

**MULTIFAMILY ASSISTED HOUSING REFORM  
AND AFFORDABILITY ACT OF 1997**

**As Amended by H.R. 2684 (Public Law 106-74), Departments of Veterans Affairs and Housing and Urban Development, Independent Agencies Appropriations Act, 2000 Changes were made to §512(2)(C), §514(f)(3), §514(h)(1), §515(c)(4), §517(a)(6), and §524**

**No Amendments in the FY 2001 Appropriations Cycle**

**As Further Amended by H.R. 3061 (Public Law 107-342), Departments of Labor, Health and Human Services, and Education Appropriations Act, 2002 Changes were made to §512(2) and (19), §514(f)(3)(A), §514(g)(2)(a), §514(h)(2), §516(d), §517(a), (b) and (c), §524(a)(4)(c), §524(e)(3), §525, §572, §573(b), §576, §578, and §579 by the Mark-to-Market Extension Act of 2001 (Title VI of H.R. 3061). These changes were effective 9/30/01**

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**SEC. 510. SHORT TITLE.** This title may be cited as the “Multifamily Assisted Housing Reform and Affordability Act of 1997”.

#### **Subtitle A--FHA-Insured Multifamily Housing Mortgage and Housing Assistance Restructuring**

#### **SEC. 511. FINDINGS AND PURPOSES.**

(a) Findings.--Congress finds that--

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

(2) as of the date of enactment of this Act, it is estimated that--

(A) the insured multifamily housing portfolio of the Federal Housing Administration consists of 14,000 rental properties, with an aggregate unpaid principal mortgage balance of \$38,000,000,000; and

- (B) approximately 10,000 of these properties contain housing units that are assisted with project-based rental assistance under section 8 of the United States Housing Act of 1937;
- (3) FHA-insured multifamily rental properties are a major Federal investment, providing affordable rental housing to an estimated 2,000,000 low- and very low-income families;
- (4) approximately 1,600,000 of these families live in dwelling units that are assisted with project-based rental assistance under section 8 of the United States Housing Act of 1937;
- (5) a substantial number of housing units receiving project-based assistance have rents that are higher than the rents of comparable, unassisted rental units in the same housing rental market;
- (6) many of the contracts for project-based assistance will expire during the several years following the date of enactment of this Act;
- (7) it is estimated that--
- (A) if no changes in the terms and conditions of the contracts for project-based assistance are made before fiscal year 2000, the cost of renewing all expiring rental assistance contracts under section 8 of the United States Housing Act of 1937 for both project-based and tenant-based rental assistance will increase from approximately \$3,600,000,000 in fiscal year 1997 to over \$14,300,000,000 by fiscal year 2000 and some \$22,400,000,000 in fiscal year 2006;
- (B) of those renewal amounts, the cost of renewing project-based assistance will increase from \$1,200,000,000 in fiscal year 1997 to almost \$7,400,000,000 by fiscal year 2006; and
- (C) without changes in the manner in which project-based rental assistance is provided, renewals of expiring contracts for project-based rental assistance will require an increasingly larger portion of the discretionary budget authority of the Department of Housing and Urban Development in each subsequent fiscal year for the foreseeable future;
- (8) absent new budget authority for the renewal of expiring rental contracts for project-based assistance, many of the FHA-insured multifamily housing projects that are assisted with project-based assistance are likely to default on their FHA-insured mortgage payments, resulting in substantial claims to the FHA General Insurance Fund and Special Risk Insurance Fund;
- (9) more than 15 percent of federally assisted multifamily housing projects are physically or financially distressed, including a number which suffer from mismanagement;
- (10) due to Federal budget constraints, the downsizing of the Department of Housing and Urban Development, and diminished administrative capacity, the Department lacks the ability to ensure the continued economic and physical well-being of the stock of federally insured and assisted multifamily housing projects;
- (11) the economic, physical, and management problems facing the stock of federally insured and assisted multifamily housing projects will be best served by reforms that--
- (A) reduce the cost of Federal rental assistance, including project-based assistance, to these projects by reducing the debt service and operating costs of these projects while retaining the low-income affordability and availability of this housing;

- (B) address physical and economic distress of this housing and the failure of some project managers and owners of projects to comply with management and ownership rules and requirements; and
  - (C) transfer and share many of the loan and contract administration functions and responsibilities of the Secretary to and with capable State, local, and other entities; and
- (12) the authority and duties of the Secretary, not including the control by the Secretary of applicable accounts in the Treasury of the United States, may be delegated to State, local or other entities at the discretion of the Secretary, to the extent the Secretary determines, and for the purpose of carrying out this [Act, title](#), so that the Secretary has the discretion to be relieved of processing and approving any document or action required by these reforms.

(b) Purposes.--Consistent with the purposes and requirements of the Government Performance and Results Act of 1993, the purposes of this subtitle are--

- (1) to preserve low-income rental housing affordability and availability while reducing the long-term costs of project-based assistance;
- (2) to reform the design and operation of Federal rental housing assistance programs, administered by the Secretary, to promote greater multifamily housing project operating and cost efficiencies;
- (3) to encourage owners of eligible multifamily housing projects to restructure their FHA-insured mortgages and project-based assistance contracts in a manner that is consistent with this subtitle before the year in which the contract expires;
- (4) to reduce the cost of insurance claims under the National Housing Act related to mortgages insured by the Secretary and used to finance eligible multifamily housing projects;
- (5) to streamline and improve federally insured and assisted multifamily housing project oversight and administration;
- (6) to resolve the problems affecting financially and physically troubled federally insured and assisted multifamily housing projects through cooperation with residents, owners, State and local governments, and other interested entities and individuals;
- (7) to protect the interest of project owners and managers, because they are partners of the Federal Government in meeting the affordable housing needs of the Nation through the section 8 rental housing assistance program;
- (8) to protect the interest of tenants residing in the multifamily housing projects at the time of the restructuring for the housing; and
- (9) to grant additional enforcement tools to use against those who violate agreements and program requirements, in order to ensure that the public interest is safeguarded and that Federal multifamily housing programs serve their intended purposes.

**SEC. 512. DEFINITIONS.** In this subtitle:

- (1) Comparable properties.--The term “comparable properties” means properties in the same market areas, where practicable, that--
  - (A) are similar to the eligible multifamily housing project as to neighborhood (including risk of crime), type of location, access, street appeal, age, property size, apartment mix,

physical configuration, property and unit amenities, utilities, and other relevant characteristics; and

(B) are not receiving project-based assistance.

(2) Eligible multifamily housing project.--The term “eligible multifamily housing project” means a property consisting of more than 4 dwelling units--

(A) with rents that, on an average per unit or per room basis, exceed the rent of comparable properties in the same market area, determined in accordance with guidelines established by the Secretary;

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

(i) the new construction or 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 the United States Housing Act of 1937;

(iii) the moderate rehabilitation program under section 8(e)(2) of the United States Housing Act of 1937;

(iv) the loan management assistance program under section 8 of the United States Housing Act of 1937;

(v) section 23 of the United States Housing Act of 1937 (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

(C) financed by a mortgage insured or held by the Secretary under the National Housing Act. Such term does not include any project with an expiring contract described in paragraph (1) or (2) of section 524(e) but does include a project described in section 524(e)(3).

Notwithstanding any other provision of this title, the Secretary may treat a project as an eligible multifamily housing project for purposes of this title if (I) the project is assisted pursuant to a contract for project-based assistance under section 8 of the United States Housing Act of 1937 renewed under section 524 of this Act, (II) the owner consents to such treatment, and (III) the project met the requirements of the first sentence of this paragraph for eligibility as an eligible multifamily housing project before the initial renewal of the contract under section 524.

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

- (4) Expiration date.--The term “expiration date” means the date on which an expiring contract expires.
- (5) Fair market rent.--The term “fair market rent” means the fair market rental established under section 8(c) of the United States Housing Act of 1937.
- (6) Low-income families.--The term “low-income families” has the same meaning as provided under section 3(b)(2) of the United States Housing Act of 1937.
- (7) Mortgage restructuring and rental assistance sufficiency plan .--The term “mortgage restructuring and rental assistance sufficiency plan” means the plan as provided under section 514.
- (8) Nonprofit organization.--The term “nonprofit organization” means any private non-profit organization that--
- (A) is organized under State or local laws;
  - (B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and
  - (C) has a long-term record of service in providing or financing quality affordable housing for low-income families through relationships with public entities.
- (9) Portfolio restructuring agreement.--The term “Portfolio restructuring agreement” means the agreement entered into between the Secretary and a participating administrative entity, as provided under section 513.
- (10) Participating administrative entity.--The term “participating administrative entity” means a public agency (including a State housing finance agency or a local housing agency), a nonprofit organization, or any other entity (including a law firm or an accounting firm) or a combination of such entities, that meets the requirements under section 513(b).
- (11) Project-based assistance.--The term “project-based assistance” means rental assistance described in paragraph (2)(B) of this section that is attached to a multifamily housing project.
- (12) Renewal.--The term “renewal” means the replacement of an expiring Federal rental contract with a new contract under section 8 of the United States Housing Act of 1937, consistent with the requirements of this subtitle.
- (13) Secretary.--The term “Secretary” means the Secretary of Housing and Urban Development.
- (14) State.--The term “State” has the same meaning as in section 104 of the Cranston-Gonzalez National Affordable Housing Act.

(15) Tenant-based assistance.--The term “tenant-based assistance” has the same meaning as in section 8(f) of the United States Housing Act of 1937.

(16) Unit of general local government.--The term “unit of general local government” has the same meaning as in section 104 of the Cranston-Gonzalez National Affordable Housing Act.

(17) Very low-income family.--The term “very low-income family” has the same meaning as in section 3(b) of the United States Housing Act of 1937.

(18) Qualified mortgagee.--The term “qualified mortgagee” means an entity approved by the Secretary that is capable of servicing, as well as originating, FHA-insured mortgages, and that--  
(A) is not suspended or debarred by the Secretary;  
(B) is not suspended or on probation imposed by the Mortgagee Review Board; and  
(C) is not in default under any Government National Mortgage Association obligation.

(19) OFFICE.--The term “Office” means the Office of Multifamily Housing Assistance Restructuring established under section 571.

## **SEC. 513. AUTHORITY OF PARTICIPATING ADMINISTRATIVE ENTITIES.**

(a) Participating Administrative Entities.--

(1) In general.--Subject to subsection (b)(3), the Secretary shall enter into portfolio restructuring agreements with participating administrative entities for the implementation of mortgage restructuring and rental assistance sufficiency plans to restructure multifamily housing mortgages insured or held by the Secretary under the National Housing Act, in order to--

- (A) reduce the costs of expiring contracts for assistance under section 8 of the United States Housing Act of 1937;
- (B) address financially and physically troubled projects; and
- (C) correct management and ownership deficiencies.

(2) Portfolio restructuring agreements.--Each portfolio restructuring agreement entered into under this subsection shall--

- (A) be a cooperative agreement to establish the obligations and requirements between the Secretary and the participating administrative entity;
- (B) identify the eligible multifamily housing projects or groups of projects for which the participating administrative entity is responsible for assisting in developing and implementing approved mortgage restructuring and rental assistance sufficiency plans under section 514;
- (C) require the participating administrative entity to review and certify to the accuracy and completeness of the evaluation of rehabilitation needs required under section 514(e)(3) for each eligible multifamily housing project included in the portfolio restructuring agreement, in accordance with regulations promulgated by the Secretary;

- (D) identify the responsibilities of both the participating administrative entity and the Secretary in implementing a mortgage restructuring and rental assistance sufficiency plan, including any actions proposed to be taken under section 516 or 517;
- (E) require each mortgage restructuring and rental assistance sufficiency plan to be prepared in accordance with the requirements of section 514 for each eligible multifamily housing project;
- (F) include other requirements established by the Secretary, including a right of the Secretary to terminate the contract immediately for failure of the participating administrative entity to comply with any applicable requirement;
- (G) if the participating administrative entity is a State housing finance agency or a local housing agency, indemnify the participating administrative entity against lawsuits and penalties for actions taken pursuant to the agreement, excluding actions involving willful misconduct or negligence;
- (H) include compensation for all reasonable expenses incurred by the participating administrative entity necessary to perform its duties under this subtitle; and
- (I) include, where appropriate, incentive agreements with the participating administrative entity to reward superior performance in meeting the purposes of this ~~Act~~title.

