such other criteria as the Secretary may specify by regulation or by notice printed in the Federal Register.

"(4) CONSIDERATIONS.—In providing assistance under this section, the Secretary shall take into consideration—

"(A) the extent to which there is evidence that there will be significant opportunities for residents (including a resident council or resident management corporation, as appropriate) to be involved in the management of the project (except that this paragraph shall have no application to projects that are owned as cooperatives); and

"(B) the extent to which there is evidence that the project owner has provided competent management and complied with all regulatory and administrative requirements.".

(4) REPEAL.—Section 201 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–1a) is amended—

(A) by striking subsection (o); and

(B) by redesignating subsection (p) as subsection (o).

(c) IMPLEMENTATION AND EFFECTIVE DATES FOR SUBSECTIONS (a) AND (b).—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a) and (b) shall apply with respect to amounts made available for fiscal year 1994 and fiscal years thereafter.

(2) EXCEPTION.—Section 201(n)(1) of the Housing and Community Development Amendments of 1978 (as added by the amendment made by subsection (b)(3) of this section) shall take effect on the date of enactment of this Act.

(3) NOTICE.—The Secretary shall, by notice published in the Federal Register, establish any requirements necessary to implement the amendments made by subsections (a) and (b). The notice shall invite public comments and, not later than 12 months after the date on which the notice is published,

the Secretary shall issue final regulations based on the initial notice, taking into consideration any public comments received.

(d) STREAMLINED REFINANCING.—As soon as practicable, the Secretary shall implement a streamlined refinancing program under the authority provided in section 223 of the National Housing Act to prevent the default of mortgages insured by the FHA which cover multifamily housing projects, as defined in section 203(b) of the Housing and Community Development Amendments of 1978.

(e) GAO STUDY ON PREVENTION OF DEFAULT.—

(1) IN GENERAL.—Not later than April 1, 1995, the Comptroller General of the United States shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report that evaluates the adequacy of loan loss reserves in the General Insurance and Special Risk Insurance Funds and presents recommendations for the Secretary to prevent losses from occurring.

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

(A) evaluate the factors considered in arriving at loss estimates and determine whether other factors should be considered;

(B) determine the relative benefit of creating a new, actuarially sound insurance fund for all new multifamily housing insurance commitments; and

(C) recommend alternatives to the Secretary's current procedures for preventing the future default of multifamily housing project mortgages insured under title II of the National Housing Act.

(f) GAO STUDY ON ACTUARIAL SOUNDNESS OF CERTAIN INSURANCE PROGRAMS.—

(1) IN GENERAL.—Not later than April 1, 1995, the Comptroller General of the United States shall submit 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 Representatives a report that evaluates, in connection with the General Insurance Fund, the role and performance of the nursing home, hospital, and retirement service center insurance programs.

(2) CONTENTS.—The reports submitted under paragraph (1) shall—

(A) evaluate the strategic importance of these insurance programs to the mission of the FHA;

(B) evaluate the impact of these insurance programs upon the financial performance of the General Insurance Fund;

(C) assess the potential losses expected under these programs through fiscal year 1999;

(D) evaluate the risk of these programs to the General Insurance Fund in connection with changes in national health care policy;

(E) assess the ability of the FHA to manage these programs; and

(F) make recommendations for any necessary changes.

(g) RISK ASSESSMENT.—

(1) SPECIAL RISK INSURANCE FUND.—Section 238(c) of the National Housing Act (12 U.S.C. 1715z–3(c)) is amended by adding at the end the following new paragraph:

"(3) The Secretary shall undertake an annual assessment of the risks associated with each of the insurance programs comprising the Special Risk Insurance Fund, and shall present findings from such review to the Congress in the FHA Annual Management Report.".

(2) GENERAL INSURANCE FUND.—Section 519 of the National Housing Act (12 U.S.C. 1735c) is amended by adding at the end the following new subsection:

"(g) RISK ASSESSMENT.—The Secretary shall undertake an annual assessment of the risks associated with each of the insurance programs comprising the General Insurance Fund, and shall present findings from such review to the Congress in the FHA Annual Management Report.".

(h) ALTERNATIVE USES FOR PREVENTION OF DEFAULT.—

(1) IN GENERAL.—Subject to notice to and comment by existing tenants, to prevent the imminent default of a multifamily housing project subject to a mortgage insured under title II of the National Housing Act, the Secretary may authorize the mortgagor to use the project for purposes not contemplated by or permitted under the regulatory agreement, if—

(A) such other uses are acceptable to the Secretary;

(B) such other uses would be otherwise insurable under title II of the National Housing Act;

(C) the outstanding principal balance on the mortgage covering such project is not increased;

(D) any financial benefit accruing to the mortgagor shall, subject to the discretion of the Secretary, be applied to project reserves or project rehabilitation; and

(E) such other use serves a public purpose.

(2) DISPLACEMENT PROTECTION.—The Secretary may take actions under paragraph (1) only if—

(A) tenant-based rental assistance under section 8 of the United States Housing Act of 1937 is made available to each eligible family residing in the project that is displaced as a result of such actions; and

(B) the Secretary determines that sufficient habitable, affordable (as such term is defined in section 203(b) of the Housing and Community Development Amendments of 1978) rental housing is available in the market area in which the project is located to ensure use of such assistance.

(3) IMPLEMENTATION.—The Secretary shall, by notice published in the Federal Register, which shall take effect upon publication, establish such requirements as may be necessary to implement the amendments made by this subsection. The notice shall invite public comments and, not later than 12 months after the date on which the notice is published, the Secretary shall issue final regulations based on the initial notice, taking into account any public comments received.

SEC. 104. INTEREST RATES ON ASSIGNED MORTGAGES.

Section 7(i)(5) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(i)(5)) is amended by striking the first

semicolon, and all that follows through "as determined by the Secretary".

SEC. 105. AUTHORIZATION OF APPROPRIATIONS.

(a) SPECIAL RISK INSURANCE FUND.—Section 238(b) of the National Housing Act (12 U.S.C. 1715z–3(b)) is amended by striking the fifth sentence.

(b) GENERAL INSURANCE FUND.—Section 519 of the National Housing Act (12 U.S.C. 1735c) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsection (g) (as added by section 103(g)(2) of this Act) as subsection (f).

(c) MULTIFAMILY INSURANCE FUND APPROPRIATIONS.—Title V of the National Housing Act (12 U.S.C. 1731a et seq.) is amended by adding after section 541 (as added by section 101(e) of this Act) the following new section:

"SEC. 542. AUTHORIZATION OF APPROPRIATIONS FOR GENERAL AND SPECIAL RISK INSURANCE FUNDS.

"There are authorized to be appropriated such sums as may be necessary for each of fiscal years 1994 and 1995, to be allocated in any manner that the Secretary determines appropriate, for the following costs incurred in conjunction with programs authorized under the General Insurance Fund, as provided by section 519, and the Special Risk Insurance Fund, as provided by section 238:

"(1) The cost to the Government, as defined in section 502 of the Congressional Budget Act, of new insurance commitments.

"(2) The cost to the Government, as defined in section 502 of the Congressional Budget Act, of modifications to existing loans, loan guarantees, or insurance commitments.

"(3) The cost to the Government, as defined in section 502 of the Congressional Budget Act, of loans provided under section 203(f) of the Housing and Community Development Amendments of 1978.

"(4) The costs of the rehabilitation of multifamily housing projects (as defined in section 203(b) of the Housing and Community Development Amendments of 1978) upon disposition by the Secretary.".

TITLE II—OTHER PROGRAM REFORMS

Subtitle A—Home Investment Partnerships Program

SEC. 201. PARTICIPATION BY STATE AGENCIES OR INSTRUMENTALITIES.

Section 104(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704(2)) is amended—

(1) by striking "and" after "Columbia,"; and

(2) by inserting before the period at the end the following: ", or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the State with regard to the provisions of this Act".

SEC. 202. SIMPLIFICATION OF PROGRAM-WIDE INCOME TARGETING FOR RENTAL HOUSING.

Section 214(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12744(1)) is amended—

(1) in subparagraph (A)—

(A) by striking "such funds are invested with respect to dwelling units that are occupied by" and inserting "(i) the families receiving such rental assistance are"; and

(B) by striking ", and" and inserting ", or (ii) the dwelling units assisted with such funds are occupied by families having such incomes; and"; and

(2) in subparagraph (B)—

(A) by striking "such funds are invested with respect to dwelling units that are occupied by" and inserting "(i) the families receiving such rental assistance are"; and

(B) by inserting before the semicolon at the end the following: ", or (ii) the dwelling units assisted with such funds are occupied by such households".

SEC. 203. HOMEOWNERSHIP UNITS.

(a) REMOVAL OF FIRST-TIME HOMEBUYER REQUIREMENT.—Section 215(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745(b)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(b) SIMPLIFICATION OF RESALE PROVISIONS.—Section 215(b)(3)(B) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745(b)(3)(B)), as so redesignated by subsection (a) of this section, is amended by striking "subsection" and inserting "title".

SEC. 204. SIMPLIFICATION OF MATCHING REQUIREMENTS.

Section 220(a) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12750(a)) is amended to read as follows:

"(a) CONTRIBUTION.—Each participating jurisdiction shall make contributions to housing that qualifies as affordable housing under this title that total, throughout a fiscal year, not less than 25 percent of the funds drawn from the jurisdiction's HOME Investment Trust Fund in such fiscal year. Such contributions shall be in addition to any amounts made available under section 216(3)(A)(ii).".

SEC. 205. REPEAL OF SEPARATE AUDIT REQUIREMENT.

Section 283 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12833) is amended—

(1) by striking the section designation and heading and inserting the following:

"SEC. 283. AUDITS BY COMPTROLLER GENERAL.";

(2) by striking subsection (a);

(3) in subsection (b)—

(A) by striking "(b) AUDITS BY THE COMPTROLLER GENERAL.—";

(B) by redesignating paragraphs (1) and (2) as subsections (a) and (b), respectively; and

(C) by moving subsections (a) and (b), as so redesignated by subparagraph (B), 2 ems to the left so that such subsections are flush with the left margin; and

(4) in subsection (a), as so redesignated by paragraph (3)(B), by striking the second sentence.

SEC. 206. ENVIRONMENTAL REVIEW REQUIREMENTS.

Section 288 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12838) is amended—

(1) in subsection (a)—

(A) in the first sentence, by striking ''participating jurisdictions'' and inserting ''jurisdictions, Indian tribes, or insular areas''; and

(B) by adding at the end the following new sentences: ''The regulations shall provide—

''(1) for the monitoring of the environmental reviews performed under this section;

''(2) in the discretion of the Secretary, to facilitate training for the performance of such reviews; and

''(3) for the suspension or termination of the assumption under this section.

The Secretary's duty under the preceding sentence shall not be construed to limit or reduce any responsibility assumed by a State or unit of general local government with respect to any particular release of funds.'';

(2) in the first sentence of subsection (b), by striking ''participating jurisdiction'' and inserting ''jurisdiction, Indian tribe, or insular area'';

(3) in subsection (c)(4)(B), by striking ''participating jurisdiction'' and inserting ''jurisdiction, Indian tribe, or insular area''; and

(4) in subsection (d), by striking ''ASSISTANCE TO A STATE.—In the case of assistance to States'' and inserting the following: ''ASSISTANCE TO UNITS OF GENERAL LOCAL GOVERNMENT FROM A STATE.—In the case of assistance to units of general local government from a State''.

