

104TH CONGRESS
2D SESSION

S. 2042

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

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 1996

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

A BILL

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

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Multifamily Assisted Housing Reform and Affordability
6 Act of 1996”.

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

Sec. 1. Short title; table of contents.

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

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

TITLE II—ENFORCEMENT PROVISIONS

Sec. 201. Implementation.

Subtitle A—FHA Single Family and Multifamily Housing

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

Subtitle B—FHA Multifamily

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (7) it is estimated that—

7 (A) if no changes in the terms and condi-
8 tions of the contracts for project-based assist-
9 ance are made before fiscal year 2000, the cost
10 of renewing all expiring rental assistance con-
11 tracts under section 8 of the United States
12 Housing Act of 1937 for both project-based and
13 tenant-based rental assistance will increase
14 from approximately \$4,000,000,000 in fiscal
15 year 1997 to over \$17,000,000,000 by fiscal
16 year 2000 and some \$23,000,000,000 in fiscal
17 year 2006;

18 (B) of those renewal amounts, the cost of
19 renewing project-based assistance will increase
20 from \$1,200,000,000 in fiscal year 1997 to al-
21 most \$8,000,000,000 by fiscal year 2006; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **SEC. 102. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (8) MULTIFAMILY HOUSING MANAGEMENT
21 AGREEMENT.—The term “multifamily housing man-
22 agement agreement” means the agreement entered
23 into between the Secretary and a participating ad-
24 ministrative entity, as provided under section 103 of
25 the title.

1 (9) PARTICIPATING ADMINISTRATIVE ENTITY.—

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

6 (10) PROJECT-BASED ASSISTANCE.—The term

7 “project-based assistance” means rental assistance
8 under section 8 of the United States Housing Act of
9 1937 that is attached to a multifamily housing
10 project.

11 (11) RENEWAL.—The term “renewal” means

12 the replacement of an expiring Federal rental con-
13 tract with a new contract under section 8 of the
14 United States Housing Act of 1937, consistent with
15 the requirements of this title.

16 (12) SECRETARY.—The term “Secretary”

17 means the Secretary of Housing and Urban Develop-
18 ment.

19 (13) STATE.—The term “State” has the same

20 meaning as in section 104 of the Cranston-Gonzalez
21 National Affordable Housing Act.

22 (14) TENANT-BASED ASSISTANCE.—The term

23 “tenant-based assistance” has the same meaning as
24 in section 8(f) of the United States Housing Act of
25 1937.

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

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

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

12 (a) PARTICIPATING ADMINISTRATIVE ENTITIES.—

13 (1) IN GENERAL.—The Secretary shall enter
 14 into multifamily housing management agreements
 15 with participating administrative entities for the im-
 16 plementation of mortgage restructuring and rental
 17 assistance sufficiency plans to restructure FHA-in-
 18 sured multifamily housing mortgages, in order to—

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

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

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

1 (2) MULTIFAMILY HOUSING MANAGEMENT
2 AGREEMENTS.—Each multifamily housing manage-
3 ment agreement entered into under this subsection
4 shall—

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

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

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

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

7 (E) require each mortgage restructuring
8 and rental assistance sufficiency plan prepared
9 in accordance with the requirements of section
10 104 for each eligible multifamily housing
11 project;

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

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

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

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

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

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

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

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

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

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

1 (3) ALTERNATIVE ADMINISTRATORS.—With re-
2 spect to any eligible multifamily housing project that
3 is located in a State or local jurisdiction in which the
4 Secretary determines that a participating adminis-
5 trative entity is not located, is unavailable, or does
6 not qualify, the Secretary shall either—

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

10 (B) contract with other qualified entities
11 that meet the requirements of subsection (b),
12 with the exception of subsection (b)(1)(A), the
13 authority to carry out all or a portion of the re-
14 quirements of this title with respect to that eli-
15 gible multifamily housing project.

16 (4) PREFERENCE FOR STATE HOUSING FI-
17 NANCE AGENCIES AS PARTICIPATING ADMINISTRA-
18 TIVE ENTITIES.—For each State in which eligible
19 multifamily housing projects are located, the Sec-
20 retary shall give preference to the housing finance
21 agency of that State or, if a State housing finance
22 agency is unqualified or has declined to participate,
23 a local housing agency to act as the participating ad-
24 ministrative entity for that State or for the jurisdic-
25 tion in which the agency located.