(b) Selection of Participating Administrative Entity.--

- (1) Selection criteria.--The Secretary shall select a participating administrative entity based on whether, in the determination of the Secretary, the participating administrative entity--
  - (A) has demonstrated experience in working directly with residents of low-income housing projects and with tenants and other community-based organizations;
  - (B) has demonstrated experience with and capacity for multifamily restructuring and multifamily financing (which may include risk-sharing arrangements and restructuring eligible multifamily housing properties under the fiscal year 1997 Federal Housing Administration multifamily housing demonstration program);
  - (C) has a history of stable, financially sound, and responsible administrative performance (which may include the management of affordable low-income rental housing);
  - (D) has demonstrated financial strength in terms of asset quality, capital adequacy, and liquidity;
  - (E) has demonstrated that it will carry out the specific transactions and other responsibilities under this part in a timely, efficient, and cost-effective manner; and
  - (F) meets other criteria, as determined by the Secretary.
- (2) Selection.--If more than 1 interested entity meets the qualifications and selection criteria for a participating administrative entity, the Secretary may select the entity that demonstrates, as determined by the Secretary, that it will--
  - (A) provide the most timely, efficient, and cost-effective--
    - (i) restructuring of the mortgages covered by the portfolio restructuring agreement; and
    - (ii) administration of the section 8 project-based assistance contract, if applicable; and



(B) protect the public interest (including the long-term provision of decent low-income affordable rental housing and protection of residents, communities, and the American taxpayer).

(3) Partnerships.--For the purposes of any participating administrative entity applying under this subsection, participating administrative entities are encouraged to develop partnerships with each other and with nonprofit organizations, if such partnerships will further the participating administrative entity's ability to meet the purposes of this ~~Aet.~~title.

(4) Alternative administrators.--With respect to any eligible multifamily housing project for which a participating administrative entity is unavailable, or should not be selected to carry out the requirements of this subtitle with respect to that multifamily housing project for reasons relating to the selection criteria under paragraph (1), the Secretary shall--

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

(B) contract with other qualified entities that meet the requirements of paragraph (1) to provide the authority to carry out all or a portion of the requirements of this subtitle with respect to that eligible multifamily housing project.

(5) Priority for public agencies as participating administrative entities.--The Secretary shall provide a reasonable period during which the Secretary will consider proposals only from State housing finance agencies or local housing agencies, and the Secretary shall select such an agency without considering other applicants if the Secretary determines that the agency is qualified. The period shall be of sufficient duration for the Secretary to determine whether any State housing financing agencies or local housing agencies are interested and qualified. Not later than the end of the period, the Secretary shall notify the State housing finance agency or the local housing agency regarding the status of the proposal and, if the proposal is rejected, the reasons for the rejection and an opportunity for the applicant to respond.

(6) State and local portfolio requirements.--

(A) In general.--If the housing finance agency of a State is selected as the participating administrative entity, that agency shall be responsible for such eligible multifamily housing projects in that State as may be agreed upon by the participating administrative entity and the Secretary. If a local housing agency is selected as the participating administrative entity, that agency shall be responsible for such eligible multifamily housing projects in the jurisdiction of the agency as may be agreed upon by the participating administrative entity and the Secretary.

(B) Nondelegation.--Except with the prior approval of the Secretary, a participating administrative entity may not delegate or transfer responsibilities and functions under this subtitle to 1 or more entities.

(7) Private entity requirements.--

(A) In general.--If a for-profit entity is selected as the participating administrative entity, that entity shall be required to enter into a partnership with a public purpose entity (including the Department).

(B) Prohibition.--No private entity shall share, participate in, or otherwise benefit from any equity created, received, or restructured as a result of the portfolio restructuring agreement.

**SEC. 514. MORTGAGE RESTRUCTURING AND RENTAL ASSISTANCE SUFFICIENCY PLAN.**

(a) In General.--

(1) Development of procedures and requirements.--The Secretary shall develop procedures and requirements for the submission of a mortgage restructuring and rental assistance sufficiency plan for each eligible multifamily housing project with an expiring contract.

(2) Terms and conditions.--Each mortgage restructuring and rental assistance sufficiency plan submitted under this subsection shall be developed by the participating administrative entity, in cooperation with an owner of an eligible multifamily housing project and any servicer for the mortgage that is a qualified mortgagee, under such terms and conditions as the Secretary shall require.

(3) Consolidation.--Mortgage restructuring and rental assistance sufficiency plans submitted under this subsection may be consolidated as part of an overall strategy for more than 1 property.

(b) Notice Requirements.--The Secretary shall establish notice procedures and hearing requirements for tenants and owners concerning the dates for the expiration of project-based assistance contracts for any eligible multifamily housing project.

(c) Extension of Contract Term.--Subject to agreement by a project owner, the Secretary may extend the term of any expiring contract or provide a section 8 contract with rent levels set in accordance with subsection (g) for a period sufficient to facilitate the implementation of a mortgage restructuring and rental assistance sufficiency plan, as determined by the Secretary.

(d) Tenant Rent Protection.--If the owner of a project with an expiring Federal rental assistance contract does not agree to extend the contract, not less than 12 months prior to terminating the contract, the project owner shall provide written notice to the Secretary and the tenants and the Secretary shall make tenant-based assistance available to tenants residing in units assisted under the expiring contract at the time of expiration.

(e) Mortgage Restructuring and Rental Assistance Sufficiency Plan.--Each mortgage restructuring and rental assistance sufficiency plan shall--

(1) except as otherwise provided, restructure the project-based assistance rents for the eligible multifamily housing project in a manner consistent with subsection (g), or provide for tenant-based assistance in accordance with section 515;

(2) allow for rent adjustments by applying an operating cost adjustment factor established under guidelines established by the Secretary;

(3) require the owner or purchaser of an eligible multifamily housing project to evaluate the rehabilitation needs of the project, in accordance with regulations of the Secretary, and notify the participating administrative entity of the rehabilitation needs;

- (4) require the owner or purchaser of the project to provide or contract for competent management of the project;
- (5) require the owner or purchaser of the project to take such actions as may be necessary to rehabilitate, maintain adequate reserves, and to maintain the project in decent and safe condition, based on housing quality standards established by--
  - (A) the Secretary; or
  - (B) local housing codes or codes adopted by public housing agencies that--
    - (i) meet or exceed housing quality standards established by the Secretary; and
    - (ii) do not severely restrict housing choice;
- (6) require the owner or purchaser of the project to maintain affordability and use restrictions in accordance with regulations promulgated by the Secretary, for a term of not less than 30 years which restrictions shall be--
  - (A) contained in a legally enforceable document recorded in the appropriate records; and
  - (B) consistent with the long-term physical and financial viability and character of the project as affordable housing;
- (7) include a certification by the participating administrative entity that the restructuring meets subsidy layering requirements established by the Secretary by regulation for purposes of this subtitle;
- (8) require the owner or purchaser of the project to meet such other requirements as the Secretary determines to be appropriate; and
- (9) prohibit the owner from refusing to lease a reasonable number of units to holders of certificates and vouchers under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenants as certificate and voucher holders.

(f) Tenant and Other Participation and Capacity Building.--

(1) Procedures .--

(A) In general .--The Secretary shall establish procedures to provide an opportunity for tenants of the project, residents of the neighborhood, the local government, and other affected parties to participate effectively and on a timely basis in the restructuring process established by this subtitle.

(B) Coverage .--These procedures shall take into account the need to provide tenants of the project, residents of the neighborhood, the local government, and other affected parties timely notice of proposed restructuring actions and appropriate access to relevant information about restructuring activities. To the extent practicable and consistent with the need to accomplish project restructuring in an efficient manner, the procedures shall give all such parties an opportunity to provide comments to the participating administrative entity in writing, in meetings, or in another appropriate manner (which comments shall be taken into consideration by the participating administrative entity).

(2) Required consultation .--The procedures developed pursuant to paragraph (1) shall require consultation with tenants of the project, residents of the neighborhood, the local government, and other affected parties, in connection with at least the following:

- (A) the mortgage restructuring and rental assistance sufficiency plan;
- (B) any proposed transfer of the project; and
- (C) the rental assistance assessment plan pursuant to section 515(c).

(3) Funding.--

(A) In general.--The Secretary ~~may provide~~shall make available not more than \$10,000,000 annually in funding, which amount shall be in addition to any amounts made available under this subparagraph and carried over from previous years, from which the Secretary may make obligations to tenant groups, nonprofit organizations, and public entities for building the capacity of tenant organizations, for technical assistance in furthering any of the purposes of this subtitle (including transfer of developments to new owners), for technical assistance for preservation of low-income housing for which project-based rental assistance is owners)provided at below market rent levels, for tenant services, and for tenant ~~services~~groups, nonprofit organizations, and public entities described in section 517(a)(5), from those amounts made available under appropriations Acts for implementing this subtitle or previously made available for technical assistance in connection with the preservation of affordable rental housing for low-income persons.

(B) Manner of providing.--Notwithstanding any other provision of law restricting the use of preservation technical assistance funds, the Secretary may provide any funds made available under subparagraph (A) through existing technical assistance programs pursuant to any other Federal law, including the Low-Income Housing Preservation and Resident Homeownership Act of 1990 and the Multifamily Housing Property Disposition Reform Act of 1994, or through any other means that the Secretary considers consistent with the purposes of this subtitle, without regard to any set-aside requirement otherwise applicable to those funds.

(C) Prohibition.--None of the funds made available under subparagraph (A) may be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation.

(g) Rent Levels.--

(1) In general.--Except as provided in paragraph (2), each mortgage restructuring and rental assistance sufficiency plan pursuant to the terms, conditions, and requirements of this subtitle shall establish for units assisted with project-based assistance in eligible multifamily housing projects adjusted rent levels that--

(A) are equivalent to rents derived from comparable properties, if--

- (i) the participating administrative entity makes the rent determination within a reasonable period of time; and
- (ii) the market rent determination is based on not less than 2 comparable properties; or

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

(2) Exceptions.--

(A) In general.--A contract under this section may include rent levels that exceed the rent level described in paragraph (1) at rent levels that do not exceed 120 percent of the fair market rent for the market area (except that the Secretary may waive this limit for not more than five percent of all units subject to ~~restructured mortgages in any fiscal year~~ portfolio restructuring agreements, based on a finding of special need), if the participating administrative entity--

- (i) determines that the housing needs of the tenants and the community cannot be adequately addressed through implementation of the rent limitation required to be established through a mortgage restructuring and rental assistance sufficiency plan under paragraph (1); and
- (ii) follows the procedures under paragraph (3).

(B) Exception rents.--In any fiscal year, a participating administrative entity may approve exception rents on not more than 20 percent of all units covered by the portfolio restructuring agreement with expiring contracts in that fiscal year, except that the Secretary may waive this ceiling upon a finding of special need.

(3) Rent levels for exception projects.--For purposes of this section, a project eligible for an exception rent shall receive a rent calculated based on the actual and projected costs of operating the project, at a level that provides income sufficient to support a budget-based rent that consists of--

(A) the debt service of the project;

(B) the operating expenses of the project, as determined by the participating administrative entity, including--

- (i) contributions to adequate reserves;
- (ii) the costs of maintenance and necessary rehabilitation; and
- (iii) other eligible costs permitted under section 8 of the United States Housing Act of 1937;

(C) an adequate allowance for potential operating losses due to vacancies and failure to collect rents, as determined by the participating administrative entity;

(D) an allowance for a reasonable rate of return to the owner or purchaser of the project, as determined by the participating administrative entity, which may be established to provide incentives for owners or purchasers to meet benchmarks of quality for management and housing quality; and

(E) other expenses determined by the participating administrative entity to be necessary for the operation of the project.