SEC. 207. USE OF CDBG FUNDS FOR HOME PROGRAM EXPENSES.

(a) ADMINISTRATIVE EXPENSES.—Section 105(a)(13) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(13)) is amended by inserting after ''charges related to'' the following: ''(A) administering the HOME program under title II of the Cranston-Gonzalez National Affordable Housing Act; and (B)''.

(b) PROJECT DELIVERY COSTS.—Section 105(a)(21) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(21)) is amended—

(1) by inserting ''in connection with tenant-based rental assistance and affordable housing projects assisted under title II of the Cranston-Gonzalez National Affordable Housing Act'' after ''housing counseling''; and

(2) by striking ''authorized'' and all that follows through ''any law'' and inserting ''assisted under title II of the Cranston-Gonzalez National Affordable Housing Act''.

SEC. 208. FLEXIBILITY OF HOME PROGRAM FOR DISASTER AREAS.

Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12721 et seq.) is amended by adding at the end the following new section:

"SEC. 290. SUSPENSION OF REQUIREMENTS FOR DISASTER AREAS.

"For funds designated under this title by a recipient to address the damage in an area for which the President has declared a disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the Secretary may suspend all statutory requirements for purposes of assistance under this title for that area, except for those related to public notice of funding availability, nondiscrimination, fair housing, labor standards, environmental standards, and low-income housing affordability.".

SEC. 209. APPLICABILITY AND REGULATIONS.

The amendments made by this title shall apply with respect to any amounts made available to carry out title II of the Cranston-Gonzalez National Affordable Housing Act after the date of the enactment of this Act and any amounts made available to carry out such title before such date of enactment that remain uncommitted on such date. The Secretary shall issue any regulations necessary to carry out the amendments made by this title not later than the expiration of the 45-day period beginning on the date of the enactment of this Act.

Subtitle B—HOPE Homeownership Program

SEC. 221. MATCHING REQUIREMENT UNDER HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM.

Section 443(c)(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12893(c)(1)) is amended by striking "33 percent" and inserting "25 percent".

Subtitle C—Community Development Block Grants

SEC. 231. SECTION 108 ELIGIBLE ACTIVITIES.

The first sentence of section 108(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5308(a)) is amended—

(1) by striking "or" after "section 105(a);"; and

(2) by inserting before the period the following: "; (5) the acquisition, construction, reconstruction, or installation of public facilities (except for buildings for the general conduct of government); or (6) in the case of colonias (as such term is defined in section 916 of the Cranston-Gonzalez National Affordable Housing Act), public works and site or other improvements".

SEC. 232. ECONOMIC DEVELOPMENT GRANTS.

(a) GRANTS.—

(1) IN GENERAL.—Section 108 of the Housing and Community Development Act of 1974 (42 U.S.C. 5308) is amended by adding at the end the following new subsection:

"(q) ECONOMIC DEVELOPMENT GRANTS.—

"(1) AUTHORIZATION.—The Secretary may make grants in connection with notes or other obligations guaranteed under this section to eligible public entities for the purpose of enhancing the security of loans guaranteed under this section or improving the viability of projects financed with loans guaranteed under this section.

"(2) ELIGIBLE ACTIVITIES.—Assistance under this subsection may be used only for the purposes of and in conjunction with projects and activities assisted under subsection (a).

"(3) APPLICATIONS.—Applications for assistance under this subsection may be submitted only by eligible public entities, and shall be in the form and in accordance with the procedures established by the Secretary. Eligible public entities may apply for grants only in conjunction with requests for guarantees under subsection (a).

"(4) SELECTION CRITERIA.—The Secretary shall establish criteria for awarding assistance under this subsection. Such criteria shall include—

"(A) the extent of need for such assistance;

"(B) the level of distress in the community to be served and in the jurisdiction applying for assistance;

"(C) the quality of the plan proposed and the capacity or potential capacity of the applicant to successfully carry out the plan; and

"(D) such other factors as the Secretary determines to be appropriate.".

(2) CONFORMING AMENDMENT.—Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) is amended—

(A) in section 101(c) in the second sentence, by inserting "or a grant" after "guarantee"; and

(B) in section 104(b)(3), by inserting "or a grant" after "guarantee".

(b) USE OF UDAG RECAPTURES.—Section 119(o) of the Housing and Community Development Act of 1974 (42 U.S.C. 5318(o)) is amended by inserting before the period the following: ", except that amounts available to the Secretary for use under this subsection as of October 1, 1993, and amounts released to the Secretary pursuant to subsection (t) may be used to provide grants under section 108(q).".

(c) UDAG RETENTION PROGRAM.—

(1) AMENDMENT.—Section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. 5318) is amended by adding at the end the following new subsection:

"(t) UDAG RETENTION PROGRAM.—If a grant or a portion of a grant under this section remains unexpended upon the issuance of a notice implementing this subsection, the grantee may enter into an agreement, as provided under this subsection, with the Secretary to receive a percentage of the grant amount and relinquish all claims to the balance of the grant within 90 days of the issuance of notice implementing this subsection (or such later date as the Secretary may approve). The Secretary shall not recapture any funds obligated pursuant to this section during a period beginning on the date of enactment of the Multifamily Housing Property Disposition Reform Act of 1994 until 90 days after the

issuance of a notice implementing this subsection. A grantee may receive as a grant under this subsection—

"(1) 33 percent of such unexpended amounts if—

"(A) the grantee agrees to expend not less than one-half of the amount received for activities authorized pursuant to section 108(q) and to expend such funds in conjunction with a loan guarantee made under section 108 at least equal to twice the amount of the funds received; and

"(B)(i) the remainder of the amount received is used for economic development activities eligible under title I of this Act; and

"(ii) except when waived by the Secretary in the case of a severely distressed jurisdiction, not more than one-half of the costs of activities under subparagraph (B) are derived from such unexpended amounts; or

"(2) 25 percent of such unexpended amounts if—

"(A) the grantee agrees to expend such funds for economic development activities eligible under title I of this Act; and

"(B) except when waived by the Secretary in the case of a severely distressed jurisdiction, not more than one-half of the costs of such activities are derived from such unexpended amount.".

(2) IMPLEMENTATION.—Not later than 10 days after the date of enactment of this Act, the Secretary shall, by notice published in the Federal Register, which shall take effect upon publication, establish such requirements as may be necessary to implement the amendments made by this subsection.

SEC. 233. GUARANTEE OF OBLIGATIONS BACKED BY SECTION 108 LOANS.

Section 108 of the Housing and Community Development Act of 1974 (42 U.S.C. 5308) is amended by adding after subsection (q) (as added by section 232(a)(1) of this Act) the following new subsection:

"(r) GUARANTEE OF OBLIGATIONS BACKED BY LOANS.—

"(1) AUTHORITY.—The Secretary may, upon such terms and conditions as the Secretary considers appropriate, guarantee the timely payment of the principal of and interest on such trust certificates or other obligations as may—

"(A) be offered by the Secretary or by any other offeror approved for purposes of this subsection by the Secretary; and

"(B) be based on and backed by a trust or pool composed of notes or other obligations guaranteed or eligible for guarantee by the Secretary under this section.

"(2) FULL FAITH AND CREDIT.—To the same extent as provided in subsection (f), the full faith and credit of the United States is pledged to the payment of all amounts that may be required to be paid under any guarantee made by the Secretary under this subsection.

"(3) SUBROGATION.—If the Secretary pays a claim under a guarantee made under this section, the Secretary shall be subrogated for all the rights of the holder of the guaranteed certificate or obligation with respect to such certificate or obligation.

"(4) EFFECT OF LAWS.—No State or local law, and no Federal law, shall preclude or limit the exercise by the Secretary of—

"(A) the power to contract with respect to public offerings and other sales of notes, trust certificates, and other obligations guaranteed under this section upon such terms and conditions as the Secretary deems appropriate;

"(B) the right to enforce any such contract by any means deemed appropriate by the Secretary; and

"(C) any ownership rights of the Secretary, as applicable, in notes, certificates, or other obligations guaranteed under this section, or constituting the trust or pool against which trust certificates, or other obligations guaranteed under this section, are offered.".

SEC. 234. FLEXIBILITY OF CDBG PROGRAM FOR DISASTER AREAS.

Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) is amended by adding at the end the following new section:

"SEC. 122. SUSPENSION OF REQUIREMENTS FOR DISASTER AREAS.

"For funds designated under this title by a recipient to address the damage in an area for which the President has declared a disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the Secretary may suspend all requirements for purposes of assistance under section 106 for that area, except for those related to public notice of funding availability, nondiscrimination, fair housing, labor standards, environmental standards, and requirements that activities benefit persons of low- and moderate-income.".

TITLE III—TECHNICAL AMENDMENTS

SEC. 301. DEFINITION OF "FAMILIES".

The first sentence of section 3(b)(3)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(3)(B)) is amended by striking "means families with children" and inserting "includes families with children and".

SEC. 302. ELIMINATION OF REQUIREMENT TO IDENTIFY CIAP REPLACEMENT NEEDS.

Section 14 of the United States Housing Act of 1937 (42 U.S.C. 1437l) is amended—

(1) in subsection (d)—

(A) by striking paragraph (2);

(B) in paragraph (4), in the matter preceding subparagraph (A)—

(i) by striking "and replacements,"; and

(ii) by striking "(1), (2), and (3)" and inserting "(1) and (2)"; and

(C) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

(2) in subsection (f)(1)—

(A) in subparagraph (A), by striking "(d)(4)(A)" and inserting "(d)(3)(A)";

(B) by striking subparagraph (B);

(C) in subparagraph (C), by striking "(d)(4)" and inserting "(d)(3)";

(D) in subparagraph (D)—

(i) by striking "(1), (2), and (3)" and inserting "(1) and (2)"; and

(ii) by striking "(d)(4)" and inserting "(d)(3)"; and

(E) by redesignating subparagraphs (C) and (D), as so amended, as subparagraphs (B) and (C), respectively;

(3) in subsection (g), by striking "(d)(4)" and inserting "(d)(3)"; and

(4) in subsection (h)(2), by striking "(d)(4)" and inserting "(d)(3)".

SEC. 303. PROJECT-BASED ACCOUNTING.

Section 6(c)(4)(E) of the United States Housing Act of 1937 (42 U.S.C. 1437d(c)(4)(E)) is amended by striking "250" and inserting "500".

SEC. 304. OPERATING SUBSIDY ADJUSTMENTS FOR ANTICIPATED FRAUD RECOVERIES.

Section 9(a) of the United States Housing Act of 1937 (42 U.S.C. 1437g(a)) is amended by adding at the end the following new paragraph:

"(4) Adjustments to a public housing agency's operating subsidy made by the Secretary under this section shall reflect actual changes in rental income collections resulting from the application of section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988.".

SEC. 305. ENVIRONMENTAL REVIEW PROVISIONS.

(a) LEAD-BASED PAINT HAZARD REDUCTION.—Section 1011 of the Housing and Community Development Act of 1992 (42 U.S.C. 4852) is amended—

(1) by redesignating subsection (o) as subsection (p); and

(2) by inserting after subsection (n) the following new subsection:

"(o) ENVIRONMENTAL REVIEW.—

"(1) IN GENERAL.—For purposes of environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969 and other provisions of law that further the purposes of such Act, a grant under this section shall be treated as assistance under the HOME Investment Partnership Act, established under title II of the Cranston-Gonzalez National Affordable Housing Act, and shall be subject to the regulations promulgated by the Secretary to implement section 288 of such Act.