1 (5) STATE PORTFOLIO REQUIREMENTS.—

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

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

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

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

21 (a) IN GENERAL.—

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

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

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

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

14 (b) NOTICE REQUIREMENTS.—

15 (1) ESTABLISHMENT.—

16 (A) IN GENERAL.—The Secretary shall es-
17 tablish notice procedures and hearing require-
18 ments for tenants and owners concerning the
19 dates for the expiration of project-based assist-
20 ance contracts for any eligible multifamily hous-
21 ing project.

22 (B) 12-MONTH NOTICE.—Under the hear-
23 ing requirements established under this para-
24 graph, the owner shall provide 12 months notice
25 in writing before the expiration of the initial

1 project-based assistance contract to tenants of
2 any eligible multifamily housing project.

3 (2) EXTENSION OF CONTRACT TERM.—Subject
4 to agreement by a project owner, the Secretary may
5 extend the term of any expiring contract or provide
6 a section 8 contract with rent levels set in accord-
7 ance with subsection (f)(2) for a period sufficient to
8 facilitate the implementation of a mortgage restruc-
9 turing and rental assistance sufficiency plan, as de-
10 termined by the Secretary.

11 (c) TENANT RENT PROTECTION.—If the owner of a
12 project with an expiring Federal rental assistance contract
13 does not agree to extend the contract, the Secretary shall
14 make tenant-based assistance available to tenants residing
15 in units assisted under the expiring contract at the time
16 of expiration.

17 (d) MORTGAGE RESTRUCTURING AND RENTAL AS-
18 SISTANCE SUFFICIENCY PLAN.—Each mortgage restruc-
19 turing and rental assistance sufficiency plan shall—

20 (1) except as otherwise provided, restructure
21 the project-based assistance rents for the eligible
22 multifamily housing property in a manner consistent
23 with subsection (e);

24 (2) require the owner or purchaser of an eligible
25 multifamily mortgage housing project with an expir-

1 ing contract to submit to the participating adminis-
2 trative entity a comprehensive housing needs assess-
3 ment, in accordance with the information and data
4 requirements of section 403 of the Housing and
5 Community Development Act of 1992, including
6 such other data, information, and requirements as
7 the Secretary may require to be included as part of
8 the comprehensive needs assessment;

9 (3) require the owner or purchaser of the
10 project to provide or contract for competent manage-
11 ment of the project;

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

17 (A) the Secretary; or

18 (B) local housing codes or codes adopted

19 by public housing agencies that—

20 (i) meet or exceed housing quality
21 standards established by the Secretary;

22 and

23 (ii) do not severely restrict housing
24 choice;

1 (5) require the owner or purchaser of the
2 project to maintain affordability and use restrictions
3 for 20 years, as the participating administrative en-
4 tity determines to be appropriate, which restrictions
5 shall be consistent with the long-term physical and
6 financial viability character of the project as afford-
7 able housing;

8 (6) meet subsidy layering requirements under
9 guidelines established by the Secretary; and

10 (7) require the owner or purchaser of the
11 project to meet such other requirements as the Sec-
12 retary determines to be appropriate.

13 (e) TENANT AND COMMUNITY PARTICIPATION AND
14 CAPACITY BUILDING.—

15 (1) PROCEDURES.—

16 (A) IN GENERAL.—The Secretary shall es-
17 tablish procedures to provide an opportunity for
18 tenants of the project and other affected par-
19 ties, including local government and the com-
20 munity in which the project is located, to par-
21 ticipate effectively in the restructuring process
22 established by this title.

23 (B) CRITERIA.—These procedures shall in-
24 clude—

1 (i) the rights to timely and adequate
2 written notice of the proposed decisions of
3 the owner or the Secretary or participating
4 administrative entity;

5 (ii) timely access to all relevant infor-
6 mation (except for information determined
7 to be proprietary under standards estab-
8 lished by the Secretary);

9 (iii) an adequate period to analyze
10 this information and provide comments to
11 the Secretary or participating administra-
12 tive entity (which comments shall be taken
13 into consideration by the Administrator);
14 and

15 (iv) if requested, a meeting with a
16 representative of the Administrator and
17 other affected parties.