(h) Exemptions From Restructuring.--The following categories of projects shall not be covered by a mortgage restructuring and rental assistance sufficiency plan if--

- (1) the primary financing or mortgage insurance for the multifamily housing project that is covered by that expiring contract was provided by a unit of State government or a unit of general local government (or an agency or instrumentality of a unit of a State government or unit

of general local ~~government) and the government);~~financing involves mortgage insurance under the National Housing Act, such that the implementation of a mortgage restructuring and rental assistance sufficiency plan under this subtitle is in conflict with applicable law or agreements governing such financing;

(2) the project is a project financed under section 202 of the Housing Act of 1959 or section 515 of the Housing Act of 1949, or refinanced pursuant to section 811 of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note); or

(3) the project has an expiring contract under section 8 of the United States Housing Act of 1937 entered into pursuant to section 441 of the Stewart B. McKinney Homeless Assistance Act.

## **SEC. 515. SECTION 8 RENEWALS AND LONG-TERM AFFORDABILITY COMMITMENT BY OWNER OF PROJECT.**

### **(a) Section 8 Renewals of Restructured Projects.--**

(1) Project-based assistance.--Subject to the availability of amounts provided in advance in appropriations Acts, and to the control of the Secretary of applicable accounts in the Treasury of the United States, with respect to an expiring section 8 contract on an eligible multifamily housing project to be renewed with project-based assistance (based on a determination under subsection (c)), the Secretary shall enter into contracts with participating administrative entities pursuant to which the participating administrative entity shall offer to renew or extend the contract, or the Secretary shall offer to renew such contract, and the owner of the project shall accept the offer, if the initial renewal is in accordance with the terms and conditions specified in the mortgage restructuring and rental assistance sufficiency plan and the rental assistance assessment plan.

(2) Tenant-based assistance.--Subject to the availability of amounts provided in advance in appropriations Acts and to the control of the Secretary of applicable accounts in the Treasury of the United States, with respect to an expiring section 8 contract on an eligible multifamily housing project to be renewed with tenant-based assistance (based on a determination under subsection (c)), the Secretary shall enter into contracts with participating administrative entities pursuant to which the participating administrative entity shall provide for the renewal of section 8 assistance on an eligible multifamily housing project with tenant-based assistance, or the Secretary shall provide for such renewal, in accordance with the terms and conditions specified in the mortgage restructuring and rental assistance sufficiency plan and the rental assistance assessment plan.

(b) Required Commitment.--After the initial renewal of a section 8 contract pursuant to this section, the owner shall accept each offer made pursuant to subsection (a) to renew the contract, for the term of the affordability and use restrictions required by section 514(e)(6), if the offer to renew is on terms and conditions specified in the mortgage restructuring and rental assistance sufficiency plan.

(c) Determination of Whether To Renew With Project-Based or Tenant-Based Assistance.--

(1) Mandatory renewal of project-based assistance.--Section 8 assistance shall be renewed with project-based assistance, if--

(A) the project is located in an area in which the participating administrative entity determines, based on housing market indicators, such as low vacancy rates or high absorption rates, that there is not adequate available and affordable housing or that the tenants of the project would not be able to locate suitable units or use the tenant-based assistance successfully;

(B) a predominant number of the units in the project are occupied by elderly families, disabled families, or elderly and disabled families; or

(C) the project is held by a nonprofit cooperative ownership housing corporation or nonprofit cooperative housing trust.

(2) Rental assistance assessment plan.--

(A) In general.--With respect to any project that is not described in paragraph (1), the participating administrative entity shall, after consultation with the owner of the project, develop a rental assistance assessment plan to determine whether to renew assistance for the project with tenant-based assistance or project-based assistance.

(B) Rental assistance assessment plan requirements.--Each rental assistance assessment plan developed under this paragraph shall include an assessment of the impact of converting to tenant-based assistance and the impact of extending project-based assistance on--

(i) the ability of the tenants to find adequate, available, decent, comparable, and affordable housing in the local market;

(ii) the types of tenants residing in the project (such as elderly families, disabled families, large families, and cooperative homeowners);

(iii) the local housing needs identified in the comprehensive housing affordability strategy, and local market vacancy trends;

(iv) the cost of providing assistance, comparing the applicable payment standard to the project's adjusted rent levels determined under section 514(g);

(v) the long-term financial stability of the project;

(vi) the ability of residents to make reasonable choices about their individual living situations;

(vii) the quality of the neighborhood in which the tenants would reside; and

(viii) the project's ability to compete in the marketplace.

(C) Reports to director.--Each participating administrative entity shall report regularly to the Director as defined in subtitle D, as the Director shall require, identifying--

(i) each eligible multifamily housing project for which the entity has developed a rental assistance assessment plan under this paragraph that determined that the tenants of the project generally supported renewal of assistance with tenant-based assistance, but under which assistance for the project was renewed with project-based assistance; and

(ii) each project for which the entity has developed such a plan under which the assistance is renewed using tenant-based assistance.

(3) Eligibility for tenant-based assistance.--Subject to paragraph (4), with respect to any project that is not described in paragraph (1), if a participating administrative entity approves the use of tenant-based assistance based on a rental assistance assessment plan developed under paragraph (2), tenant-based assistance shall be provided to each assisted family (other than a family already receiving tenant-based assistance) residing in the project at the time the assistance described in section 512(2)(B) terminates.

~~(4) Rents for families receiving tenant-based assistance.--~~

~~(A) In general.--Notwithstanding subsection (c)(1) or (o)(1) of section 8 of the United States Housing Act of 1937, in~~ 4) Assistance through enhanced vouchers.--In the case of any family described in paragraph (3) that resides in a project described in section ~~512(2)(B) in which the reasonable rent (which rent shall include any amount allowed for utilities and shall not exceed comparable market rents for the relevant housing market area) exceeds the fair market rent limitation or the payment standard, as applicable, the amount of assistance for the family shall be determined in accordance with subparagraph (B).~~

~~(B) Maximum monthly rent; payment standard.--With respect to the certificate program under section 8(b) of the United States Housing Act of 1937, the maximum monthly rent under the contract (plus any amount allowed for utilities) shall be such reasonable rent for the unit. With respect to the voucher program under section 8(o) of the United States Housing Act of 1937, the payment standard shall be deemed to be such reasonable rent for the unit.~~ 512(2)(B), the tenant-based assistance provided shall be enhanced voucher assistance under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)).

(5) Inapplicability of certain provision.--If a participating administrative entity approves renewal with project-based assistance under this subsection, section 8(d)(2) of the United States Housing Act of 1937 shall not apply.

## **SEC. 516. PROHIBITION ON RESTRUCTURING.**

(a) Prohibition on Restructuring.--The Secretary may elect not to consider any mortgage restructuring and rental assistance sufficiency plan or request for contract renewal if the Secretary or the participating administrative entity determines that--

- (1) (A) the owner or purchaser of the project has engaged in material adverse financial or managerial actions or omissions with regard to such project; or  
(B) the owner or purchaser of the project has engaged in material adverse financial or managerial actions or omissions with regard to other projects of such owner or purchaser that are federally-assisted or financed with a loan from, or mortgage insured or guaranteed by, an agency of the Federal government.

(2) Material adverse financial or managerial actions or omissions include--

- (A) materially violating any Federal, State, or local law or regulation with regard to this project or any other federally assisted project, after receipt of notice and an opportunity to cure;
- (B) materially breaching a contract for assistance under section 8 of the United States Housing Act of 1937, after receipt of notice and an opportunity to cure;



- (C) materially violating any applicable regulatory or other agreement with the Secretary or a participating administrative entity, after receipt of notice and an opportunity to cure;
- (D) repeatedly and materially violating any Federal, State, or local law or regulation with regard to the project or any other federally assisted project;
- (E) repeatedly and materially breaching a contract for assistance under section 8 of the United States Housing Act of 1937;
- (F) repeatedly and materially violating any applicable regulatory or other agreement with the Secretary or a participating administrative entity;
- (G) repeatedly failing to make mortgage payments at times when project income was sufficient to maintain and operate the property;
- (H) materially failing to maintain the property according to housing quality standards after receipt of notice and a reasonable opportunity to cure; or
- (I) committing any actions or omissions that would warrant suspension or debarment by the Secretary;

(3) the owner or purchaser of the property materially failed to follow the procedures and requirements of this part, after receipt of notice and an opportunity to cure; or

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

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

**(b) Opportunity To Dispute Findings.--**

(1) In general.--During the 30-day period beginning on the date on which the owner or purchaser of an eligible multifamily housing project receives notice of a rejection under subsection (a) or of a mortgage restructuring and rental assistance sufficiency plan under section 514, the Secretary or participating administrative entity shall provide that owner or purchaser with an opportunity to dispute the basis for the rejection and an opportunity to cure. (2) Affirmation, modification, or reversal.--

(A) In general.--After providing an opportunity to dispute under paragraph (1), the Secretary or the participating administrative entity may affirm, modify, or reverse any rejection under subsection (a) or rejection of a mortgage restructuring and rental assistance sufficiency plan under section 514.

(B) Reasons for decision.--The Secretary or the participating administrative entity, as applicable, shall identify the reasons for any final decision under this paragraph.

(C) Review process.--The Secretary shall establish an administrative review process to appeal any final decision under this paragraph.

(c) Final Determination.--Any final determination under this section shall not be subject to judicial review.

(d) Displaced Tenants.—

(1) Notice to Certain Residents.--The Office shall notify any tenant that is residing in a project or receiving assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) at the time of rejection under this section, of such rejection, except that the Office may delegate the responsibility to provide notice under this paragraph to the participating administrative entity.

Tenants.—Subject(2) Assistance and Moving Expenses.--Subject to the availability of amounts provided in advance in appropriations Acts, for any low-income tenant that is residing in a project or receiving assistance under section 8 of the United States Housing Act of 1937 at the time of rejection under this section, that tenant shall be provided with tenant-based assistance and reasonable moving expenses, as determined by the Secretary.

(e) Transfer of Property.--For properties disqualified from the consideration of a mortgage restructuring and rental assistance sufficiency plan under this section in accordance with paragraph (1) or (2) of subsection (a) because of actions by an owner or purchaser, the Secretary shall establish procedures to facilitate the voluntary sale or transfer of a property as part of a mortgage restructuring and rental assistance sufficiency plan, with a preference for tenant organizations and tenant-endorsed community-based nonprofit and public agency purchasers meeting such reasonable qualifications as may be established by the Secretary.

## **SEC. 517. RESTRUCTURING TOOLS.**

(a) Mortgage Restructuring.--

(1) In this part, an approved mortgage restructuring and rental assistance sufficiency plan shall include restructuring mortgages in accordance with this subsection to provide--

(A) a restructured or new first mortgage that is sustainable at rents at levels that are established in section 514(g); and

(B) a second mortgage that is in an amount equal to not more than the greater of--

(i) the full or partial payment of claim made under this subtitle; or

(ii) the difference between the restructured or new first mortgage and the indebtedness under the existing insured mortgage immediately before it is restructured or refinanced, provided that the amount of the second mortgage shall be in an amount that the Secretary or participating administrative entity determines can reasonably be expected to be repaid.

(2) The second mortgage shall bear interest at a rate not to exceed the applicable Federal rate as defined in section 1274(d) of the Internal Revenue Code of 1986. The term of the second mortgage shall be equal to the term of the restructured or new first mortgage.