"(2) APPLICABILITY.—This subsection shall apply to—

"(A) grants awarded under this section; and

"(B) grants awarded to States and units of general local government for the abatement of significant lead-based paint and lead dust hazards in low- and moderate-income owner-occupied units and low-income privately owned rental units pursuant to title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Public Law 102–139, 105 Stat. 736).".

(b) PROGRAMS UNDER UNITED STATES HOUSING ACT OF 1937.—Title I of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) is amended by adding at the end the following new section:

"SEC. 26. ENVIRONMENTAL REVIEWS.

"(a) IN GENERAL.—

"(1) RELEASE OF FUNDS.—In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of funds under this title, and to assure to the public undiminished protection of the environment, the Secretary may, under such regulations, in lieu of the environmental protection procedures otherwise applicable, provide for the release of funds for projects or activities under this title, as specified by the Secretary upon the request of a public housing agency (including an Indian housing authority) under this section, if the State or unit of general local government, as designated by the Secretary in accordance with regulations, assumes all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary may specify, which would otherwise apply to the Secretary with respect to the release of funds.

"(2) IMPLEMENTATION.—The Secretary, after consultation with the Council on Environmental Quality, shall issue such regulations as may be necessary to carry out this section. Such regulations shall specify the programs to be covered.

"(b) PROCEDURE.—The Secretary shall approve the release of funds subject to the procedures authorized by this section only if, not less than 15 days prior to such approval and prior to any commitment of funds to such projects or activities, the public housing agency (including an Indian housing authority) has submitted to the Secretary a request for such release accompanied by a certification of the State or unit of general local government which meets the requirements of subsection (c). The Secretary's approval of any such certification shall be deemed to satisfy the Secretary's responsibilities under the National Environmental Policy Act of 1969 and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the release of funds which are covered by such certification.

"(c) CERTIFICATION.—A certification under the procedures authorized by this section shall—

"(1) be in a form acceptable to the Secretary;

"(2) be executed by the chief executive officer or other officer of the State or unit of general local government who qualifies under regulations of the Secretary;

"(3) specify that the State or unit of general local government under this section has fully carried out its responsibilities as described under subsection (a); and

"(4) specify that the certifying officer—

"(A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 and each provision of law specified in regulations issued by the Secretary insofar as the provisions

of such Act or other such provision of law apply pursuant to subsection (a); and

"(B) is authorized and consents on behalf of the State or unit of general local government and himself or herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his or her responsibilities as such an official.

"(d) APPROVAL BY STATES.—In cases in which a unit of general local government carries out the responsibilities described in subsection (c), the Secretary may permit the State to perform those actions of the Secretary described in subsection (b) and the performance of such actions by the State, where permitted by the Secretary, shall be deemed to satisfy the Secretary's responsibilities referred to in the second sentence of subsection (b).".

(c) SPECIAL PROJECTS.—

(1) IN GENERAL.—

(A) RELEASE OF FUNDS.—In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of funds for special projects appropriated under an appropriations Act for the Department of Housing and Urban Development, such as special projects under the head "Annual Contributions for Assisted Housing" in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, and to assure to the public undiminished protection of the environment, the Secretary of Housing and Urban Development may, under such regulations, in lieu of the environmental protection procedures otherwise applicable, provide for the release of funds for particular special projects upon the request of recipients of special projects assistance, if the State or unit of general local government, as designated by the Secretary in accordance with regulations, assumes all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would otherwise apply to the Secretary were the Secretary to undertake such special projects as Federal projects.

(B) IMPLEMENTATION.—The Secretary shall issue regulations to carry out this subsection only after consultation with the Council on Environmental Quality. Such regulations shall—

(i) provide for monitoring of the performance of environmental reviews under this subsection;

(ii) in the discretion of the Secretary, provide for the provision or facilitation of training for such performance; and

(iii) subject to the discretion of the Secretary, provide for suspension or termination by the Secretary of the assumption under subparagraph (A).

(C) RESPONSIBILITIES OF STATE OR UNIT OF GENERAL LOCAL GOVERNMENT.—The Secretary's duty under subparagraph (B) shall not be construed to limit any responsibility assumed by a State or unit of general local government

with respect to any particular release of funds under subparagraph (A).

(2) PROCEDURE.—The Secretary shall approve the release of funds for projects subject to the procedures authorized by this subsection only if, not less than 15 days prior to such approval and prior to any commitment of funds to such projects, the recipient submits to the Secretary a request for such release, accompanied by a certification of the State or unit of general local government which meets the requirements of paragraph (3). The Secretary's approval of any such certification shall be deemed to satisfy the Secretary's responsibilities under the National Environmental Policy Act of 1969 and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the releases of funds for special projects to be carried out pursuant thereto which are covered by such certification.

(3) CERTIFICATION.—A certification under the procedures authorized by this subsection shall—

(A) be in a form acceptable to the Secretary;

(B) be executed by the chief executive officer or other officer of the State or unit of general local government who qualifies under regulations of the Secretary;

(C) specify that the State or unit of general local government under this subsection has fully carried out its responsibilities as described under paragraph (1); and

(D) specify that the certifying officer—

(i) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other such provision of law apply pursuant to paragraph (1); and

(ii) is authorized and consents on behalf of the State or unit of general local government and himself or herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities as such an official.

(4) APPROVAL BY STATES.—In cases in which a unit of general local government carries out the responsibilities described in paragraph (1), the Secretary may permit the State to perform those actions of the Secretary described in paragraph (2) and the performance of such actions by the State, where permitted by the Secretary, shall be deemed to satisfy the Secretary's responsibilities referred to in the second sentence of paragraph (2).

SEC. 306. CORRECTION OF FHA MULTIFAMILY MORTGAGE LIMITS.

The National Housing Act (12 U.S.C. 1701 et seq.) is amended in sections 207(c)(3), 213(b)(2), 220(d)(3)(B)(iii), and 234(e)(3) by striking "$59,160" each place it appears and inserting "$56,160".

SEC. 307. AMENDMENTS TO FHA MULTIFAMILY RISK-SHARING AND HOUSING FINANCE AGENCY PILOT PROGRAMS.

(a) RISK-SHARING PILOT PROGRAM.—Section 542(b) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) is amended—

(1) by striking paragraphs (1) and (2) and inserting the following new paragraphs:

"(1) IN GENERAL.—The Secretary shall carry out a pilot program in conjunction with qualified participating entities to determine the effectiveness of Federal credit enhancement for loans for affordable multifamily housing through a system of risk-sharing agreements with such entities.

"(2) PROGRAM REQUIREMENTS.—

"(A) IN GENERAL.—In carrying out the pilot program under this subsection, the Secretary shall enter into risk-sharing agreements with qualified participating entities.

"(B) MORTGAGE INSURANCE AND REINSURANCE.—Agreements under subparagraph (A) may provide for (i) mortgage insurance through the Federal Housing Administration of loans for affordable multifamily housing originated by or through, or purchased by, qualified participating entities, and (ii) reinsurance, including reinsurance of pools of loans, on affordable multifamily housing. In entering into risk-sharing agreements under this subsection covering mortgages, the Secretary may give preference to mortgages that are not already in the portfolios of qualified participating entities.

"(C) RISK APPORTIONMENT.—Agreements entered into under this subsection between the Secretary and a qualified participating entity shall specify the percentage of loss that each of the parties to the agreement will assume in the event of default of the insured or reinsured multifamily mortgage. Such agreements shall specify that the qualified participating entity and the Secretary shall share any loss in accordance with the risk-sharing agreement.

"(D) REIMBURSEMENT CAPACITY.—Agreements entered into under this subsection between the Secretary and a qualified participating entity shall provide evidence acceptable to the Secretary of the capacity of such entity to fulfill any reimbursement obligations made pursuant to this subsection. Evidence of such capacity which may be considered by the Secretary may include—

"(i) a pledge of the full faith and credit of a qualified participating entity to fulfill any obligations entered into by the entity;

"(ii) reserves pledged or otherwise restricted by the qualified participating entity in an amount equal to an agreed upon percentage of the loss assumed by the entity under subparagraph (C);

"(iii) funds pledged through a State or local guarantee fund; or

"(iv) any other form of evidence mutually agreed upon by the Secretary and the qualified participating entity.

"(E) UNDERWRITING STANDARDS.—The Secretary shall allow any qualified participating entity to use its own underwriting standards and loan terms and conditions for purposes of underwriting loans to be insured under this subsection, except as provided in this section, without further review by the Secretary, except that the Secretary may impose additional underwriting criteria and loan terms and conditions for contractual agreements where the Secretary retains more than 50 percent of the risk of loss. Any financing permitted on property insured under this

subsection other than the first mortgage shall be expressly subordinate to the insured mortgage.

"(F) AUTHORITY OF SECRETARY.—The Secretary, upon request of a qualified participating entity, may insure or reinsure and make commitments to insure or reinsure under this section any mortgage, advance, loan, or pool of mortgages otherwise eligible under this section, pursuant to a risk-sharing agreement providing that the qualified participating entity will carry out (under a delegation or otherwise, and with or without compensation, but subject to audit, exception, or review requirements) such credit approval, appraisal, inspection, issuance of commitments, approval of insurance of advances, cost certification, servicing, property disposition, or other functions as the Secretary shall approve as consistent with the purpose of this section. All appraisals of property for mortgage insurance under this section shall be completed by a Certified General Appraiser in accordance with the Uniform Standards of Professional Appraisal Practice.

"(G) DISCLOSURE OF RECORDS.—Qualified participating entities shall make available to the Secretary or the Secretary's designee, at the Secretary's request, such financial and other records as the Secretary deems necessary for purposes of review and monitoring for the program under this section.";

(2) in paragraph (4), by striking "financial institutions and entities to be eligible to enter into reinsurance agreements" and inserting "eligibility under this subsection of qualified participating entities";

(3) by striking paragraph (8) and inserting the following new paragraph:

"(11) IMPLEMENTATION.—The Secretary shall take any administrative actions necessary to initiate the pilot program under this subsection."; and

(4) by inserting after paragraph (7) the following new paragraphs:

"(8) PROHIBITION ON GINNIE MAE SECURITIZATION.—The Government National Mortgage Association shall not securitize any multifamily loans insured or reinsured under this subsection.

"(9) QUALIFICATION AS AFFORDABLE HOUSING.—Multifamily housing securing loans insured or reinsured under this subsection shall qualify as affordable only if the housing is occupied by families and bears rents not greater than the gross rent for rent-restricted residential units as determined under section 42(g) of the Internal Revenue Code of 1986.

"(10) CERTIFICATION OF SUBSIDY LAYERING COMPLIANCE.—The requirements of section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 may be satisfied in connection with a commitment to insure a mortgage under this subsection by a certification by a housing credit agency (including an entity established by a State that provides mortgage insurance) to the Secretary that the combination of assistance within the jurisdiction of the Secretary and other government assistance provided in connection with a property for which a mortgage is to be insured shall not be any greater than is necessary to provide affordable housing.".