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

23 (A) The Multifamily Housing Management
24 Agreement.

1 (B) Any proposed expiration of the section
2 8 contract.

3 (C) The project's eligibility for restructur-
4 ing pursuant to section 106 and the mortgage
5 restructuring and rental assistance sufficiency
6 plan pursuant to section 104.

7 (D) Physical inspections.

8 (E) Capital needs and management assess-
9 ments, whether before or after restructuring.

10 (F) Any proposed transfer of the project.

11 (3) FUNDING.—

12 (A) IN GENERAL.—The Secretary may
13 provide not more than \$10,000,000 annually in
14 funding to tenant groups, nonprofit organiza-
15 tions, and public entities for building the capac-
16 ity of tenant organizations, for technical assist-
17 ance in furthering any of the purposes of this
18 title (including transfer of developments to new
19 owners) and for tenant services, from those
20 amounts made available under appropriations
21 Acts for implementing this title.

22 (B) ALLOCATION.—The Secretary may al-
23 locate any funds made available under subpara-
24 graph (A) through existing technical assistance
25 programs and procedures developed pursuant to

1 any other Federal law, including the Low-In-
2 come Housing Preservation and Resident
3 Homeownership Act of 1990 and the Multifam-
4 ily Property Disposition Reform Act of 1994.

5 (C) PROHIBITION.—None of the funds
6 made available under subparagraph (A) may be
7 used directly or indirectly to pay for any per-
8 sonal service, advertisement, telegram, tele-
9 phone, letter, printed or written matter, or
10 other device, intended or designed to influence
11 in any manner a Member of Congress, to favor
12 or oppose, by vote or otherwise, any legislation
13 or appropriation by the Congress, whether be-
14 fore or after the introduction of any bill or reso-
15 lution proposing such legislation or appropria-
16 tion.

17 (f) RENT LEVELS.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), each mortgage restructuring and rental
20 assistance sufficiency plan pursuant to the terms,
21 conditions, and requirements of this title shall estab-
22 lish for units assisted with project-based assistance
23 in eligible multifamily housing projects adjusted rent
24 levels that—

1 (A) are equivalent to rents derived from
2 comparable properties, if—

3 (i) the participating administrative en-
4 tity makes the rent determination not later
5 than 60 days after the owner submits a
6 mortgage restructuring and rental assist-
7 ance sufficiency plan; and

8 (ii) the market rent determination is
9 based on not less than 2 comparable prop-
10 erties; or

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

14 (2) EXCEPTIONS.—

15 (A) IN GENERAL.—A contract under this
16 section may include rent levels that exceed the
17 rent level described in paragraph (1) at rent
18 levels that do not exceed 120 percent of the
19 local fair market rent if the participating ad-
20 ministrative entity—

21 (i) determines, that the housing needs
22 of the tenants and the community cannot
23 be adequately addressed through imple-
24 mentation of the rent limitation required
25 to be established through a mortgage re-

1 structuring and rental assistance suffi-
2 ciency plan under paragraph (1); and

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

5 (B) EXCEPTION RENTS.—In any fiscal
6 year, a participating administrative entity may
7 approve exception rents on not more than 20
8 percent of all units in the geographic jurisdic-
9 tion of the entity with expiring contracts in that
10 fiscal year, except that the Secretary may waive
11 this ceiling upon a finding of special need in the
12 geographic area served by the participating ad-
13 ministrative entity.

14 (3) RENT LEVELS FOR EXCEPTION
15 PROJECTS.—For purposes of this section, a project
16 eligible for an exception rent shall receive a rent cal-
17 culation on the actual and projected costs of operat-
18 ing the project, at a level that provides income suffi-
19 cient to support a budget-based rent that consists
20 of—

21 (A) the debt service of the project;

22 (B) the operating expenses of the project,
23 as determined by the participating administra-
24 tive entity, including—

25 (i) contributions to adequate reserves;

1 (ii) the costs of maintenance and nec-
2 essary rehabilitation; and

3 (iii) other eligible costs permitted
4 under section 8 of the United States Hous-
5 ing Act of 1937;

6 (C) an adequate allowance for potential op-
7 erating losses due to vacancies and failure to
8 collect rents, as determined by the participating
9 administrative entity;

10 (D) an allowance for a reasonable rate of
11 return to the owner or purchaser of the project,
12 as determined by the participating administra-
13 tive entity, which shall not exceed 7 percent of
14 the return on equity; and

15 (E) other expenses determined by the par-
16 ticipating administrative entity to be necessary
17 for the operation of the project.