(3) Payments on the second mortgage shall be deferred when the first mortgage remains outstanding, except to the extent there is excess project income remaining after payment of all reasonable and necessary operating expenses (including deposits in a reserve for replacement), debt service on the first mortgage, and any other expenditures approved by the Secretary. At least 75 percent of any excess project income shall be applied to payments on the second mortgage, and the Secretary or the participating administrative entity may permit up to 25 percent to be paid to the project owner if the Secretary or participating administrative entity determines that the project owner meets benchmarks for management and housing quality.

(4) The full amount of the second mortgage shall be immediately due and payable if--

(A) the first mortgage is terminated or paid in full, except as otherwise provided by the holder of the second mortgage;

(B) the project is purchased and the second mortgage is assumed by any subsequent purchaser in violation of guidelines established by the Secretary; or

(C) the Secretary provides notice to the project owner that such owner has failed to materially comply with any requirements of this section or the United States Housing Act of 1937 as those requirements apply to the project, with a reasonable opportunity for such owner to cure such failure.

(5) The Secretary may modify the terms of the second mortgage, assign the second mortgage to the acquiring organization or agency, or forgive all or part of the second mortgage if the Secretary holds the second mortgage and if the project is acquired by a tenant organization or tenant-endorsed community-based nonprofit or public agency, pursuant to guidelines established by the Secretary.

(6) The second mortgage under this section may be a first mortgage if no restructured or new first mortgage will meet the requirement of paragraph (1)(A).

(b) Restructuring Tools.--In addition to the requirements of subsection (a) and to the extent these actions are consistent with this section and with the control of the Secretary of applicable accounts in the Treasury of the United States, an approved mortgage restructuring and rental assistance sufficiency plan under this subtitle may include 1 or more of the following actions:

(1) Full or partial payment of claim.--Making a full payment of claim or partial payment of claim under section 541(b) of the National Housing Act, as amended by section 523(b) of this Act. Any payment under this paragraph shall not require the approval of a mortgagee.

(2) Refinancing of debt.--Refinancing of all or part of the debt on a project. If the refinancing involves a mortgage that will continue to be insured under the National Housing Act, the refinancing shall be documented through amendment of the existing insurance contract and not through a new insurance contract.

(3) Mortgage insurance.--Providing FHA multifamily mortgage insurance, reinsurance or other credit enhancement alternatives, including multifamily risk-sharing mortgage programs, as provided under section 542 of the Housing and Community Development Act of 1992. Any limitations on the number of units available for mortgage insurance under section 542 shall not

apply to eligible multifamily housing projects. Any credit subsidy costs of providing mortgage insurance shall be paid from the Liquidating Account of the General Insurance Fund or the Special Risk Insurance Fund and shall not be subject to any limitation on appropriations.

(4) Credit enhancement.--Any additional State or local mortgage credit enhancements and risk-sharing arrangements may be established with State or local housing finance agencies, the Federal Housing Finance Board, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, to a modified or refinanced first mortgage.

(5) Compensation of third parties.--Consistent with the portfolio restructuring agreement, entering into agreements, incurring costs, or making payments, including incentive agreements designed to reward superior performance in meeting the purposes of this Act, as may be reasonably necessary, to compensate the participation of participating administrative entities and other parties in undertaking actions authorized by this subtitle. Upon request to the Secretary, participating administrative entities that are qualified under the United States Housing Act of 1937 to serve as contract administrators shall be the contract administrators under section 8 of the United States Housing Act of 1937 for purposes of any contracts entered into as part of an approved mortgage restructuring and rental assistance sufficiency plan. Subject to the availability of amounts provided in advance in appropriations Acts for administrative fees under section 8 of the United States Housing Act of 1937, such amounts may be used to compensate participating administrative entities for compliance monitoring costs incurred under section 519.

(6) Use of project accounts.--Applying any residual receipts, replacement reserves, and any other project accounts not required for project operations, to maintain the long-term affordability and physical condition of the property or of other eligible multifamily housing projects. The participating administrative entity may expedite the acquisition of residual receipts, replacement reserves, or other such accounts, by entering into agreements with owners of housing covered by an expiring contract to provide an owner with a share of the receipts, not to exceed 10 percent, in accordance with guidelines established by the Secretary.

(c) Rehabilitation Needs and Addition of Significant Features.--

(1) Rehabilitation needs.--

(A) In general.--Assisting in addressing the rehabilitation needs of the project. Rehabilitation may be paid from the residual receipts, replacement reserves, or any other project accounts not required for project operations, or, as provided in appropriations Acts and subject to the control of the Secretary of applicable accounts in the Treasury of the United States, from budget authority provided for increases in the budget authority for assistance contracts under section 8 of the United States Housing Act of 1937, the rehabilitation grant program established under section 236(s) of the National Housing Act, or through the debt restructuring transaction. Rehabilitation under this paragraph shall only be for the purpose of restoring the project to a non-luxury standard adequate for the rental market intended at the original approval of the project-based assistance.

(B) Contribution.--Each owner or purchaser of a project to be rehabilitated under an approved mortgage restructuring and rental assistance sufficiency plan shall contribute, from non-project resources, not less than 25 percent of the amount of rehabilitation

assistance received, except that the participating administrative entity may provide an exception from the requirement of this subparagraph for housing cooperatives.

~~(c) Role of FNMA and FHLMC. Section 1335 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4565) is amended—~~

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

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

~~(3) by striking “To meet” and inserting the following: “(a) In General. To meet”; and (2) Addition of Significant Features.--~~

~~(A) Authority.--An approved mortgage restructuring and rental assistance sufficiency plan may require the improvement of the project by the addition of significant features that are not necessary for rehabilitation to the standard provided under paragraph (1), such as air conditioning, an elevator, and additional community space. The Secretary shall establish guidelines regarding the inclusion of requirements regarding such additional significant features under such plans.~~

~~(B) Funding.--Significant features added pursuant to an approved mortgage restructuring and rental assistance sufficiency plan may be paid from the funding sources specified in the first sentence of paragraph (1)(A).~~

~~(C) Limitation on Owner Contribution.--An owner of a project may not be required to contribute from non-project resources, toward the cost of any additional significant features required pursuant to this paragraph, more than 25 percent of the amount of any assistance received for the inclusion of such features.~~

~~(4) by adding at the end the following: “(5) assist in maintaining the affordability of assisted units in(D) Applicability.--This paragraph shall apply to all eligible multifamily housing projects with expiring contracts, as defined under the Multifamily Assisted Housing Reform and Affordability Act of 1997. “(b) Affordable Housing Goals. Actions taken under subsection projects, except projects for which the Secretary and the project owner executed a mortgage restructuring and rental assistance sufficiency plan on or before the date of the enactment of the Mark-to-Market Extension Act of 2001.~~

~~(a)(5) shall constitute part of the contribution of each entity in meeting its affordable housing goals under sections 1332, 1333, and 1334 for any fiscal year, as determined by the Secretary.”--~~

(d) Prohibition on Equity Sharing by the Secretary.--The Secretary is prohibited from participating in any equity agreement or profit-sharing agreement in conjunction with any eligible multifamily housing project.

(e) Conflict of Interest Guidelines --The Secretary may establish guidelines to prevent conflicts of interest by a participating administrative entity that provides, directly or through risk-sharing arrangements, any form of credit enhancement or financing pursuant to subsections (b)(3) or (b)(4) or to prevent conflicts of interest by any other person or entity under this subtitle.

**SEC. 518. MANAGEMENT STANDARDS.** Each participating administrative entity shall establish management standards, including requirements governing conflicts of interest between owners, managers, contractors with an identity of interest, pursuant to guidelines established by the Secretary and consistent with industry standards.

**SEC. 519. MONITORING OF COMPLIANCE.**

(a) Compliance Agreements.--

(1) Pursuant to regulations issued by the Secretary under section 522(a), each participating administrative entity, through binding contractual agreements with owners and otherwise, shall ensure long-term compliance with the provisions of this subtitle. Each agreement shall, at a minimum, provide for--

(A) enforcement of the provisions of this subtitle; and

(B) remedies for the breach of those provisions.

(2) If the participating administrative entity is not qualified under the United States Housing Act of 1937 to be a section 8 contract administrator or fails to perform its duties under the portfolio restructuring agreement, the Secretary shall have the right to enforce the agreement.

(b) Periodic Monitoring.--

(1) In general.--Not less than annually, each participating administrative entity that is qualified to be the section 8 contract administrator shall review the status of all multifamily housing projects for which a mortgage restructuring and rental assistance sufficiency plan has been implemented.

(2) Inspections.--Each review under this subsection shall include onsite inspection to determine compliance with housing codes and other requirements as provided in this subtitle and the portfolio restructuring agreements.

(3) Administration.--If the participating administrative entity is not qualified under the United States Housing Act of 1937 to be a section 8 contract administrator, either the Secretary or a qualified State or local housing agency shall be responsible for the review required by this subsection.

(c) Audit by the Secretary.--The Comptroller General of the United States, the Secretary, and the Inspector General of the Department of Housing and Urban Development may conduct an audit at any time of any multifamily housing project for which a mortgage restructuring and rental assistance sufficiency plan has been implemented.

**SEC. 520. REPORTS TO CONGRESS.**

(a) Annual Review.--In order to ensure compliance with this subtitle, the Secretary shall conduct an annual review and report to the Congress on actions taken under this subtitle and the status of eligible multifamily housing projects.

(b) Semiannual Review.--Not less than semiannually during the 2-year period beginning on the date of the enactment of this Act and not less than annually thereafter, the Secretary shall submit reports to the Committee on ~~Banking and~~ Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate stating, for such periods, the total number of

projects identified by participating administrative entities under each of clauses (i) and (ii) of subparagraph (C).

## **SEC. 521. GAO AUDIT AND REVIEW.**

(a) Initial Audit.--Not later than 18 months after the effective date of final regulations promulgated under this part, the Comptroller General of the United States shall conduct an audit to evaluate eligible multifamily housing projects and the implementation of mortgage restructuring and rental assistance sufficiency plans.

(b) Report.--

(1) In general.--Not later than 18 months after the audit conducted under subsection (a), the Comptroller General of the United States shall submit to Congress a report on the status of eligible multifamily housing projects and the implementation of mortgage restructuring and rental assistance sufficiency plans.

(2) Contents.--The report submitted under paragraph (1) shall include--

(A) a description of the initial audit conducted under subsection (a); and

(B) recommendations for any legislative action to increase the financial savings to the Federal Government of the restructuring of eligible multifamily housing projects balanced with the continued availability of the maximum number of affordable low-income housing units.

## **SEC. 522. REGULATIONS.**

(a) Rulemaking and Implementation.--

(1) Interim regulations.--The Director shall issue such interim regulations as may be necessary to implement this subtitle and the amendments made by this subtitle with respect to eligible multifamily housing projects covered by contracts described in section 512(2)(B) that expire in fiscal year 1999 or thereafter. If, before the expiration of such period, the Director has not been appointed, the Secretary shall issue such interim regulations.

(2) Final regulations.--The Director shall issue final regulations necessary to implement this subtitle and the amendments made by this subtitle with respect to eligible multifamily housing projects covered by contracts described in section 512(2)(B) that expire in fiscal year 1999 or thereafter before the later of

(A) the expiration of the 12-month period beginning upon the date of the enactment of this Act, and

(B) the 3-month period beginning upon the appointment of the Director under subtitle B.

(3) Factors for consideration.--Before the publication of the final regulations under paragraph (2), in addition to public comments invited in connection with publication of the interim rule, the Secretary shall--

(A) seek recommendations on the implementation of sections 513(b) and 515(c)(1) from organizations representing--

(i) State housing finance agencies and local housing agencies;

- (ii) other potential participating administering entities;
- (iii) tenants;
- (iv) owners and managers of eligible multifamily housing projects;
- (v) States and units of general local government; and
- (vi) qualified mortgagees; and

(B) convene not less than 3 public forums at which the organizations making recommendations under subparagraph (A) may express views concerning the proposed disposition of the recommendations.