(b) HOUSING FINANCE AGENCY PILOT PROGRAM.—Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) is amended—

(1) in paragraph (1), by inserting after "qualified housing finance agencies" the following: "(including entities established by States that provide mortgage insurance)";

(2) in paragraph (2)—

(A) in subparagraph (C), by striking the last sentence and inserting the following: "Such agreements shall specify that the qualified housing finance agency and the Secretary shall share any loss in accordance with the risk-sharing agreement."; and

(B) by adding at the end the following new subparagraph:

"(F) DISCLOSURE OF RECORDS.—Qualified housing finance agencies shall make available to the Secretary such financial and other records as the Secretary deems necessary for program review and monitoring purposes.";

(3) in paragraph (7)—

(A) by striking "very low-income"; and

(B) by striking "(2)"; and

(4) by adding at the end the following new paragraphs:

"(9) ENVIRONMENTAL AND OTHER REVIEWS.—

"(A) ENVIRONMENTAL REVIEWS.—

"(i) IN GENERAL.—(I) In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the insurance of mortgages under subsection (c)(2), and to assure to the public undiminished protection of the environment, the Secretary may, under such regulations, in lieu of the environmental protection procedures otherwise applicable, provide for agreements to endorse for insurance mortgages under subsection (c)(2) upon the request of qualified housing finance agencies under this subsection, if the State or unit of general local government, as designated by the Secretary in accordance with regulations, assumes all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary may specify, that would otherwise apply to the Secretary with respect to the insurance of mortgages on particular properties.

"(II) The Secretary shall issue regulations to carry out this subparagraph only after consultation with the Council on Environmental Quality. Such regulations shall, among other matters, provide—

"(aa) for the monitoring of the performance of environmental reviews under this subparagraph;

"(bb) subject to the discretion of the Secretary, for the provision or facilitation of training for such performance; and

"(cc) subject to the discretion of the Secretary, for the suspension or termination by the Secretary

of the qualified housing finance agency's responsibilities under subclause (I).

"(III) The Secretary's duty under subclause (II) shall not be construed to limit any responsibility assumed by a State or unit of general local government with respect to any particular property under subclause (I).

"(ii) PROCEDURE.—The Secretary shall approve a mortgage for the provision of mortgage insurance subject to the procedures authorized by this paragraph only if, not less than 15 days prior to such approval, prior to any approval, commitment, or endorsement of mortgage insurance on the property on behalf of the Secretary, and prior to any commitment by the qualified housing finance agency to provide financing under the risk-sharing agreement with respect to the property, the qualified housing finance agency submits to the Secretary a request for such approval, accompanied by a certification of the State or unit of general local government that meets the requirements of clause (iii). The Secretary's approval of any such certification shall be deemed to satisfy the Secretary's responsibilities under the National Environmental Policy Act of 1969 and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the provision of mortgage insurance on the property that is covered by such certification.

"(iii) CERTIFICATION.—A certification under the procedures authorized by this paragraph shall—

"(I) be in a form acceptable to the Secretary;

"(II) be executed by the chief executive officer or other officer of the State or unit of general local government who qualifies under regulations of the Secretary;

"(III) specify that the State or unit of general local government under this section has fully carried out its responsibilities as described under clause (i); and

"(IV) specify that the certifying officer consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 and under each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or such other provisions of law apply pursuant to clause (i), and is authorized and consents on behalf of the State or unit of general local government and himself or herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities as such an official.

"(iv) APPROVAL BY STATES.—In cases in which a unit of general local government carries out the responsibilities described in clause (i), the Secretary may permit the State to perform those actions of the Secretary described in clause (ii) and the performance of such actions by the State, where permitted by the Secretary, shall be deemed to satisfy the Secretary's

responsibilities referred to in the second sentence of clause (ii).

"(B) LEAD-BASED PAINT POISONING PREVENTION.—In carrying out the requirements of section 302 of the Lead-Based Paint Poisoning Prevention Act, the Secretary may provide by regulation for the assumption of all or part of the Secretary's duties under such Act by qualified housing finance agencies, for purposes of this section.

"(C) CERTIFICATION OF SUBSIDY LAYERING COMPLIANCE.—The requirements of section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 may be satisfied in connection with a commitment to insure a mortgage under this subsection by a certification by a housing credit agency (including an entity established by a State that provides mortgage insurance) to the Secretary that the combination of assistance within the jurisdiction of the Secretary and other government assistance provided in connection with a property for which a mortgage is to be insured shall not be any greater than is necessary to provide affordable housing.

"(10) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

"(A) MORTGAGE.—The term 'mortgage' means a first mortgage on real estate that is—

"(i) owned in fee simple; or

"(ii) subject to a leasehold interest that—

"(I) has a term of not less than 99 years and is renewable; or

"(II) has a remaining term that extends beyond the maturity of the mortgage for a period of not less than 10 years.

"(B) FIRST MORTGAGE.—The term 'first mortgage' means a single first lien given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instrument, if any, secured thereby. Any other financing permitted on property insured under this section must be expressly subordinate to the insured mortgage.

"(C) UNIT OF GENERAL LOCAL GOVERNMENT; STATE.—The terms 'unit of general local government' and 'State' have the same meanings as in section 102(a) of the Housing and Community Development Act of 1974.".

(c) DEFINITIONS.—Section 544 of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) The term 'multifamily housing' means housing accommodations on the mortgaged property that are designed principally for residential use, conform to standards satisfactory to the Secretary, and consist of not less than 5 rental units on 1 site. These units may be detached, semidetached, row house, or multifamily structures."; and

(2) by adding at the end the following new paragraph:

"(5) The term 'qualified participating entity' means an entity approved by the Secretary for participation in the pilot program under this subsection, which may include—

"(A) the Federal National Mortgage Association;

"(B) the Federal Home Loan Mortgage Corporation;

"(C) State housing finance and mortgage insurance agencies; and

"(D) the Federal Housing Finance Board.".

SEC. 308. SUBSIDY LAYERING REVIEW.

Section 911 of the Housing and Community Development Act of 1992 (42 U.S.C. 3545 note) is amended—

(1) by striking subsection (a) and inserting the following new subsection:

"(a) CERTIFICATION OF SUBSIDY LAYERING COMPLIANCE.—The requirements of section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 may be satisfied in connection with a project receiving assistance under a program that is within the jurisdiction of the Department of Housing and Urban Development and under section 42 of the Internal Revenue Code of 1986 by a certification by a housing credit agency to the Secretary, submitted in accordance with guidelines established by the Secretary, that the combination of assistance within the jurisdiction of the Secretary and other government assistance provided in connection with a property for which assistance is to be provided within the jurisdiction of the Department of Housing and Urban Development and under section 42 of the Internal Revenue Code of 1986 shall not be any greater than is necessary to provide affordable housing."; and

(2) by striking subsection (c) and inserting the following new subsection:

"(c) REVOCATION BY SECRETARY.—If the Secretary determines that a housing credit agency has failed to comply with the guidelines established under subsection (a), the Secretary—

"(1) may inform the housing credit agency that the agency may no longer submit certification of subsidy layering compliance under this section; and

"(2) shall carry out section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 relating to affected projects allocated a low-income housing tax credit pursuant to section 42 of the Internal Revenue Code of 1986.".

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

24 CFR Part 880

Subpart F—Management

§880.601 Responsibilities of owner.

(a) *Marketing.* (1) The owner must commence diligent marketing activities in accordance with the Agreement not later than 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.

(2) Marketing must be done in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan and all Fair Housing and Equal Opportunity requirements. The purpose of the Plan and requirements is to assure that eligible families of similar income in the same housing market area have an equal opportunity to apply and be selected for a unit in projects assisted under this part regardless of their race, color, creed, religion, sex or national origin.

(3) With respect to non–elderly family units, the owner must undertake marketing activities in advance of marketing to other prospective tenants in order to provide opportunities to reside in the project to non–elderly families who are least likely to apply, as determined in the Affirmative Fair Housing Marketing Plan, and to non– elderly families expected to reside in the community by reason of current or planned employment.

(4) At the time of Contract execution, the owner must submit a list of leased and unleased units, with justification for the unleased units, in order to qualify for vacancy payments for the unleased units.

(b) *Management and maintenance.* The owner is responsible for all management functions, including determining eligibility of applicants, selection of tenants, reexamination and verification of family income and composition, determination of family rent (total tenant payment, tenant rent and utility reimbursement), collection of rent, termination of tenancy and eviction, and performance of all repair and maintenance functions (including ordinary and extraordinary maintenance), and replacement of capital items. (See part 5 of this title.) All functions must be performed in accordance with applicable equal opportunity requirements.

(c) *Contracting for services.* (1) For this part 880 and 24 CFR part 881 projects, with HUD approval, the owner may contract with a private or public entity (except the contract administrator) for performance of the services or duties required in paragraphs (a) and (b) of this section.

(2) For 24 CFR part 883 projects, with approval of the Agency, the owner may contract with a private or public entity (but not with the Agency unless temporarily necessary for the Agency to protect its financial interest and to uphold its program responsibilities

where no alternative management agent is immediately available) for performance of the services or duties required in paragraphs (a) and (b) of this section.

(3) However, such an arrangement does not relieve the owner of responsibility for these services and duties.

(d) *Submission of financial and operating statements.* After execution of the Contract, the owner must submit to the contract administrator:

(1) Financial information in accordance with 24 CFR part 5, subpart H; and

(2) Other statements as to project operation, financial conditions and occupancy as HUD may require pertinent to administration of the Contract and monitoring of project operations.

(e) *Use of project funds.* (1) Project funds must be used for the benefit of the project, to make required deposits to the replacement reserve in accordance with §880.602 and to provide distributions to the owner as provided in §880.205, §881.205 of this chapter, or §883.306 of this chapter, as appropriate.

(2) For this part 880 and 24 CFR part 881 projects:

(i) Any remaining project funds must be deposited with the mortgagee or other HUD-approved depository in an interest-bearing residual receipts account. Withdrawals from this account will be made only for project purposes and with the approval of HUD.

(ii) Partially-assisted projects are exempt from the provisions of this section.

(iii) In the case of HUD-insured projects, the provisions of this paragraph (e) will apply instead of the otherwise applicable mortgage insurance provisions.

(3) For 24 CFR part 883 projects:

(i) Any remaining project funds must be deposited with the Agency, other mortgagee or other Agency-approved depository in an interest-bearing account. Withdrawals from this account may be made only for project purposes and with the approval of the Agency.

(ii) In the case of HUD-insured projects, the provisions of this paragraph will apply instead of the otherwise applicable mortgage insurance provisions, except in the case of partially-assisted projects which are subject to the applicable mortgage insurance provisions.

(Approved by the Office of Management and Budget under control number 2502–0204)

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§880.602 Replacement reserve.

(a) A replacement reserve must be established and maintained in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items.

(1) *Part 880 and 24 CFR part 881 projects.* (i) For this part 880 and 24 CFR part 811 projects, an amount equivalent to .006 of the cost of total structures, including main buildings, accessory buildings, garages and other buildings, or any higher rate as required by HUD from time to time, will be deposited in the replacement reserve annually. This amount will be adjusted each year by the amount of the automatic annual adjustment factor.

(ii) The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.

(iii) All earnings including interest on the reserve must be added to the reserve.

(iv) Funds will be held by the mortgagee or trustee for bondholders, and may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

(v) Partially-assisted part 880 and 24 CFR part 881 projects are exempt from the provisions of this section.