18 (g) EXEMPTIONS FROM RESTRUCTURING.—Subject
19 to section 106, the Secretary shall renew project-based as-
20 sistance contracts at existing rents if—

21 (1) the project was financed through obligations
22 such that the implementation of a mortgage restruc-
23 turing and rental assistance plan under this section
24 is inconsistent with applicable law or agreements
25 governing such financing;

1 (2) in the determination of the Secretary or the
2 participating administrative entity, the refinancing
3 would not result in significant savings to the Sec-
4 retary; or

5 (3) the project has an expiring contract under
6 section 8 of the United States Housing Act of 1937
7 but does not qualify as an eligible multifamily
8 project pursuant to section 102(6) of this title.

9 **SEC. 105. SECTION 8 RENEWALS AND LONG-TERM AFFORD-**
10 **ABILITY COMMITMENT BY OWNER OF**
11 **PROJECT.**

12 (a) SECTION 8 RENEWALS OF RESTRUCTURED
13 PROJECTS.—Subject to the availability of amounts pro-
14 vided in advance in appropriations Acts, the Secretary
15 shall enter into contracts with participating administrative
16 entities pursuant to which the participating administrative
17 entity shall offer to renew or extend an expiring section
18 8 contract on an eligible multifamily project, and the
19 owner of the project shall accept the offer, provided the
20 initial renewal is in accordance with the terms and condi-
21 tions specified in the mortgage restructuring and rental
22 sufficiency plan.

23 (b) REQUIRED COMMITMENT.—After the initial re-
24 newal of a section 8 contract pursuant to this section, the
25 owner shall accept each offer made pursuant to subsection

1 (a) to renew the contract, for a period of 20 years from
2 the date of the initial renewal, if the offer to renew is on
3 terms and conditions specified in the mortgage restoration
4 and rental sufficiency plan.

5 **SEC. 106. PROHIBITION ON RESTRUCTURING.**

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

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

19 (A) knowingly and materially violating any
20 Federal, State, or local law or regulation with
21 regard to this project or any other federally as-
22 sisted project;

23 (B) knowingly and materially breaching a
24 contract for assistance under section 8 of the
25 United States Housing Act of 1937;

1 (C) knowingly and materially violating any
2 applicable regulatory or other agreement with
3 the Secretary or a participating administrative
4 entity;

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

8 (E) materially failing to maintain the prop-
9 erty according to housing quality standards
10 after receipt of notice and a reasonable oppor-
11 tunity to cure; or

12 (F) committing any actions or omissions
13 that would warrant suspension or debarment by
14 the Secretary;

15 (2) the owner or purchaser of the property ma-
16 terially failed to follow the procedures and require-
17 ments of this title, after receipt of notice and an op-
18 portunity to cure; or

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

22 (b) OPPORTUNITY TO DISPUTE FINDINGS.—

23 (1) IN GENERAL.—During the 30-day period
24 beginning on the date on which the owner or pur-
25 chaser of an eligible multifamily housing project re-

1 ceives notice of a rejection under subsection (a) or
2 of a mortgage restructuring and rental assistance
3 sufficiency plan under section 104, the Secretary or
4 participating administrative entity shall provide that
5 owner or purchaser with an opportunity to dispute
6 the basis for the rejection and an opportunity to
7 cure.

8 (2) AFFIRMATION, MODIFICATION, OR REVER-
9 SAL.—

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

17 (B) REASONS FOR DECISION.—The Sec-
18 retary or the participating administrative en-
19 tity, as applicable, shall identify the reasons for
20 any final decision under this paragraph.

21 (C) REVIEW PROCESS.—The Secretary
22 shall establish an administrative review process
23 to appeal any final decision under this para-
24 graph.

1 (c) FINAL DETERMINATION.—Any final determina-
2 tion under this section shall not be subject to judicial re-
3 view.