(b) Transition Provision for Contracts Expiring in Fiscal Year 1998.--Notwithstanding any other provision of law, the Secretary shall apply all the terms of section 211 and section 212 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (except for section 212(h)(1)(G) and the limitation in section 212(k)) contracts for project-based assistance that expire during fiscal year 1998 (in the same manner that such provisions apply to expiring contracts defined in section 212(a)(3) of such Act), except that section 517(a) of the Act shall apply to mortgages on projects subject to such contracts.

#### **SEC. 523. TECHNICAL AND CONFORMING AMENDMENTS.**

(a) Calculation of Limit on Project-Based Assistance.--Section 8(d) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)) is amended by adding at the end the following: “(5) Calculation of limit.--Any contract entered into under section 514 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 shall be excluded in computing the limit on project-based assistance under this subsection.”.

(b) Partial Payment of Claims on Multifamily Housing Projects.--Section 541 of the National Housing Act (12 U.S.C. 1735f 19) is amended--

- (1) in subsection (a), in the subsection heading, by striking “Authority” and inserting “Defaulted Mortgages”;
- (2) by redesignating subsection (b) as subsection (c); and
- (3) by inserting after subsection (a) the following: “(b) Existing Mortgages.--Notwithstanding any other provision of law, the Secretary, in connection with a mortgage restructuring under section 514 of the Multifamily Assisted Housing Reform and Affordability Act of 1997, may make a 1 time, nondefault partial payment of the claim under the mortgage insurance contract, which shall include a determination by the Secretary or the participating administrative entity, in accordance with the Multifamily Assisted Housing Reform and Affordability Act of 1997, of the market value of the project and a restructuring of the mortgage, under such terms and conditions as are permitted by section 517(a) of such Act.”.

(c) Reuse and Rescission of Certain Recaptured Budget Authority.--Section 8(bb) of the United States Housing Act of 1937 (42 U.S.C. 1437f(bb)) is amended--

- (1) by inserting after “(bb)” the following: “ Transfer, Reuse, and Rescission of Budget Authority --(1)”; and



(2) by inserting the following new paragraph at the end: “(2) Reuse and Rescission of Certain Recaptured Budget Authority.--Notwithstanding paragraph (1), if a project-based assistance contract for an eligible multifamily housing project subject to actions authorized under title I is terminated or amended as part of restructuring under section 517 of the Multifamily Assisted Housing Reform and Affordability Act of 1997, the Secretary shall recapture the budget authority not required for the terminated or amended contract and use such amounts as are necessary to provide housing assistance for the same number of families covered by such contract for the remaining term of such contract, under a contract providing for project-based or tenant-based assistance. The amount of budget authority saved as a result of the shift to project-based or tenant-based assistance shall be rescinded.”.

(d) Section 8 Contract Renewals.--Section 405(a) of the Balanced Budget Downpayment Act, I (42 U.S.C. 1437f note) is amended by striking “For” and inserting “Notwithstanding part 24 of title 24 of the Code of Federal Regulations, for”.

(e) Renewal Upon Request of Owner.--Section 211(b)(3) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Public Law 104 204; 110 Stat. 2896) is amended--

(1) by striking the paragraph heading and inserting the following: “(3) Exemption of certain other projects.--“; and

(2) by striking “section 202 projects, section 811 projects and section 515 projects” and inserting “section 202 projects, section 515 projects, projects with contracts entered into pursuant to section 441 of the Stewart B. McKinney Homeless Assistance Act, and projects with rents that exceed 100 percent of fair market rent for the market area, but that are less than rents for comparable projects”.

(f) Extension of Demonstration Contract Period.--Section 212(g) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Public Law 104 204) is amended--

(1) by inserting “(1)” after “(g)”;

(2) by inserting before the period at the end the following: “or in paragraph (2)”;

(3) by adding at the end the following: “(2) The Secretary may renew a demonstration contract for an additional period of not to exceed 120 days, if-- “(A) the contract was originally executed before February 1, 1997, and the Secretary determines, in the sole discretion of the Secretary, that the renewal period for the contract needs to exceed 1 year, due to delay of publication of the Secretary’s demonstration program guidelines until January 23, 1997 (not to exceed 21 projects); or “(B) the contract was originally executed before October 1, 1997, in connection with a project that has been identified for restructuring under the joint venture approach described in section VII.B.2. of the Secretary’s demonstration program guidelines, and the Secretary determines, in the sole discretion of the Secretary, that the renewal period for the contract needs to exceed 1 year, due to delay in implementation of the joint venture agreement required by the guidelines (not to exceed 25 projects).”.

**SEC. 524. SECTION 8 CONTRACT RENEWALS. RENEWAL OF EXPIRING PROJECT-BASED SECTION 8 CONTRACTS.**

(a) ~~Section 8 Contract Renewal Authority.—~~

~~(1) In general.—Notwithstanding part 24 of title 24 of the Code of Federal Regulations and subject to section 516 of this subtitle, for fiscal year 1999 and henceforth, the Secretary may use amounts available for the renewal of assistance under section 8 of the United States Housing Act of 1937, upon termination or expiration of a contract for assistance under section 8 (other than a contract for tenant-based assistance and notwithstanding section 8(v) of such Act for loan management assistance), to provide assistance under section 8 of such Act at rent levels that do not exceed comparable market rents for the market area. The assistance shall be provided in accordance with terms and conditions prescribed by the Secretary.~~

~~(2) Exception projects.—Notwithstanding paragraph (1), upon the request of the owner, the Secretary shall renew an expiring contract in accordance with terms and conditions prescribed by the Secretary at the lesser of—~~

~~(i) existing rents, adjusted by an operating cost adjustment factor established by the Secretary;~~

~~(ii) a level that provides income sufficient to support a budget-based rent (including a budget-based rent adjustment if justified by reasonable and expected operating expenses); or~~

~~(iii) in the case of a contract under the moderate rehabilitation program, other than a moderate rehabilitation contract under section 441 of the Stewart B. McKinney Homeless Assistance Act, the base rent adjusted by an operating cost adjustment factor established by the Secretary;~~

~~for the following categories of multifamily housing projects—~~

~~(A) projects for which the primary financing or mortgage insurance was provided by a unit of State government or a unit of general local government (or an agency or instrumentality of either) and is not insured under the National Housing Act;~~

~~(B) projects for which the primary financing was provided by a unit of State government or a unit of general local government (or an agency or instrumentality of either) and the financing involves mortgage insurance under the National Housing Act, such that the implementation of a mortgage restructuring and rental assistance sufficiency plan under this Act is in conflict with applicable law or agreements governing such financing;~~

~~(C) projects financed under section 202 of the Housing Act of 1959 or section 515 of the Housing Act of 1949;~~

~~(D) projects that have an expiring contract under section 8 of the United States Housing Act of 1937 pursuant to section 441 of the Stewart B. McKinney Homeless Assistance Act; and~~

~~(E) projects that do not qualify as eligible multifamily housing projects pursuant to section 512(2) of this subtitle.—In General.—~~

~~(1) Renewal.—Subject to paragraph (2), upon termination or expiration of a contract for project-based assistance under section 8 for a multifamily housing project (and notwithstanding section 8(v) of the United States Housing Act of 1937 for loan management assistance), the~~

Secretary shall, at the request of the owner of the project and to the extent sufficient amounts are made available in appropriation Acts, use amounts available for the renewal of assistance under section 8 of such Act to provide such assistance for the project. The assistance shall be provided under a contract having such terms and conditions as the Secretary considers appropriate, subject to the requirements of this section. This section shall not require contract renewal for a project that is eligible under this subtitle for a mortgage restructuring and rental assistance sufficiency plan, if there is no approved plan for the project and the Secretary determines that such an approved plan is necessary.

(2) Prohibition on renewal.--Notwithstanding part 24 of title 24 of the Code of Federal Regulations, the Secretary may elect not to renew assistance for a project otherwise required to be renewed under paragraph (1) or provide comparable benefits under paragraph (1) or (2) of subsection (e) for a project described in either such paragraph, if the Secretary determines that a violation under paragraphs (1) through (4) of section 516(a) has occurred with respect to the project. For purposes of such a determination, the provisions of section 516 shall apply to a project under this section in the same manner and to the same extent that the provisions of such section apply to eligible multifamily housing projects, except that the Secretary shall make the determination under section 516(a)(4).

(3) Contract term for mark-up-to-market contracts.--In the case of an expiring or terminating contract that has rent levels less than comparable market rents for the market area, if the rent levels under the renewal contract under this section are equal to comparable market rents for the market area, the contract shall have a term of not less than 5 years, subject to the availability of sufficient amounts in appropriation Acts.

(4) Renewal rents.--Except as provided in subsection (b), the contract for assistance shall provide assistance at the following rent levels:

(A) Market rents.--At the request of the owner of the project, at rent levels equal to the lesser of comparable market rents for the market area or 150 percent of the fair market rents, in the case only of a project that--

(i) has rent levels under the expiring or terminating contract that do not exceed such comparable market rents;

(ii) does not have a low- and moderate- income use restriction that can not be eliminated by unilateral action by the owner;

(iii) is decent, safe, and sanitary housing, as determined by the Secretary;

(iv) is not--

(I) owned by a nonprofit entity;

(II) subject to a contract for moderate rehabilitation assistance under section 8(e)(2) of the United States Housing Act of 1937, as in effect before October 1, 1991; or

(III) a project for which the public housing agency provided voucher assistance to one or more of the tenants after the owner has provided notice of termination of the contract covering the tenant's unit; and

(v) has units assisted under the contract for which the comparable market rent exceeds 110 percent of the fair market rent.

The Secretary may adjust the percentages of fair market rent (as specified in the matter preceding clause (i) and in clause (v)), but only upon a determination and written notification to the Congress within 10 days of making such determination, that such adjustment is necessary to ensure that this subparagraph covers projects with a high risk of nonrenewal of expiring contracts for project-based assistance.

(B) Reduction to market rents.--In the case of a project that has rent levels under the expiring or terminating contract that exceed comparable market rents for the market area, at rent levels equal to such comparable market rents.

(C) Rents not exceeding market rents.--In the case of a project that is not subject to subparagraph (A) or (B), at rent levels that--

(i) are not less than the existing rents under the terminated or expiring contract, as adjusted by an operating cost adjustment factor established by the Secretary (which shall not result in a negative adjustment), if such adjusted rents do not exceed comparable market rents for the market area; and

(ii) do not exceed comparable market rents for the market area.

In determining the rent level for a contract under this subparagraph, the Secretary shall approve rents sufficient to cover budget-based cost increases and shall give greater consideration to providing rent at a level up to comparable market rents for the market area based on the number of the criteria under clauses (i) through (iii) of subparagraph (D) that the project meets. Notwithstanding any other provision of law, the Secretary shall include in such budget-based cost increases costs relating to the project as a whole (including costs incurred with respect to units not covered by the contract for assistance), but only (I) if inclusion of such costs is requested by the owner or purchaser of the project, (II) if inclusion of such costs will permit capital repairs to the project or acquisition of the project by a nonprofit organization, and (III) to the extent that inclusion of such costs (or a portion thereof) complies with the requirement under clause (ii).

(D) Waiver of 150 percent limitation.--Notwithstanding subparagraph (A), at rent levels up to comparable market rents for the market area, in the case of a project that meets the requirements under clauses (i) through (v) of subparagraph (A) and--

(i) has residents who are a particularly vulnerable population, as demonstrated by a high percentage of units being rented to elderly families, disabled families, or large families;

(ii) is located in an area in which tenant-based assistance would be difficult to use, as demonstrated by a low vacancy rate for affordable housing, a high turnback rate for vouchers, or a lack of comparable rental housing; or

(iii) is a high priority for the local community, as demonstrated by a contribution of State or local funds to the property.

In determining the rent level for a contract under this subparagraph, the Secretary shall approve rents sufficient to cover budget-based cost increases and shall give greater consideration to providing rent at a level up to comparable market rents for the market area based on the number of the criteria under clauses (i) through (iv) that the project meets.