(2) *Part 883 of this chapter projects.* (i) For 24 CFR part 883 projects, an amount equivalent to at least .006 of the cost of total structures, including main buildings, accessory buildings, garages and other buildings, or any higher rate as required from time to time by:

(A) The Agency, in the case of projects approved under 24 CFR part 883, subpart D; or

(B) HUD, in the case of all other projects, will be deposited in the replacement reserve annually. For projects approved under 24 CFR part 883, subpart D, this amount may be adjusted each year by up to the amount of the automatic annual adjustment factor. For all projects not approved under 24 CFR part 883, subpart D, this amount must be adjusted each year by the amount of the automatic annual adjustment factor.

(ii) The reserve must be built up to and maintained at a level determined to be sufficient by the Agency to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of the Agency.

(iii) All earnings, including interest on the reserve, must be added to the reserve.

(iv) Funds will be held by the Agency, other mortgagee or trustee for bondholders, as determined by the Agency, and may be drawn from the reserve and used only in accordance with Agency guidelines and with the approval of, or as directed by, the Agency.

(v) The Agency may exempt partially-assisted projects approved under 24 CFR part 883, subpart D, from the provisions of this section. All partially-assisted projects not approved under the Fast Track Procedures formerly in 24 CFR part 883, subpart D, are exempt from the provisions of this section.

(b) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance provisions, except in the case of partially-assisted insured projects which are subject to the applicable mortgage insurance provisions.

[61 FR 13588, Mar. 27, 1996]

CHAPTER 4. RESERVE FUND FOR REPLACEMENTS

4-1 Introduction and Applicability. A Reserve Fund for Replacements exists for most projects with HUD-insured, formerly coinsured, and HUD-held mortgages. This Chapter applies to these projects as well as to Section 202 and Section 162 Direct Loan Program projects and Section 801 and 811 Capital Advance Program projects. The Reserve Fund is generally used to help defray the costs of replacing a project's capital items. Title 24 of the Code of Federal Regulations provides, at Section 207.19(f)(3)(i), "In all projects, except those involving rehabilitation where the mortgage does not exceed $200,000, a fund for replacements shall be established and maintained with the mortgagee. The amount and type of such fund and the conditions under which it shall be accumulated, replenished, and used, shall be specified in the charter, trust agreement, or regulatory agreement."

4-2 Regulatory Agreements for projects generally contain the following typical language pertaining to the Reserve Fund for Replacements to the effect that owners shall establish or continue to maintain a reserve fund for replacements by the allocation to such reserve fund in a separate account with the mortgagee or in a safe and responsible depository designated by the mortgagee, concurrently with the beginning of payments towards amortization of principal of the mortgage insured or held by the Federal Housing Commissioner of an amount equal to $_____ per month unless a different date or amount is approved in writing by the Commissioner. Such fund, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America shall at all times be under the control of the mortgagee. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements and mechanical equipment of the project, for the cure of mortgage defaults, or for any other purpose, may be made only after receiving the consent in writing of the Commissioner. In the case of Section 202, 162, 801, or 811 projects, where HUD serves as the mortgagee, the project owner escrows the funds but may not withdraw them from the Reserve for Replacements Account without the Asset Management Branch Chief's written permission. For HUD-Held mortgages, HUD shall exercise control over the Reserve Fund for Replacements by acting pursuant to its own authority as well as in the stead of the mortgagee. This authority may be exercised only by HUD Headquarters.

4-3 Mortgagee's Certificates generally contain the following typical language that pertains to the Reserve Fund for Replacements: "Beginning on the date on which the first payment toward amortization is required to be made by the terms of the insured mortgage or at such later date as may be agreed to by you [the Federal Housing Commissioner], we [the Mortgagee] shall require a monthly deposit with us or in a depository satisfactory to us of one-twelfth (1/12) of the sum set forth in your Commitment for Insurance constituting a 'Reserve Fund for Replacements' which fund shall be subject to our order and from which fund withdrawals may be made only upon the receipt of your written permission. These funds will be deposited with us by the Mortgagor in cash or in the form of obligations of or guaranteed as to principal by the United States of America. We will, upon appropriate request by the Mortgagor, permit the conversion of the whole or a substantial part of such cash deposits into the form of obligations of, or fully guaranteed as to principal by, the United States of America. . . ."

4-4 Remaining Economic Life of Building Improvements. Economic life is the period over which improvements to real property contribute to property value. Because buildings are subject to physical deterioration and functional or economic obsolescence, their periods of usefulness are limited. For purposes of this Chapter 4, "buildings" includes building structures themselves, major movable equipment, and other on-site improvements such as water mains, sewer laterals, swimming pools, parking lots, etc. As buildings deteriorate or become obsolete, their ability to serve useful purposes decreases and eventually disappears. This decline and ultimate disappearance of utility may occur gradually or rapidly.

4-5 Economic Life vs. Physical Life. The period between the time of completion of the building and the time when it is no longer fit or safe for use, or when it is no longer practicable to maintain it in a safe and usable condition, is its total physical life. The total economic life of a structure is the period of time between the completion of the building and the disappearance of its ability to produce the service of providing housing for its intended occupants (in the case of non-profit mortgagors) or net returns over and above a return on the land value (in the case of profit motivated and limited dividend mortgagors), notwithstanding that it is structurally sound, in good condition, and usable (though not functionally or profitably).

A. Estimates are made of both physical life and remaining economic life, but the estimate of physical life sets the maximum for the estimate of economic life.

NOTE: Judicious use of the Reserve Fund for Replacements is expected to extend the physical life of the building.

B. Economic life can never be greater than physical life but it may be and frequently is less. A structure may be sound and in good physical condition with a number of years of physical life remaining and yet have reached the end of its economic life if its remaining years of physical usefulness will not deliver a positive cash flow or provide the service of supplying housing on a cost-effective basis.

4-6 Estimates of Remaining Economic Life. In predicting the remaining economic life of a building, six types of factors are considered:

A. Economic background of the community or region and the need for accommodations of the type represented.

B. Relationship between the property and the immediate environment.

C. Architectural design, style, and utility from the functional point of view and the likelihood of obsolescence attributable to new inventions, new materials, changes in building codes, and changes in tastes.

D. Trend and rate of changes of characteristics of the neighborhood and their effect upon land values.

E. Workmanship and durability of construction and the rapidity with which natural forces cause physical deterioration.

F. Physical condition and probable cost of maintenance and repair, the practices of owners and occupants with respect to maintenance, and the use or abuse to which structures are subjected.

4-7 End of Useful Life of Building Improvements. The useful life of a building has come to an end when the building is incapable of producing an annual income sufficient to offset the expense of operation and maintenance, insurance, and taxes, and to produce returns upon the value of the land or provide the service of shelter for the intended occupants in the case of non-profit owners. The improvements upon the land at that time possess no more value than the amount which can be obtained from a purchaser who will buy them and remove them from the site. At this point the value of the building has dwindled to "Shell" value less demolition costs. The last years of economic life are more difficult to predict than the first years, so caution must be exercised to avoid over-estimation of the remaining economic life for older buildings in older, declining neighborhoods.

4-8 Many projects with HUD-insured or HUD-held mortgages were underwritten with forty year mortgages and with estimated economic lives of fifty-five years. The Reserve Fund for Replacements was established to help ensure that the physical live of the buildings and structures would extend to the assumed 55-year economic lives. It was not the original purpose of this Reserve Fund to provide for a complete, dollar for dollar, capability of replacing all the building structural components and equipment as these wear out but rather to provide a readily available source of capital that will help defray these costs in the latter years of amortization of the mortgage note.

4-9 Building components generally tend to fall into two categories: 1. Those items that are usually considered to be capital items and eligible for reimbursement from the Reserve Fund for Replacements to the extent of the availability of money in that account; and, 2. Those items that are usually considered to be routine maintenance items. As a guideline, repair/replacement expenditures that are generally capitalized may often be eligible for payment from a project's Reserve Fund, while those expenditures that are expensed are only occasionally eligible for payment from the Reserve Fund.

NOTE: As items, equipment, etc. that fall into either of these classifications are obtained for a project, HUD expects that mortgagors will be mindful of energy and environmental considerations and will be sensitive to issues involving handicapped/disabled persons.

A. Items traditionally contemplated as eligible for draws from this Fund include capital items such as (but not limited to):

1. Replacement of refrigerators, ranges, and other major appliances in the dwelling units.

2. Extensive replacement of kitchen and bathroom sinks and counter tops, bathroom tubs, water closets, and doors (exterior and interior).

3. Major roof repairs, including major replacements of gutters, downspouts, and related eaves or soffits.

   NOTE: When replacing an entire roofing system, HUD encourages owners to seek energy efficient roofs and bonded roofs.

4. Major plumbing and sanitary system repairs.

5. Replacement or major overhaul of central air conditioning and heating systems, including cooling towers, water chilling units, furnaces, stokers, boilers, and fuel storage tanks.

6. Overhaul of elevator systems.

7. Major repaving/resurfacing/sealcoating (sidewalks, parking lots, and driveways).

8. Repainting of the entire building exterior.

9. Extensive replacement of siding.

10. Extensive replacement of exterior (lawn) sprinkler systems.

11. Replacement of or major repairs to a swimming pool.

12. For certain projects, requests for capital improvements or enhancements to the property could be considered. For examples, a personal computer and some associated software could be purchased, or perhaps individual air conditioning units could be added to a project that was not air conditioned when it was built, or perhaps gutters and downspouts could be added where necessary. Some improvements may be eligible if in HUD's opinion such items:

    a. Would result in enhancing the mortgage security.

    b. Would upgrade the property and place the property in a more favorable competitive position in the rental market.

    c. Would be necessary to comply with changes in local, state, or federal laws.

    d. Would not inordinately deplete the Reserve Fund, i.e., the improvement must be affordable.

B. Items traditionally contemplated as ineligible for draws from this Fund include maintenance items such as (but not limited to):

1. Repainting of interior areas of projects.
   Note: A separate interior painting reserve for this kind of work may be established by mutual agreement and consent of the concerned parties.

2. Replacement of range burners, bibs, oven elements, controls, valves, wiring, etc.

3. Replacement of dwelling unit air conditioning components such as fan motors and window unit compressors.

4. Minor repairs to central air conditioning and heating systems such as valve replacements and the cleaning of boiler interiors.

5. Minor roof repairs, including minor repairs to gutters and downspouts.

6. Minor paving repairs.

7. Caulking and sealing.

8. Window and screen repairs.

9. Purchase of maintenance tools and equipment such as lawn mowers or snow blowers.

10. Purchase of minor office equipment.

11. Inspection/recharging/replacement of fire extinguishers.

12. Other items generally considered to be routine maintenance.

4-10 Adequacy of Reserve Fund for Replacements. Owners should analyze periodically the amounts in their Reserve Fund in the light of anticipated replacement needs. Owners should rely on their own personal knowledge of the physical condition of the project, evaluations made by their managing agents, and physical inspection reports furnished by their mortgagee and by HUD. After reviewing this information, owners should project how much money needs to be on deposit in the Reserve Fund at what points in the future. Owners should then calculate what amounts need to be deposited and when these amounts need to be deposited in order to accommodate the projected future demands on the Reserve Fund. If the owners' analyses indicate a need to increase the rate of deposits into the Reserve Fund, the owners should contact the Loan Management Branch Chief of their HUD Field Office and request HUD to authorize an increase in the deposits. These requests would usually be made in conjunction with requests for increases in rental rates so that enough revenue would exist to make the

increased deposits.