(5) Comparable market rents and comparison with fair market rents.--The Secretary shall prescribe the method for determining comparable market rent by comparison with rents charged for comparable properties (as such term is defined in section 512), which may include appropriate adjustments for utility allowances and adjustments to reflect the value of any subsidy (other than section 8 assistance) provided by the Department of Housing and Urban Development.

(b) Exception Rents.--

(1) Renewal.--In the case of a multifamily housing project described in paragraph (2), pursuant to the request of the owner of the project, the contract for assistance for the project pursuant to subsection (a) shall provide assistance at the lesser of the following rent levels:

(A) Adjusted existing rents.--The existing rents under the expiring contract, as adjusted by an operating cost adjustment factor established by the Secretary (which shall not result in a negative adjustment).

(B) Budget-based rents.--Subject to a determination by the Secretary that a rent level under this subparagraph is appropriate for a project, a rent level that provides income sufficient to support a budget-based rent (including a budget-based rent adjustment if justified by reasonable and expected operating expenses).

(2) Projects covered.--A multifamily housing project described in this paragraph is a multifamily housing project that--

(A) is not an eligible multifamily housing project under section 512(2); or

(B) is exempt from mortgage restructuring under this subtitle pursuant to section 514(h).

(3) Moderate rehabilitation projects.--In the case of a project with a contract under the moderate rehabilitation program, other than a moderate rehabilitation contract under section 441 of the Stewart B. McKinney Homeless Assistance Act, pursuant to the request of the owner of the project, the contract for assistance for the project pursuant to subsection (a) shall provide assistance at the lesser of the following rent levels:

(A) Adjusted existing rents.--The existing rents under the expiring contract, as adjusted by an operating cost adjustment factor established by the Secretary (which shall not result in a negative adjustment).

(B) Fair market rents.--Fair market rents (less any amounts allowed for tenant-purchased utilities).

(C) Market rents.--Comparable market rents for the market area.

(c) Rent Adjustments After Renewal of Contract.--

(1) Required.--After the initial renewal of a contract for assistance under section 8 of the United States Housing Act of 1937 pursuant to subsection (a), (b)(1), or (e)(2), the Secretary shall annually adjust the rents using an operating cost adjustment factor established by the Secretary (which shall not result in a negative adjustment) or, upon the request of the owner and subject to approval of the Secretary, on a budget basis. In the case of projects with contracts renewed pursuant to subsection (a) or pursuant to subsection (e)(2) at rent levels equal to comparable market rents for the market area, at the expiration of each 5-year period, the Secretary shall compare existing rents with comparable market rents for the market area and may make any

adjustments in the rent necessary to maintain the contract rents at a level not greater than comparable market rents or to increase rents to comparable market rents.

(2) Discretionary.--In addition to review and adjustment required under paragraph (1), in the case of projects with contracts renewed pursuant to subsection (a) or pursuant to subsection (e)(2) at rent levels equal to comparable market rents for the market area, the Secretary may, at the discretion of the Secretary but only once within each 5-year period referred to in paragraph (1), conduct a comparison of rents for a project and adjust the rents accordingly to maintain the contract rents at a level not greater than comparable market rents or to increase rents to comparable market rents.

(d) Enhanced Vouchers Upon Contract Expiration.--

(1) In general.--In the case of a contract for project-based assistance under section 8 for a covered project that is not renewed under subsection (a) or (b) of this section (or any other authority), to the extent that amounts for assistance under this subsection are provided in advance in appropriation Acts, upon the date of the expiration of such contract the Secretary shall make enhanced voucher assistance under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)) available on behalf of each low-income family who, upon the date of such expiration, is residing in an assisted dwelling unit in the covered project.

(2) Definitions.--For purposes of this subsection, the following definitions shall apply:

(A) Assisted dwelling unit.--The term 'assisted dwelling unit' means a dwelling unit that--

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(i) is in a covered project; and

(ii) is covered by rental assistance provided under the contract for project-based assistance for the covered project.

(B) Covered project.--The term 'covered project' means any housing that--

(i) consists of more than four dwelling units;

(ii) is covered in whole or in part by a contract for project-based assistance under--

(I) the new construction or 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 the United States Housing Act of 1937;

(III) the moderate rehabilitation program under section 8(e)(2) of the United States Housing Act of 1937 (as in effect before October 1, 1991);

(IV) the loan management assistance program under section 8 of the United States Housing Act of 1937;

(V) section 23 of the United States Housing Act of 1937 (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, which contract will (under its own terms) expire during the period consisting of fiscal years 2000 through 2004; and

(iii) is not housing for which residents are eligible for enhanced voucher assistance as provided, pursuant to the 'Preserving Existing Housing Investment' account in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Public Law 104-204; 110 Stat. 2884) or any other subsequently enacted provision of law, in lieu of any benefits under section 223 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4113).

(4)<sup>1</sup> Authorization of appropriations.-- There are authorized to be appropriated for each of fiscal years 2000, 2001, 2002, 2003, and 2004 such sums as may be necessary for enhanced voucher assistance under this subsection.

(e) Contractual Commitments Under Preservation Laws.-- Except as provided in subsection (a)(2) and notwithstanding any other provision of this subtitle, the following shall apply:

(1) Preservation projects.-- Upon expiration of a contract for assistance under section 8 for a project that is subject to an approved plan of action under the Emergency Low Income Housing Preservation Act of 1987 (12 U.S.C. 17151 note) or the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4101 et seq.), to the extent amounts are specifically made available in appropriation Acts, the Secretary shall provide to the owner benefits comparable to those provided under such plan of action, including distributions, rent increase procedures, and duration of low-income affordability restrictions. This paragraph shall apply to projects with contracts expiring before, on, or after the date of the enactment of this section.

(2) Demonstration projects.--

(A) In general.-- Upon expiration of a contract for assistance under section 8 for a project entered into pursuant to any authority specified in subparagraph (B) for which the Secretary determines that debt restructuring is inappropriate, the Secretary shall, at the request of the owner of the project and to the extent sufficient amounts are made available in appropriation Acts, provide benefits to the owner comparable to those provided under such contract, including annual distributions, rent increase procedures, and duration of low-income affordability restrictions. This paragraph shall apply to projects with contracts expiring before, on, or after the date of the enactment of this section.

(B) Demonstration programs.-- The authority specified in this subparagraph is the authority under--

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<sup>1</sup> Statute does not include a (3).

(i) section 210 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (Public Law 104-134; 110 Stat. 1321-285; 42 U.S.C. 1437f note);

(ii) section 212 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Public Law 104-204; 110 Stat. 2897; 42 U.S.C. 1437f note); and

(iii) either of such sections, pursuant to any provision of this title.

(3) Mortgage Restructuring and Rental Assistance Sufficiency Plans.--Notwithstanding paragraph (1), the owner of the project may request, and the Secretary may consider, mortgage restructuring and rental assistance sufficiency plans to facilitate sales or transfers of properties under this subtitle, subject to an approved plan of action under the Emergency Low Income Housing Preservation Act of 1987 (12 U.S.C. 1715l note) or the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4101 et seq.), which plans shall result in a sale or transfer of those properties.

(f) Preemption of Conflicting State Laws Limiting Distributions.--

(1) In general.--Except as provided in paragraph (2), no State or political subdivision of a State may establish, continue in effect, or enforce any law or regulation that limits or restricts, to an amount that is less than the amount provided for under the regulations of the Secretary establishing allowable project distributions to provide a return on investment, the amount of surplus funds accruing after the date of the enactment of this section that may be distributed from any multifamily housing project assisted under a contract for rental assistance renewed under any provision of this section (except subsection (b)) to the owner of the project.

(2) Exception and waiver.--Paragraph (1) shall not apply to any law or regulation to the extent such law or regulation applies to--

(A) a State-financed multifamily housing project; or

(B) a multifamily housing project for which the owner has elected to waive the applicability of paragraph (1).

(3) Treatment of low-income use restrictions.--This subsection may not be construed to provide for, allow, or result in the release or termination, for any project, of any low- or moderate-income use restrictions that can not be eliminated by unilateral action of the owner of the project.

(g) Applicability.--Except to the extent otherwise specifically provided in this section, this section shall apply with respect to any multifamily housing project having a contract for project-based assistance under section 8 that terminates or expires during fiscal year 2000 or thereafter.

## **SEC. 525. CONSISTENCY OF RENT LEVELS UNDER ENHANCED VOUCHER ASSISTANCE AND RENT RESTRUCTURINGS.**

(a) In General.--The Secretary shall examine the standards and procedures for determining and establishing the rent standards described under subsection (b). Pursuant to such examination, the Secretary shall establish procedures and guidelines that are designed to ensure that the amounts



determined by the various rent standards for the same dwelling units are reasonably consistent and reflect rents for comparable unassisted units in the same area as such dwelling units.

(b) Rent Standards.--The rent standards described in this subsection are as follows:

(1) Enhanced Vouchers.--The payment standard for enhanced voucher assistance under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)).

(2) Mari-to-Market.--The rents derived from comparable properties, for purposes of section 514(g) of this Act.

(3) Contract Renewal.--The comparable market rents for the market area, for purposes of section 524(a)(4) of this Act.

## **Subtitle B--Miscellaneous Provisions**

**SEC. 531. REHABILITATION GRANTS FOR CERTAIN INSURED PROJECTS.** Section 236 of the National Housing Act (12 U.S.C. 1715z 1) is amended by adding at the end the following:

“(s) Grant Authority.--

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

“(2) Project eligibility.--A project may be eligible for capital grant assistance under this subsection--

“(A) if--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(D) if the project owner demonstrates to the satisfaction of the Secretary--

“(i) using information in a comprehensive needs assessment, that capital grant assistance is needed for rehabilitation of the project; and

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

“(3) Eligible purposes.--The Secretary may make grants to the owners of eligible projects for the purposes of--

“(A) payment into project replacement reserves;

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

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

“(4) Grant agreement.--

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

“(B) Affordability and use clauses.--The Secretary shall include in a grant agreement under this subsection a requirement for the project owners to maintain such affordability and use restrictions as the Secretary determines to be appropriate.

“(C) Other terms.--The Secretary may include in a grant agreement under this subsection such other terms and conditions as the Secretary determines to be necessary.

“(5) Delegation.--

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

“(B) Administration costs.--In addition to other eligible purposes, amounts of grants under this subsection may be made available for costs of administration under subparagraph (A).

“(6) Funding.--

“(A) In general.--For purposes of carrying out this subsection, the Secretary may make available amounts that are unobligated amounts for contracts for interest reduction payments--

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

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

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

“(iv) that become available from any other source.

“(B) Liquidation authority.--The Secretary may liquidate obligations entered into under this subsection under section 1305(10) of title 31, United States Code.

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

**SEC. 532. GAO REPORT ON SECTION 8 RENTAL ASSISTANCE FOR MULTIFAMILY HOUSING PROJECTS.** Not later than the expiration of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress analyzing--

(1) the housing projects for which project-based assistance is provided under section 8 of the United States Housing Act of 1937, but which are not subject to a mortgage insured or held by the Secretary under the National Housing Act;

(2) how State and local housing finance agencies have benefited financially from the rental assistance program under section 8 of the United States Housing Act of 1937, including any benefits from fees, bond financings, and mortgage refinancings; and

(3) the extent and effectiveness of State and local housing finance agencies oversight of the physical and financial management and condition of multifamily housing projects for which project-based assistance is provided under section 8 of the United States Housing Act of 1937.

## **Subtitle C--Enforcement Provisions**

### **SEC. 541. IMPLEMENTATION.**

(a) Issuance of Necessary Regulations.--Notwithstanding section 7(o) of the Department of Housing and Urban Development Act or part 10 of title 24, Code of Federal Regulations (as in existence on the date of enactment of this Act), the Secretary shall issue such regulations as the Secretary determines to be necessary to implement this subtitle and the amendments made by this subtitle in accordance with section 552 or 553 of title 5, United States Code, as determined by the Secretary.