4-11 Recommended Minimum Threshold. HUD Handbook 4465.1 REV-2, Valuation Analysis for Project Mortgage Insurance, gives details on how the initial monthly deposit to the Reserve Fund is established. All owners should strive to reach some minimum threshold for the Reserve Fund for Replacements. The main purpose of having a recommended minimum threshold is to have funds available for an emergency or unforeseen contingency, such as a major roof failure or a water or sewer main break, so that funds could be drawn below the customary threshold. Assuming that a project is in very good physical condition and that no major replacements are needed in the near future (e.g., five years), HUD strongly recommends, but does not mandate, that owners target a minimum amount to be held in the Reserve Fund that would equal or exceed the greater of the following two amounts:

A. The initially established monthly deposit times 144 (12 years); or

B. At least $1,000 per unit.

4-12 Adjustments to a Recommended Minimum Threshold. The dollar amount calculated above may need to be increased for the following variables:

A. Physical Condition of the Project. Projects in less than very good condition would almost certainly need larger balances.

B. Geographical Location. Exposure to severe or unusual weather conditions as well as widely varying costs of replacements may have important consequences.

C. Immediate Replacement Needs. A property may be in good physical condition and yet might have large capital needs in the relatively near (five year) future.

D. Changes in Replacement Items. If non-traditional items, such as routine carpet replacement, are to become eligible Reserve Fund items, the minimum to be held in the fund would certainly need to be increased.

E. Unit composition. Projects with more units of larger size typically need larger amounts in the Reserve Fund than projects with smaller units. For example, a

project designed for large families consisting entirely of three and four bedroom units would almost always need more reserves than a project of the same number of units that consists of efficiencies and one bedroom units because the former project usually experiences greater wear.

F. Project Size. Larger projects typically need larger reserves than smaller projects.

G. Urban vs. Rural. Urban projects often need larger reserves than rural projects.

4-13 Suspension of Deposits to the Reserve Fund for Replacements. In older projects where the mortgage is seasoned and the owner has demonstrated the will and the ability to stay with the property, the Loan Management Branch Chief may, upon the owner's request and if deemed appropriate, suspend further payments to the project's Reserve Fund for Replacements by signing a Form HUD-9250, "Reserve Fund for Replacements Authorization (Appendix 1)," authorizing a suspension. (Note: If rental rates are predicated upon a certain rate of deposits being made into the Reserve Fund, the rental rates may need to be reexamined if the deposits are suspended.) This suspension is considered by HUD to be a privilege that may be granted to an owner for providing competent management and for keeping the project in good physical condition as determined by HUD. HUD's approval of suspending future deposits is subject to the following conditions:

A. A mutually acceptable minimum threshold as calculated above and revised as necessary is kept in the Fund.

B. The owner has asked the mortgagee to invest a substantial portion of the Reserve Fund.

C. All interest earned by investments of the Reserve Fund accrue to the Fund and is kept in the Fund (unless released by HUD for repairs/replacements).

D. The property continues to be maintained in good physical condition.

E. If the balance in the Fund should fall below the recommended minimum threshold, monthly deposits would resume at no less than the previous dollar amount until a mutually acceptable minimum balance is restored.

F. The project remains under the effective control of the same owners and the owners continue in good standing with HUD.

G. Projects receiving Section 8 assistance generally may not suspend deposits to the Reserve Fund for Replacements except for:

1. Projects that are not subject to Section 8 Automatic Annual Adjustment Factors (AAFs), i.e., rental rates are established by HUD under the budgeted rent increase procedures, and the Reserve for Replacement line item is deleted as an allowable cost in the rent determination; or,

2. The projects' rents are adjusted automatically by application of the AAF and immediate, temporary financial relief is needed. However, in this case, the project owner would not be eligible to take its distribution as long as the suspension is in effect.

4-14 Earliest Withdrawals. Projects which were newly built or substantially rehabilitated normally should not need withdrawals from the Reserve Fund during the early years of occupancy for repairs to or replacement of capital items. For example, many building components may be covered by a latent defects bond, roofs should be guaranteed, and most appliances should be under warranty. Projects insured under Section 223(f) are an exception to this general statement; these projects may need and be eligible for withdrawals from the Reserve Fund at any time following Final Endorsement. Owners of Section 223(f) projects should be urged to make and submit to the Field Office an early analysis of their Reserve Fund requirements in accordance with the procedures described above.

4-15 General Requirements for Requesting Withdrawals From the Reserve Fund for Replacements.

A. Mortgagors shall make all requests in writing and shall provide a detailed description of the work done or to be done; the description should identify the specific location including the dwelling unit (if applicable) in order to permit an inspection of the work without needing additional information about the work.

B. Owners should be invited to discuss proposed large withdrawals ($20,000 or more than twenty per cent of the existing balance in the Fund) with the Loan Management staff of the HUD Field Office before making the written request to agree upon plans for replenishing the Fund.

C. If the withdrawal request is a reimbursement for work that has been done, a copy of the paid invoice(s) normally should accompany the request unless the Optional Procedures see below are being used.

D. If the withdrawal request is for work that is to be done (an advance from the Fund), at least three formal or informal bids together with a copy of the bid specifications generally should accompany the request. If the lowest bidder was not selected the owners should explain their selection of a higher bidder. For example, consideration may be given to the bidder's reputation for quality workmanship, materials, and timely performance and to the urgency of the repairs. Owners also should explain why an advance is needed. Approval of owners' requests may, at the discretion of the Field Office Loan Management Branch Chief, be granted on an installment basis depending largely upon the scope of work done and remaining to be done and upon the availability of funds in the project's operating account.

E. Timing. Owners should not make requests for withdrawals more often than quarterly unless an emergency exists. Owners should make reimbursement requests during the same (project) fiscal year in which the expenditure occurred, preferably at least sixty days prior to the close of the project's fiscal year.

4-16 HUD Actions. Unless the amount of the release is for a large amount ($20,000 or 20% of the Fund balance, whichever is greater), an inspection of the work generally should not be necessary in order to act upon the request; inspections should be made during subsequent visits to the property. Inspection of a sample of the replacements generally would be adequate if the mortgagor is submitting acceptable annual audited financial statements and if the project is generally untroubled. The Loan Management Branch Chief will make reasonable effort to review and act upon the mortgagor's request within thirty days (whenever possible) from receipt and, if approved, prepare, sign, and mail the Form HUD-9250 to the mortgagee of record.

4-17 Optional Procedures. HUD has developed optional procedures in an effort to respond to industry requests for expediting the procedures for requesting withdrawals from the Reserve Fund for Replacements. Loan Management Branch Chiefs may invite project owners to use these optional procedures at their discretion. If the mortgage is current, if there are no known major, uncured violations of the Regulatory Agreement, and if there are no major, unresolved findings from management reviews, analyses of annual financial statements, or other known and documented reasons that would tend to preclude use of these optional procedures, HUD Field Offices may avail themselves of the following optional procedures. If these optional procedures are followed, the HUD Field Office will make every effort to act on the mortgagor's request within ten (10) business days from receipt. If a mortgagor develops a pattern of errors when using these optional procedures (such as continuing to request ineligible items) or if the mortgage goes into default, the project becomes troubled or potentially troubled, etc., the mortgagor can expect the HUD Field Office to suspend temporarily or deny the use of these optional procedures.

A. A narrative request for the release of funds is to be made by the mortgagor/managing agent.

B. A Mortgagor Certification is required; it should be as follows:

"I (Mortgagor) certify that:

1. "Funds expended or to be expended have been or will be used for the work indicated in this request;
2. "I have inspected/will inspect the work and have determined/will determine that the damaged area(s) or equipment have been restored to as good or better condition;
3. "No mechanic's or materialman's liens will be or have been attached to the property as a result of the repair;
4. "The repairs have been or will be completed in accordance with all applicable building codes and ordinances;
5. "All contract materials, supplies, and services as applicable have been obtained at the most reasonable cost and on terms most advantageous to the property;
6. "All discounts, rebates, or commissions have been credited to the property;
7. "Any expenditures that are determined by HUD to be ineligible, as a result of an inspection, will be repaid to the property's Reserve Fund;
8. "All goods and services purchased from individuals or companies with which the Owner or Managing Agent has an identity-of-interest were or will be purchased at costs not in excess of those that would be incurred in making arms-length purchases on the open market;
9. "Under the penalties and provisions of Title 18, United States Code, Chapter 47, Section 1001, the statements contained in this request have been examined by me and to the best of my knowledge and belief are true, correct, and complete."

C. Requests, except for emergencies, should be made no more often than quarterly and at least annually (if applicable) at least sixty days before the close of the project's fiscal year.

D. Copies of invoices are not required to be submitted to HUD if the description of the work done or items replaced is sufficiently detailed to permit an inspection and verification; however, the mortgagor must keep copies of the invoices on file for at least three years and have the invoices available for HUD staff to review.

E. The mortgagor/management agent is to prepare the Form HUD-9250 for signature by the Field Office Loan Management Branch Chief, who also can provide further guidance on information that should be shown on the Form. NOTE: Many mortgagees appreciate showing their loan number on the Form HUD-9250 next to the HUD Project Number and find that this makes their processing of the form quicker and easier. Owners/agents would be well advised to check with their own lenders for their preferences in this regard. NOTE: Mortgagors must never submit a Form HUD-9250 directly to their mortgagees (other than HUD).

F. If funds are to be released based upon bids alone, three bids and a brief statement about why an advance is necessary should accompany the request. The bid selected should be identified in the narrative; if the selected bid is not the lowest bid, a brief statement about the reason for selecting a higher bidder should be made. If a (selected) bid for items being purchased is for more than $10,000, copies of all the bids should accompany the request. The mortgagor must keep copies of all the bids on file for at least three years and have them available for HUD staff to review.

G. A supply of the Forms HUD-9250 may be obtained from the HUD Field Office.

4-18 Mortgagor and Mortgagee Records. Since appliances and similar items such as office equipment constitute security under the mortgage, project owners should keep their mortgagees fully informed when appliances and items that are normally identified by make, model, and serial number are replaced. Mortgagors are expected to provide their mortgagees with this identifying information as it changes; mortgagors also should provide HUD with copies of the documentation they furnish their mortgagees. Additionally, mortgagors should keep their insurer(s) informed of changes or additions to the property.

4-19 Field Office Records. HUD Field Offices are encouraged to establish a Reserve Fund for Replacements File for each project. Forms HUD-9250 authorizing releases of funds are to be kept on file for the present fiscal year and for the previous three fiscal years of the project. Except in unusual circumstances, such as defaults or major findings from various project reviews or audits, copies of invoices that are on file and more than a year old may be discarded if the required audited financial statement covering the time period of the expenditure has been submitted and if a management review or a physical inspection has been conducted during that time period. Forms HUD-9250 that change (increase, decrease, or suspend) the monthly Reserve deposits are to be maintained on file until the mortgage matures or is prepaid in full or until mortgage insurance is terminated.

4-20 Investment Requirements for Reserve for Replacement funds in Section 8 projects. Investment of the Reserve Funds in interest-bearing
* accounts is required for certain projects receiving Section 8 assistance:

A. The revised Section 8 regulations apply to all owners of older Section 8 projects where the owners voluntarily opted to be bound thy those regulations.

B. Except for owners of previously HUD-owned projects sold pursuant to 24 CFR Section 886 (Subpart C), partially assisted projects, and Section 202/8 projects, the revised Section 8 regulations apply to projects for which:

1. Agreements to Enter Into Housing Assistance Payments Contracts (AHAPs) were executed on or after November 5, 1979, for New Construction projects.