(b) Use of Existing Regulations.--In implementing any provision of this subtitle, the Secretary may, in the discretion of the Secretary, provide for the use of existing regulations to the extent appropriate, without rulemaking.

### **SEC. 542. INCOME VERIFICATION.**

(a) Reinstitution of Requirements Regarding HUD Access to Certain Information of State Agencies.--

(1) In general.--Section 303(i) of the Social Security Act is amended by striking paragraph (5).

(2) Effective date.--The amendment made by this subsection shall apply to any request for information made after the date of the enactment of this Act.

(b) Repeal of Termination Regarding Housing Assistance Programs.--Section 6103(1)(7)(D) of the Internal Revenue Code of 1986 is amended by striking the last sentence.

## **Part 1--FHA Single Family and Multifamily Housing**

**SEC. 551. AUTHORIZATION TO IMMEDIATELY SUSPEND MORTGAGEES.** Section 202(c)(3)(C) of the National Housing Act (12 U.S.C. 1708(c)(3)(C)) is amended by inserting after the first sentence the following: "Notwithstanding paragraph (4)(A), a suspension shall be effective upon issuance by the Board if the Board determines that there exists adequate evidence that immediate action is required to protect the financial interests of the Department or the public."

**SEC. 552. EXTENSION OF EQUITY SKIMMING TO OTHER SINGLE FAMILY AND MULTIFAMILY HOUSING PROGRAMS.** Section 254 of the National Housing Act (12 U.S.C. 1715z 19) is amended to read as follows: "SEC. 254. EQUITY SKIMMING PENALTY.

"(a) In General.--Whoever, as an owner, agent, or manager, or who is otherwise in custody, control, or possession of a multifamily project or a 1- to 4-family residence that is security for a mortgage note that is described in subsection (b), willfully uses or authorizes the use of any part of the rents, assets, proceeds, income, or other funds derived from property covered by that mortgage note for any purpose other than to meet reasonable and necessary expenses that include expenses approved by the Secretary if such approval is required, in a period during which the mortgage note is in default or the project is in a nonsurplus cash position, as defined by the regulatory agreement covering the property, or the mortgagor has failed to comply with the provisions of such other form of regulatory control imposed by the Secretary, shall be fined not more than \$500,000, imprisoned not more than 5 years, or both.

“(b) Mortgage Notes Described.--For purposes of subsection (a), a mortgage note is described in this subsection if it--

“(1) is insured, acquired, or held by the Secretary pursuant to this Act;

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

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

### **SEC. 553. CIVIL MONEY PENALTIES AGAINST MORTGAGEES, LENDERS, AND OTHER PARTICIPANTS IN FHA PROGRAMS.**

(a) Change to Section Title.--Section 536 of the National Housing Act (12 U.S.C. 1735f 14) is amended by striking the section heading and the section designation and inserting the following: “SEC. 536. CIVIL MONEY PENALTIES AGAINST MORTGAGEES, LENDERS, AND OTHER PARTICIPANTS IN FHA PROGRAMS.”.

(b) Expansion of Persons Eligible for Penalty.--Section 536(a) of the National Housing Act (12 U.S.C. 1735f 14(a)) is amended--

(1) in paragraph (1), by striking the first sentence and inserting the following: “If a mortgagee approved under the Act, a lender holding a contract of insurance under title I, or a principal, officer, or employee of such mortgagee or lender, or other person or entity participating in either an insured mortgage or title I loan transaction under this Act or providing assistance to the borrower in connection with any such loan, including sellers of the real estate involved, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents and dealers, knowingly and materially violates any applicable provision of subsection (b), the Secretary may impose a civil money penalty on the mortgagee or lender, or such other person or entity, in accordance with this section. The penalty under this paragraph shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.”; and

(2) in paragraph (2)--

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

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

(c) Additional Violations for Mortgagees, Lenders, and Other Participants in FHA Programs.--Section 536(b) of the National Housing Act (12 U.S.C. 1735f 14(b)) is amended--

(1) by redesignating paragraph (2) as paragraph (3);

(2) by inserting after paragraph (1) the following:

“(2) The Secretary may impose a civil money penalty under subsection (a) for any knowing and material violation by a principal, officer, or employee of a mortgagee or lender, or other participants in either an insured mortgage or title I loan transaction under this Act or provision of assistance to the borrower in connection with any such loan, including sellers of the real estate

involved, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents, and dealers for--

“(A) submission to the Secretary of information that was false, in connection with any mortgage insured under this Act, or any loan that is covered by a contract of insurance under title I of this Act;

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

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

(3) in paragraph (3), as redesignated, by striking “or paragraph (1)(F)” and inserting “or (F), or paragraph (2) (A), (B), or (C)”.

(d) Conforming and Technical Amendments.--Section 536 of the National Housing Act (12 U.S.C. 1735f 14) is amended--

(1) in subsection (c)(1)(B), by inserting after “lender” the following: “or such other person or entity”;

(2) in subsection (d)(1)-- (A) by inserting “or such other person or entity” after “lender”; and (B) by striking “part 25” and inserting “parts 24 and 25”; and

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

## **Part 2--FHA Multifamily Provisions**

### **SEC. 561. CIVIL MONEY PENALTIES AGAINST GENERAL PARTNERS, OFFICERS, DIRECTORS, AND CERTAIN MANAGING AGENTS OF MULTIFAMILY PROJECTS.**

(a) Civil Money Penalties Against Multifamily Mortgagors.--Section 537 of the National Housing Act (12 U.S.C. 1735f 15) is amended--

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

(2) in subsection (c)-- (A) by striking the subsection heading and inserting the following: “(c) Other Violations.--”; and (B) in paragraph (1)--

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

“(A) Liable parties.--The Secretary may also impose a civil money penalty under this section on--

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

“(ii) any general partner of a partnership mortgagor of such property;

“(iii) any officer or director of a corporate mortgagor;

“(iv) any agent employed to manage the property that has an identity of interest with the mortgagor, with the general partner of a partnership mortgagor, or with any officer or director of a corporate mortgagor of such property; or

“(v) any member of a limited liability company that is the mortgagor of such property or is the general partner of a limited partnership mortgagor or is a partner of a general partnership mortgagor.

“(B) Violations.--A penalty may be imposed under this section upon any liable party under subparagraph (A) that knowingly and materially takes any of the following actions:”;

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

(iii) by adding after clause (xii), as redesignated by clause (ii), the following: “(xiii) Failure to maintain the premises, accommodations, any living unit in the project, and the grounds and equipment appurtenant thereto in good repair and condition in accordance with regulations and requirements of the Secretary, except that nothing in this clause shall have the effect of altering the provisions of an existing regulatory agreement or federally insured mortgage on the property. “(xiv) Failure, by a mortgagor, a general partner of a partnership mortgagor, or an officer or director of a corporate mortgagor, to provide management for the project that is acceptable to the Secretary pursuant to regulations and requirements of the Secretary. “(xv) Failure to provide access to the books, records, and accounts related to the operations of the mortgaged property and of the project.”; and

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

(3) in subsection (d)--

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

(B) by adding at the end the following: “(5) Payment of penalty.--No payment of a civil money penalty levied under this section shall be payable out of project income.”;

(4) in subsection (e)(1), by deleting “a mortgagor” and inserting “an entity or person”;

(5) in subsection (f), by inserting after “mortgagor” each place such term appears the following: “, general partner of a partnership mortgagor, officer or director of a corporate mortgagor, or identity of interest agent employed to manage the property”;

(6) by striking the heading of subsection (f) and inserting the following: “ Civil Money Penalties Against Multifamily Mortgagors, General Partners of Partnership Mortgagors, Officers and Directors of Corporate Mortgagors, and Certain Managing Agents “; and

(7) by adding at the end the following: “(k) Identity of Interest Managing Agent.--In this section, the terms ‘agent employed to manage the property that has an identity of interest’ and ‘identity of interest agent’ mean an entity-- “(1) that has management responsibility for a project; “(2) in which the ownership entity, including its general partner or partners (if applicable) and its

officers or directors (if applicable), has an ownership interest; and “(3) over which the ownership entity exerts effective control.”.

(b) Implementation.--

(1) Public comment.--The Secretary shall implement the amendments made by this section by regulation issued after notice and opportunity for public comment. The notice shall seek comments primarily as to the definitions of the terms “ownership interest in” and “effective control”, as those terms are used in the definition of the terms “agent employed to manage the property that has an identity of interest” and “identity of interest agent”.

(2) Timing.--A proposed rule implementing the amendments made by this section shall be published not later than 1 year after the date of enactment of this Act.

(c) Applicability of Amendments.--The amendments made by subsection (a) shall apply only with respect to--

(1) violations that occur on or after the effective date of the final regulations implementing the amendments made by this section; and

(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation that occurs on or after that date.

**SEC. 562. CIVIL MONEY PENALTIES FOR NONCOMPLIANCE WITH SECTION 8 HAP CONTRACTS.**

(a) Basic Authority.--Title I of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) is amended--

(1) by designating the second section designated as section 27 (as added by section 903(b) of Public Law 104 193 (110 Stat. 2348)) as section 28; and

(2) by adding at the end the following:

“SEC. 29. CIVIL MONEY PENALTIES AGAINST SECTION 8 OWNERS.

“(a) In General.--

“(1) Effect on other remedies.--The penalties set forth in this section shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed regardless of whether the Secretary imposes other administrative sanctions.

“(2) Failure of secretary.--The Secretary may not impose penalties under this section for a violation, if a material cause of the violation is the failure of the Secretary, an agent of the Secretary, or a public housing agency to comply with an existing agreement.

“(b) Violations of Housing Assistance Payment Contracts for Which Penalty May Be Imposed.--

“(1) Liable parties.--The Secretary may impose a civil money penalty under this section on--

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

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



“(C) any agent employed to manage the property that has an identity of interest with the owner or the general partner of a partnership owner of the property.

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

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

“(B) knowing or willful submission of false, fictitious, or fraudulent statements or requests for housing assistance payments to the Secretary or to any department or agency of the United States.

“(3) Amount of penalty.--The amount of a penalty imposed for a violation under this subsection, as determined by the Secretary, may not exceed \$25,000 per violation.

“(c) Agency Procedures.--

“(1) Establishment.--The Secretary shall issue regulations establishing standards and procedures governing the imposition of civil money penalties under subsection (b). These standards and procedures--

“(A) shall provide for the Secretary or other department official to make the determination to impose the penalty;

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

“(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing and judicial review, as provided under subsection (d).

“(2) Final orders.--

“(A) In general.--If a hearing is not requested before the expiration of the 15-day period beginning on the date on which the notice of opportunity for hearing is received, the imposition of a penalty under subsection (b) shall constitute a final and unappealable determination.

“(B) Effect of review.--If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order.

“(C) Failure to review.--If the Secretary does not review that determination or order before the expiration of the 90-day period beginning on the date on which the determination or order is issued, the determination or order shall be final.

“(3) Factors in determining amount of penalty.--In determining the amount of a penalty under subsection (b), the Secretary shall take into consideration--

“(A) the gravity of the offense;

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

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

“(D) any injury to tenants;

“(E) any injury to the public;

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

“(G) deterrence of future violations; and

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

“(4) Payment of penalty.--No payment of a civil money penalty levied under this section shall be payable out of project income.

“(d) Judicial Review of Agency Determination.--Judicial review of determinations made under this section shall be carried out in accordance with section 537(e) of the National Housing Act.

“(e) Remedies for Noncompliance.--

“(1) Judicial intervention.--

“(A) In general.--If a person or entity fails to comply with the determination or order of the Secretary imposing a civil money penalty under subsection (b), after the determination or order is no longer subject to review as provided by subsections (c) and (d), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against that person or entity and such other relief as may be available.

“(B) Fees and expenses.--Any monetary judgment awarded in an action brought under this paragraph may, in the discretion of the court, include the attorney’s fees and other expenses incurred by the United States in connection with the action.

“(2) Nonreviewability of determination or order.--In an action under this subsection, the validity and appropriateness of the determination or order of the Secretary imposing the penalty shall not be subject to review.

“(f) Settlement by Secretary.--The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

“(g) Deposit of Penalties.--

“(1) In general.--Notwithstanding any other provision of law, if the mortgage covering the property receiving assistance under section 8 is insured or formerly insured by the Secretary, the Secretary shall apply all civil money penalties collected under this section to the appropriate insurance fund or funds established under this Act, as determined by the Secretary.

“(2) Exception.--Notwithstanding any other provision of law, if the mortgage covering the property receiving assistance under section 8 is neither insured nor formerly insured by the Secretary, the Secretary shall make all civil money penalties collected under this section available for use by the appropriate office within the Department for administrative costs related to enforcement of the requirements of the various programs administered by the Secretary.

“(h) Definitions.--In this section--

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

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

“(B) in which the ownership entity, including its general partner or partners (if applicable), has an ownership interest; and

“(C) over which such ownership entity exerts effective control; and

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

- (b) Applicability.--The amendments made by subsection (a) shall apply only with respect to--
- (1) violations that occur on or after the effective date of final regulations implementing the amendments made by this section; and
  - (2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation that occurs on or after such date.

(c) Implementation.--

(1) Regulations.--

(A) In general.--The Secretary shall implement the amendments made by this section by regulation issued after notice and opportunity for public comment.

(B) Comments sought.--The notice under subparagraph (A) shall seek comments as to the definitions of the terms “ownership interest in” and “effective control”, as such terms are used in the definition of the term “agent employed to manage such property that has an identity of interest”.

(2) Timing.--A proposed rule implementing the amendments made by this section shall be published not later than 1 year after the date of enactment of this Act.

**SEC. 563. EXTENSION OF DOUBLE DAMAGES REMEDY.** Section 421 of the Housing and Community Development Act of 1987 (12 U.S.C. 1715z 4a) is amended--

(1) in subsection (a)(1)--

(A) in the first sentence, by striking “Act; or (B)” and inserting the following: “Act; (B) a regulatory agreement that applies to a multifamily project whose mortgage is insured or held by the Secretary under section 202 of the Housing Act of 1959 (including property subject to section 202 of such Act as it existed before enactment of the Cranston-Gonzalez National Affordable Housing Act of 1990); (C) a regulatory agreement or such other form of regulatory control as may be imposed by the Secretary that applies to mortgages insured or held by the Secretary under section 542 of the Housing and Community Development Act of 1992, but not reinsured under section 542 of the Housing and Community Development Act of 1992; or (D)”;

(B) in the second sentence, by inserting after “agreement” the following: “, or such other form of regulatory control as may be imposed by the Secretary,”;

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

(3) in subsection (b), by inserting after “agreement” the following: “, or such other form of regulatory control as may be imposed by the Secretary,”;

(4) in subsection (c)--

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

(B) in the second sentence, by inserting before the period the following: “or, in the case of any project for which the mortgage is held by the Secretary under section 202 of the

Housing Act of 1959 (including property subject to section 202 of such Act as it existed before enactment of the Cranston-Gonzalez National Affordable Housing Act of 1990), to the project or to the Department for use by the appropriate office within the Department for administrative costs related to enforcement of the requirements of the various programs administered by the Secretary, as appropriate”; and

(5) in subsection (d), by inserting after “agreement” the following: “, or such other form of regulatory control as may be imposed by the Secretary.”. SEC. 564. OBSTRUCTION OF FEDERAL AUDITS. Section 1516(a) of title 18, United States Code, is amended by inserting after “under a contract or subcontract,” the following: “or relating to any property that is security for a mortgage note that is insured, guaranteed, acquired, or held by the Secretary of Housing and Urban Development pursuant to any Act administered by the Secretary.”.

#### **Subtitle D--Office of Multifamily Housing Assistance Restructuring**

**SEC. 571. ESTABLISHMENT OF OFFICE OF MULTIFAMILY HOUSING ASSISTANCE RESTRUCTURING.** There is hereby established an office within the Department of Housing and Urban Development, which shall be known as the Office of Multifamily Housing Assistance Restructuring.

#### **SEC. 572. DIRECTOR.**

(a) Appointment.-- The Office shall be under the management of a Director, who shall be appointed by the President ~~by and with the advice and consent of the Senate,~~ from among individuals who are citizens of the United States and have a demonstrated understanding of financing and mortgage restructuring for affordable multifamily housing. ~~Not later than 60 days after the date of the enactment of this Act, the President shall submit to the Senate a nomination for initial appointment to the position of Director.~~  
*[note – H.R. 3061 makes this provision effective starting with the first Director appointed after enactment. H.R. 3061 was signed by the President January 9, 2002]*

(b) Vacancy.--A vacancy in the position of Director shall be filled in the manner in which the original appointment was made under subsection (a).

(c) Deputy Director.--

(1) In general.--The Office shall have a Deputy Director who shall be appointed by the Director from among individuals who are citizens of the United States and have a demonstrated understanding of financing and mortgage restructuring for affordable multifamily housing.

(2) Functions --The Deputy Director shall have such functions, powers, and duties as the Director shall prescribe. In the event of the death, resignation, sickness, or absence of the Director, the Deputy Director shall serve as acting Director until the return of the Director or the appointment of a successor pursuant to subsection (b).

#### **SEC. 573. DUTY AND AUTHORITY OF DIRECTOR.**

(a) Duty.--The Secretary shall, acting through the Director, administer the program of mortgage and rental assistance restructuring for eligible multifamily housing projects under subtitle A. During the period before the Director is appointed, the Secretary may carry out such program.

(b) Authority --The Director is authorized to make such determinations, take such actions, issue such regulations, and perform such functions assigned to the Director under law as the Director determines necessary to carry out such functions, subject to the review and approval of the Secretary. The Director shall semiannually submit a report to the Assistant Secretary of the Department of Housing and Urban Development who is the Federal Housing Commissioner regarding the activities, determinations, and actions of the Director.

(c) Delegation of Authority --The Director may delegate to officers and employees of the Office (but not to contractors, subcontractors, or consultants) any of the functions, powers, and duties of the Director, as the Director considers appropriate.

(d) Independence in Providing Information to Congress.--

(1) In general.--Notwithstanding subsection (a) or (b), the Director shall not be required to obtain the prior approval, comment, or review of any officer or agency of the United States before submitting to the Congress, or any committee or subcommittee thereof, any reports, recommendations, testimony, or comments if such submissions include a statement indicating that the views expressed therein are those of the Director and do not necessarily represent the views of the Secretary or the President.

(2) Requirement.--If the Director determines at any time that the Secretary is taking or has taken any action that interferes with the ability of the Director to carry out the duties of the Director under this Act or that affects the administration of the program under subtitle A of this Act in manner that is inconsistent with the purposes of this Act, including any proposed action by the Director, in the discretion of the Director, that is overruled by the Secretary, the Director shall immediately report directly to the Committee on ~~Banking and~~ Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate regarding such action. Notwithstanding subsection (a) or (b), any determination or report under this paragraph by the Director shall not be subject to prior review or approval of the Secretary.

## **SEC. 574. PERSONNEL.**

(a) Office Personnel.--The Director may appoint and fix the compensation of such officers and employees of the Office as the Director considers necessary to carry out the functions of the Director and the Office. Officers and employees may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates.

(b) Comparability of Compensation With Federal Banking Agencies.--In fixing and directing compensation under subsection (a), the Director shall consult with, and maintain comparability with compensation of officers and employees of the Federal Deposit Insurance Corporation.

(c) Personnel of Other Federal Agencies.--In carrying out the duties of the Office, the Director may use information, services, staff, and facilities of any executive agency, independent agency, or department on a reimbursable basis, with the consent of such agency or department.

(d) Outside Experts and Consultants.--The Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

#### **SEC. 575. BUDGET AND FINANCIAL REPORTS.**

(a) Financial Operating Plans and Forecasts.--Before the beginning of each fiscal year, the Secretary shall submit a copy of the financial operating plans and forecasts for the Office to the Director of the Office of Management and Budget.

(b) Reports of Operations.--As soon as practicable after the end of each fiscal year and each quarter thereof, the Secretary shall submit a copy of the report of the results of the operations of the Office during such period to the Director of the Office of Management and Budget.

(c) Inclusion in President's Budget.--The annual plans, forecasts, and reports required under this section shall be included

(1) in the Budget of the United States in the appropriate form, and

(2) in the congressional justifications of the Department of Housing and Urban Development for each fiscal year in a form determined by the Secretary.

#### **SEC. 576. LIMITATION ON SUBSEQUENT EMPLOYMENT.**

Neither the Director nor any former officer or employee of the Office who, while employed by the Office, was compensated at a rate in excess of the lowest rate for a position classified higher than GS 15 of the General Schedule under section 5107 of title 5, United States Code, may, during the ~~2-year~~1-year period beginning on the date of separation from employment by the Office, accept compensation from any party (other than a Federal agency) having any financial interest in any mortgage restructuring and rental assistance sufficiency plan under subtitle A or comparable matter in which the Director or such officer or employee had direct participation or supervision.

**SEC. 577. AUDITS BY GAO.** The Comptroller General shall audit the operations of the Office in accordance with generally accepted Government auditing standards. All books, records, accounts, reports, files, and property belonging to, or used by, the Office shall be made available to the Comptroller General. Audits under this section shall be conducted annually for the first 2 fiscal years following the date of the enactment of this Act and as appropriate thereafter.

**SEC. 578. ~~SUSPENSION OF PROGRAM BECAUSE OF FAILURE TO APPOINT DIRECTOR.~~**

~~(a) In General.— If, upon the expiration of the 12-month period beginning on the date of the enactment of this Act, the initial appointment to the office of Director has not been made, the operation of the program under subtitle A shall immediately be suspended and such provisions shall not have any force or effect during the period that ends upon the making of such appointment.~~

~~(b) Interim applicability of demonstration program.— Notwithstanding any other provision of law, during the period referred to in subsection (a), the Secretary shall carry out sections 211 and 212 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997. For purposes of applying such sections pursuant to the authority under this section, the term “expiring contract” shall have the meaning given in such sections, except that such term shall also include any contract for project-based assistance under section 8 of the United States Housing Act of 1937 that expires during the period that the program is suspended under subsection (a).~~

**OVERSIGHT BY FEDERAL HOUSING COMMISSIONER.** All authority and responsibilities assigned under this subtitle to the Secretary shall be carried out through the Assistant Secretary of the Department of Housing and Urban Development who is the Federal Housing Commissioner.

**SEC. 579. TERMINATION.**

~~(a) Repeal.— Subtitle A (except for section 524) and subtitle D (except for this section) are~~ (a) Repeals.--  
(1) Mark-to-Market Program.-- Subtitle A (except for section 524) is repealed effective  
October 1, 2001-2006.

(2) OMHAR.-- Subtitle D (except for this section) is repealed effective October 1, 2004.

(b) Exception.-- Notwithstanding the repeal under subsection (a), the provisions of subtitle A (as in effect immediately before such repeal) shall apply with respect to projects and programs for which binding commitments have been entered into under this Act before October 1, 2001-2006

(c) Termination of Director and Office.-- The Office of Multifamily Housing Assistance Restructuring and the position of Director of such Office shall terminate upon September 30, 2001-2004.

~~(d) Transfer of Authority.— Effective upon the termination under subsection (c), any authority and responsibilities assigned to the Director that remain applicable after such date pursuant to subsection (b) are transferred to the Secretary.~~

(d) Transfer of Authority.-- Effective upon the repeal of subtitle D under subsection (a)(2) of this section, all authority and responsibilities to administer the program under subtitle A are transferred to the Secretary..