2. AHAPS were executed on or after February 20, 1980, for Substantial Rehabilitation projects.

C. For these projects, earned interest is to remain in the Reserve Fund until its release is authorized by HUD.

4-21 Liquidity Requirements. HUD recognizes that most property owners and managing agents can make fairly good estimates of the amount and timing of future replacement needs. Mortgagors should use prudence when selecting the durations of investments and make their selections according to anticipated and projected needs, including contingencies. Therefore, HUD is not establishing specific liquidity requirements for the Reserve Fund for Replacements. The mortgagor, not the mortgagee, is responsible for deciding the liquidity requirements of funds held in the Reserve Fund. The mortgagor should maintain some portion of its reserves in the form of very liquid assets such as passbook savings accounts. As a guideline only and depending on the specific project, $50/unit or three or four month's required deposits to the Reserve Fund should be enough to meet minimum liquidity requirements for some projects. HUD does not encourage project owners to commit too large a portion of Reserve Funds to excessively long term investments in order to achieve a marginal increase in the net return on the investment. Preservation of principal is of utmost importance when owners evaluate various investments and formulate their investment strategies.

NOTE:- ALL MORTGAGORS SHOULD BE CAUTIONED. If any principal is lost as a result of an early or premature liquidation of an investment that is caused by an owner's requested withdrawal from the Reserve Fund for Replacements, the lost principal must be repaid to the project. This repayment must be repaid to the project (mortgagor entity) by the owning persons, by persons with a controlling interest in the project, or by such affiliated/related parties as the project's sponsors. This caution is particularly important for non-profit mortgagors. Accordingly, the terms and durations of investments should be selected prudently and with great care.

4-22 Investment of Reserve for Replacements Funds. Consistent with program
* regulations and the Regulatory Agreement, the reserve for replacement funds must be maintained by the mortgagee. Investment options should be determined jointly by the mortgagor and mortgagee. The Regulatory Agreement requires, ".. such fund, whether in the form of a cash deposit, or invested in obligations of, or fully guaranteed by the United States of America, shall at all times be under the control of the mortgagee."

A. This paragraph suspends this provision by authorizing the mortgagee to invest funds in excess of $100,000 in U. S. government-backed securities and to hold funds in excess of $100,000 in institutions under the control of, and whose deposits are insured by, the Federal Deposit Insurance Corporation, National Credit Union Association, or other U.S. government insurance corporations under the following conditions:

1. Mortgagees must determine that the institution has a rating consistent at all times with current minimally acceptable ratings as established and published by Government National Mortgage Association (GNMA).

2. Mortgagees must monitor the institution's ratings no less than on a quarterly basis, and change institutions when necessary. The mortgagee must document the ratings of the institutions where the funds are deposited and maintain the documentation in the administrative record for three years, including the current year.

3. If the mortgagee does not perform the required quarterly review of the institutions where there are deposits in excess of $100,000 and does not maintain the funds in an institution with a rating consistent with current minimally acceptable ratings as established and published by GNMA, and the institution fails, the mortgagee is held responsible for replacing any lost funds. In addition, the mortgagee shall be subject to sanctions. In the event the mortgagee fails to replace the lost funds, HUD will seek all available remedies to recover whatever funds are lost as a result of the failed institution.

B. The above language is not deemed a modification of the Regulatory Agreement. Therefore, HUD reserves the right to invoke this Regulatory Agreement provision and make it operational in the future through notice or handbook change, if it is determined that such a policy is necessary or desirable.

4-23 Interest on Investments. HUD encourages and in some cases requires that interest earned on Reserve Fund investments remain in the Reserve Account. Interest must remain in the Reserve Account for those Section 8 projects listed in paragraph 4-20 of this Chapter 4. When this earned interest remains in the account, this interest will not be considered by HUD when processing requests for increases in rental rates if this interest is clearly and separately identified on the project's Form HUD-92410. In other words, HUD will not offset newly computed gross potential rents by the amount of interest that accrues to and remains in the Reserve Account.

NOTE: Interest may never be disbursed directly to the owners of a project or directly to any individuals associated with the owners. All interest earned must flow through the accounts of the project and must be disclosed on the project's accounting records.

A. With the issuance of this Chapter 4, owners of any of the following types of projects are instructed to ask their mortgagees to invest all or a substantial portion of their Reserve Fund for Replacements; all interest on Reserve Fund investments must remain a part of the Reserve Account. This

procedure applies if the project's mortgage is insured or held by HUD under any of the following Sections of the National Housing Act:

1. Section 236, a "Special Risk Insurance Fund."

2. Section 221(d) (3) BMIR [Section 221(d) (5)].

3. Section 221(d) (3) if the project receives Rent Supplement or Section 8 Assistance.

4. Section 223(e), a "Special Risk Insurance Fund."

5. Section 223(f).

6. Any project that has an Operating Loss Loan or a Supplemental Loan that is insured or held by HUD must keep all Reserve Fund interest earned by any of its Replacement Reserve Funds in the respective Funds.

B. With the issuance of this Chapter 4, owners of Section 202, 162, 801, and 811 projects are instructed to invest all or a substantial portion of their Reserve Fund for Replacements.

C. HUD strongly encourages owners of all other projects to ask their mortgagees, including HUD when the mortgage is HUD-held, to invest a significant portion of the money held in the Reserve Fund for Replacements. When making these investment requests, owners should specify the desired form(s) of investment.

4-24 Insured Mortgagee Charges for Handling Investments of the Reserve Fund. Reference is made to HUD Handbook 4350.4 for additional information on this topic. If a mortgagee proposes to assess charges for investing the Reserve Fund, the Field Office Loan Management staff are reminded to examine the Mortgagees Certificate for the project to see if any fees or charges for making or accepting investments were disclosed or stated. Any fees so collected by the insured or coinsured mortgagee may only be collected according to an agreement between the mortgagee and the mortgagor.

4-25 Other Fees. HUD does not recognize special fees or charges that might be paid by project mortgagors to investment brokers or other parties (other than HUD) such as managing agents for providing investment advice or for making or brokering investments except where the nature of the investment itself requires that it be brokered, i.e., obligations of federal agencies such as GNMA. Such fees, other than those involving the above exception, are not considered to be necessary expenses, should not be paid from project funds, and are not considered by HUD when calculating rental rates.

4-26 Combined Investments. For HUD-insured mortgages, monies held in the Reserve Fund for Replacements and the Residual Receipts Account (if
* such an account exists) may be combined to purchase a single investment or combination of investments.

A. Earned interest and the return of principal when the investment is liquidated must be prorated to the respective bookkeeping accounts.

B. The mortgagor must take care to preserve sufficient liquidity in these accounts. Some forms of investment, such as passbook savings accounts, are very liquid. Others are increasingly less liquid, such as Thirty, Sixty, or Ninety Day Certificates of Deposit (CDs), then U.S. Treasury Bills, U.S. Treasury Notes, etc.

4-27* HUD recognizes and appreciates the cooperation exhibited by many mortgagees when facilitating investments of the Reserve Accounts on behalf of mortgagors and acting on the mortgagors' requests. HUD considers the ability to invest a project's Reserve for Replacement Funds to be a right that accrues to the mortgagor. The mortgagor and mortgagee are encouraged to jointly decide on the investment vehicle for funds in the Reserve Accounts.

4-28 "Borrowing" from the Reserve Fund, other than advances from the Reserve Fund for curing a delinquency or a default. (The uses of a project's Reserve Fund for Replacements in curing mortgage delinquencies is covered in Chapter 5 of this Handbook.) The Asset Management Branch Chief may authorize the mortgagor to make brief, temporary uses of some portion of the Reserve Fund for Replacements for purposes other than those normally contemplated by the establishment of the Fund if:

A. There are no funds in a Residual Receipts account that could be used first.

B. An immediate crisis exists.

C. The mortgagor agrees in writing to repay the advance from the Fund over a reasonable period of time.

4-29 The Asset Management Branch Chief should exercise customary good business judgement when making a decision to permit the mortgagor to "borrow" from the Reserve Fund.

A. The purpose of such an advance is not merely to forestall an assignment of the mortgage but it may be related to a condition or circumstance beyond the normal course of business. Examples of these kinds of events include but are not limited to:

1. An unexpected increase in taxes or a special assessment.

2. An unanticipated increase in the costs of insurance, utilities, or like items.

3. Damage caused by unusually adverse weather conditions, whether or not such damage may be covered by hazard insurance.

4. Other uses of the fund not normally contemplated, such as for repairs and maintenance not usually eligible for reimbursement from the Reserve Fund.

B. Overall management of the project is at least satisfactory and the mortgagor has been cooperative in complying with requests from HUD and the mortgagee.

C. There is a formal agreement with the mortgagor to repay the advance on specified terms.

4-30 The Reserve Fund for Replacements will not always be adequate to meet the future capital needs of a project nor is it expected to do so. There are other sources of capital available to projects. Depending on the project, these include:

A. Residual Receipts Accounts.

B. General Operating Reserves.

C. Debt Service Reserves.

D. Owner Contributions in the form of equity.

E. Owner contributions in the form of unsecured debt (loans). These loans may, on a case-by-case basis, be allowed to carry a nominal interest rate that normally should not exceed the interest rate that the project owner or sponsor could earn elsewhere in a reasonably safe security, such as a Certificate of Deposit of the same duration as the loan to the project. The right to earn this interest must be pre-approved by the Loan Management Branch Chief and the terms and conditions of repayment should be formally negotiated and committed to writing.

F. Capital contributions from Transfers of Physical Assets (TPAs).

G. Supplemental Loans (under Section 241).

H. Flexible Subsidy, both Operating Assistance and Capital Improvement Loans.

I. Loans from the National Cooperative Bank for some projects.

J. Energy Loans.

K. Funds from private foundations.

L. Loans or grants from other governmental agencies or private foundations.

M. Cash flows from operations.

F. Capital contributions from Transfers of Physical Assets (TPAs)

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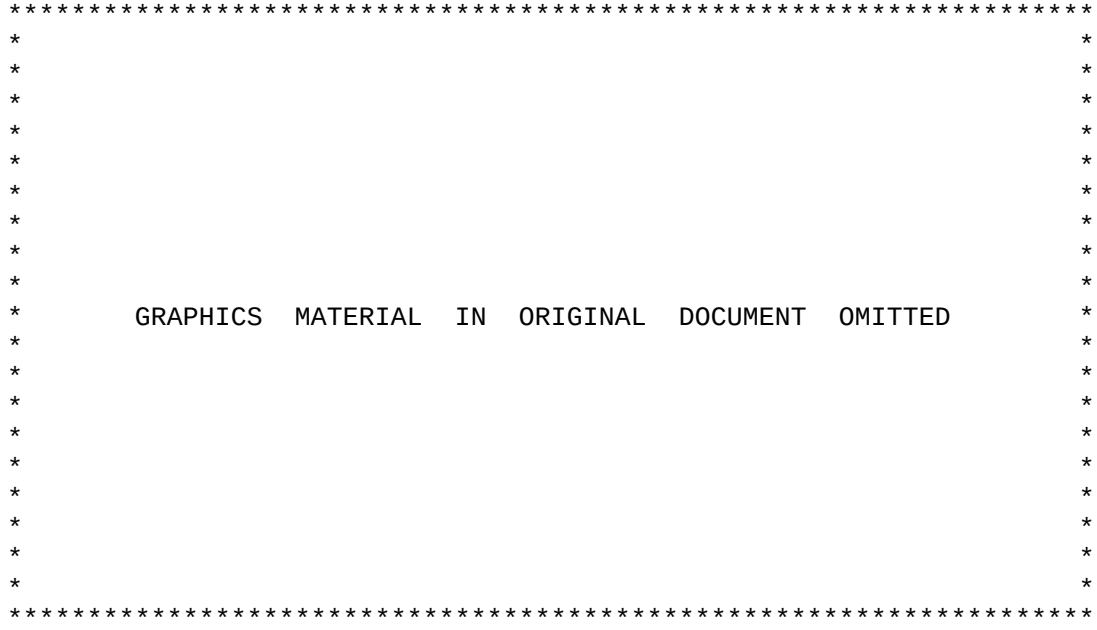
Reserve Fund for
Replacements
Authorizations



CHAPTER 25. RESIDUAL RECEIPTS

25-1. Applicability. This Chapter 25 applies to all non-profit and limited dividend multifamily projects with HUD-insured and HUD-held mortgages, including the Section 202 Program projects. This Chapter does not apply to releases of Residual Receipts under an approved Plan of Action pursuant to the Emergency Low-Income Housing Preservation Act of 1987 or the Low-Income Housing preservation and Resident Homeownership Act of 1990; guidance for such uses may be found in HUD Handbook 4350.6, Processing Plans of Action Under the Low-Income Housing Preservation and Resident Homeownership Act of 1990. Many but not all of these projects are required to establish a Residual Receipts Account. Generally, all projects owned by non-profit mortgagors and all Section 236 and 221(d)(3) projects owned by limited distribution (LD) mortgagors as well as Section 8 New Construction/ Substantial Rehabilitation projects subject to the 1979/80 revised Section 8 regulations are required to establish a Residual Receipts Account. The requirement for a Residual Receipts Account is established by a Regulatory Agreement or a project-based subsidy contract such as Section 8 Housing Assistance Payments. A general test for a Residual Receipts Account requirement is: If distributions of cash to the owners are limited or not permitted, the project probably must maintain a Residual Receipts Account.

25-2. Definition. During the life of the mortgage (except for certain Section 8 projects that are described in paragraph 25-11 of this Chapter), Residual Receipts are an asset of the mortgagor held under HUD control. When a Residual Receipts Account is required, the project's Regulatory Agreement provides an exact definition of "Residual Receipts." For purposes of a "working definition" for this Handbook 4350.1, however, "Residual Receipts" may be thought of as including:

A. All "Surplus Cash" for non-profit projects.

B. Cash remaining after all accrued distributions have been properly taken for limited dividend projects (see paragraph 25-3).

C. Under certain circumstances for Section 221(d)(3) BMIR projects, another source of residual receipts may exist. Rental collections due from over-income tenants not receiving Section 8 subsidy are normally greater than the BMIR "contract rent" as described in HUD Handbook 4350.3. Occupancy Requirements of Subsidized Multifamily Housing Programs. These surcharges, which are the differences between the BMIR "contract" and "market" rents, are recorded in Account No. 115190, Rent Revenue - Miscellaneous," as described in HUD Handbook 4370.2, Financial Operations and Accounting Procedures for Insured Multifamily Projects. Although accounted for separately, these surcharges are ordinary revenue for purposes of operations and surplus cash computations.

25-3. Calculation of Residual Receipts. Form HUD-93486, "Computation of Surplus Cash, Distributions, and Residual Receipts," is shown in Appendix 2 of HUD Handbook 4370.2. Financial Operations and Accounting Procedures for Insured Multifamily Projects. Project owners use this form either semi-annually or annually (depending on the executed Regulatory Agreement for the project) to calculate allowable distributions and any amounts that may be due for deposit to the Residual Receipts Account. Instructions for completing the form are shown on the back of the form and in the Appendix 2 of Handbook 4370.2.

25-4. Depositing Residual Receipts. The project's Regulatory Agreement or Section 8 HAP Contract specifies where Residual Receipts are to be deposited. Owners of Section 202 projects maintain their own separate bank accounts for Residual Receipts; all other project owners with insured or HUD-held mortgages or State-financed projects are required to deposit Residual Receipts with their mortgagees.

25-5.* Holding and Investing Funds. The Residual Receipts of all projects with HUD-insured mortgages should be invested with interest accruing from the investments credited to the Residual Receipts account. Investments of Residual Receipts Account funds may be effected and are to be safeguarded by mortgagees and mortgagors in the manner described in Chapter 4 of this Handbook 4350.1. The procedures and sanctions described in Chapter 4 also pertain to the Residual Receipts Account. Reference also is made to HUD Handbook 4350.4, Insured Multifamily Mortgagee Servicing and Field Office Remote Monitoring Handbook, for additional information on this topic.

25-6. * Combined Investments. For HUD-insured mortgages, monies held in the Residual Receipts Account and the Reserve Fund for Replacements Account may be combined to purchase a single investment or combination of investments.

A. Earned interest and the return of principal when the investment is liquidated must be prorated to the respective bookkeeping accounts.

B. Care should be taken to preserve sufficient liquidity in these accounts. Some forms of investment, such as passbook savings accounts, are very liquid; others are increasingly less liquid, such as Thirty, Sixty, or Ninety Day Certificates of Deposit (CDs), etc.

25-7. Insured Mortgagee Charges for Handling Investments of the Residual Receipts Account. Reference is made to HUD Handbook 4350.4 for additional information on this topic. If an insured mortgagee proposes to assess charges for investing the Residual Receipts Account, the Field Office Asset Management staff are reminded to examine the Mortgagee's Certificate for the project to see if any fees or charges for making investments were
* disclosed or stated. If such fees are disclosed, no further review is necessary; if they are not shown, any fees so collected by the insured mortgagee may only be collected according to a written agreement between the insured mortgagee and the mortgagor.

25-8. Other Fees. HUD does not recognize special fees or charges that might be paid by project mortgagors to investment brokers or other parties (other than HUD) such as managing agents for providing investment advice or for making or brokering investments except where the nature of the investment itself requires that it be brokered, i.e., obligations of federal agencies such as GNMA. Such fees, other than those involving the above exception, are not considered to be necessary expenses of the project, should not be paid from project funds, and are not considered by HUD when calculating rental rates.

25-9. Capital Resources. Projects fortunate enough to have funds in a Residual Receipts Account have a versatile source of capital that may be used only with the approval of HUD for any number of purposes if the uses are fully consistent with the intent of the program under which the project was originally endorsed or approved. Except for projects subject to the 1979/1980 revised Section 8 regulations, withdrawals from the Residual Receipts Account may be authorized by the Asset Management Branch Chief; some of these uses include but are not limited to:

A. Reduce operating deficits when legitimate cash flow deficits exist, i.e., offset increased operating expenses instead of increasing rental rates.

B. Make mortgage payments when a mortgage default is actual or imminent.

C. Make repairs to the property not covered by the Reserve Fund for Replacements.

D. Provide additional project amenities such as air conditioning, a sprinkler system, fire or smoke detectors, or energy saving devices as well as office equipment such as computers and associated software. For Section 202 projects the amenities must conform to the program's cost containment provisions.

E. Pay accrued, allowable distributions where insufficient surplus cash is available provided:

1. There are no known violations of the Regulatory Agreement.

2. There are no major unresolved findings from management reviews or analyses of financial statements.

3. The project is in acceptable physical condition and the mortgagor has certified to the acceptability of the project's physical condition.

F. Repay HUD-approved Residual Receipts Notes if the project is financially solvent, well maintained, and in a stable market if these Residual Receipts Notes do not exist as a result of a Transfer of Physical Assets (TPA). For projects with insured and HUD-held mortgages. authority for release of residual receipts for TPA-related transactions is reserved to the Director, Office of Multifamily Housing Management, in HUD Headquarters.

G. Repay Flexible Subsidy Operating Assistance or Capital Improvement Loans.

H. Make enhancements to the project or retrofit units for Rousing Accessibility under Section 504.

I. Provide for testing or abatement of lead-based paint at the project.

25-10. Section 8. Special Considerations. For those projects subject to the revised 1979/1980 Section 8 regulations, requests for withdrawals will be considered if such requests are for the purposes stated in only paragraphs 25-9A or 25-9B above. Asset Management Branch Chiefs may approve requests for these two purposes. Requests for purposes other than those in paragraphs 25-9A or 25-9B will be disapproved by the Field Office.

25-11. Section 8 Other Considerations. For certain Section 8 projects, notably those subject to the 1979/1980 revised Section 8 regulations, the Assistant Secretary for Housing/Federal

Housing Commissioner may direct that all or a portion of funds in a project's Residual Receipts Account be used to reduce Rousing Assistance Payments or for other project purposes. When a project's Section 8 contract expires, is terminated, or any extensions are terminated, HUD will request the project owner to return to HUD the unused balance of funds remaining in the Residual Receipts Account at the time of the contract's termination. It is therefore reasonably possible that some portion of monies that have been deposited to the Residual Receipts Account during the course of operations under a Section 8 Contract will be transferred back to HUD. HUD staff may hear about so-called "phantom income" from project owners subject to this provision, where taxes might be paid on this portion of income without the taxpayer (mortgagor, in this case) having the benefit of the income. Although HUD employees are not responsible for providing tax advice to mortgagors, these amounts may represent a "loss contingency" as defined by the Financial Accounting Standards Board (FASB) Statement No. 5, "Accounting for Contingencies." HUD staff may refer mortgagors to FASB Statement No. 5 if they become aware of questions on this issue.

25-12. Residual Receipts Notes. Form FHA-1710, "Residual Receipts Note (non-profit mortgagors)" and Form FHA-1712, "Residual Receipts Note (Limited Distribution Mortgagors)" may be used where such notes are necessary. The use of these Residual Receipts Notes after final endorsement or closing should be relatively rare except for advances from owning persons or sponsors to cover unpaid construction costs after final endorsement or closing and reported in the Supplemental Cost Certification. However, use of these Residual Receipts Notes may be permitted in order to recognize owning persons', sponsors', or management's advances made to cover operating expenses, taxes, or capital improvements after final endorsement/closing. Execution of Residual Receipts Notes is often desired by sponsors or other third parties as a form of guarantee that such advances may be repaid if Residual Receipts are generated. The Field Office Housing Management

Division Director, in association with the Field Office Counsel, is responsible for review, modification, and approval of these Residual Receipts Notes after final endorsement. Copies of executed Residual Receipts Notes and related correspondence are to be forwarded to the Operations Division, Office of Multifamily Housing Management, in Headquarters for inclusion in the Washington Docket. Reference is made to HUD Handbook 4355.1, Flexible Subsidy, for information about residual receipts notes used in conjunction with the Flexible Subsidy program.

Office Housing Management Division Director, in association with the Field Office Counsel, is responsible for review, modification, and approval of these Residual Receipts Notes after final endorsement. Copies of executed Residual Receipts Notes and related correspondence are to be forwarded to the Operations Division, Office of Multifamily Housing Management, in Headquarters for inclusion in the Washington Docket. Reference is made to HUD Handbook 4355.1, Flexible Subsidy, for information about residual receipts notes used in conjunction with the Flexible Subsidy program.