4 (d) DISPLACED TENANTS.—Subject to the availabil-
5 ity of amounts provided in advance in appropriations Acts,
6 for any low-income tenant that is residing in a project or
7 receiving assistance under section 8 of the United States
8 Housing Act of 1937 at the time of rejection under this
9 section, that tenant shall be provided with tenant-based
10 assistance and reasonable moving expenses, as determined
11 by the Secretary.

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

1 **SEC. 107. RESTRUCTURING TOOLS.**

2 (a) RESTRUCTURING TOOLS.—For purposes of this
3 title, and to the extent these actions are consistent with
4 this section, an approved mortgage restructuring and as-
5 sistance sufficiency plan may include one or more of the
6 following:

7 (1) FULL OR PARTIAL PAYMENT OF CLAIM.—
8 Making a full payment of claim or partial payment
9 of claim under section 541(b) of the National Hous-
10 ing Act.

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

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

1 (4) CREDIT ENHANCEMENT.—Any additional
2 State or local mortgage credit enhancements and
3 risk-sharing arrangements may be established with
4 State or local housing finance agencies, the Federal
5 Housing Finance Board, the Federal National Mort-
6 gage Association, and the Federal Home Loan Mort-
7 gage Corporation, to a modified first mortgage.

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

20 (6) RESIDUAL RECEIPTS.—Applying any ac-
21 quired residual receipts to maintain the long-term
22 affordability and physical condition of the property.
23 The participating administrative entity may expedite
24 the acquisition of residual receipts by entering into
25 agreements with owners of housing covered by an

1 expiring contract to provide an owner with a share
2 of the receipts, not to exceed 10 percent.

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

18 (8) MORTGAGE RESTRUCTURING.—Restructur-
19 ing mortgages to provide a structured first mortgage
20 to cover rents at levels that are established in sec-
21 tion 104(f) and a second mortgage equal to the dif-
22 ference between the restructured first mortgage and
23 the mortgage balance of the eligible multifamily
24 housing project at the time of restructuring. The
25 second mortgage shall bear interest at a rate not to

1 exceed the applicable Federal rate for a term not to
2 exceed 40 years. If the first mortgage remains out-
3 standing, payments of interest and principal on the
4 second mortgage shall be made from all excess
5 project income only after the payment of all reason-
6 able and necessary operating expenses (including de-
7 posits in a reserve for replacement), debt service on
8 the first mortgage, and such other expenditures as
9 may be approved by the Secretary. Except as re-
10 quired by the preceding sentence, during the period
11 in which the first mortgage remains outstanding, no
12 payments of interest or principal shall be required
13 on the second mortgage. The second mortgage shall
14 be assumable by any subsequent purchaser of any
15 multifamily housing project, pursuant to guidelines
16 established by the Secretary. The principal and ac-
17 crued interest due under the second mortgage shall
18 be fully payable upon disposition of the property, un-
19 less the mortgage is assumed under the preceding
20 sentence. The owner shall begin repayment of the
21 second mortgage upon full payment of the first
22 mortgage in equal monthly installments in an
23 amount equal to the monthly principal and interest
24 payments formerly paid under the first mortgage.
25 The principal and interest of a second mortgage

1 shall be immediately due and payable upon a finding
2 by the Secretary that an owner has failed to materi-
3 ally comply with this title or any requirements of the
4 United States Housing Act of 1937 as those require-
5 ments apply to the applicable project. Any credit
6 subsidy costs of providing a second mortgage shall
7 be paid from the General Insurance Fund and the
8 Special Risk Insurance Fund.

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

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

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

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

18 “(a) IN GENERAL.—To meet”; and

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

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

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

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

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

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

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

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

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

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

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

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

19 (1) enforcement of the provisions of this title;

20 and

21 (2) remedies for the breach of those provisions.

22 (b) PERIODIC MONITORING.—

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

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

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

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

15 **SEC. 111. REVIEW.**

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

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

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

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

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

13 (b) REPORT.—

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

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

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

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

7 **SEC. 113. REGULATIONS.**

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

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

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

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

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

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

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

10 “(5) **CALCULATION OF LIMIT.**—Any contract
11 entered into under section 104 of the Multifamily
12 Assisted Housing Reform and Affordability Act of
13 1996 shall be excluded in computing the limit on
14 project-based assistance under this subsection.”.

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

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

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

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

1 “(b) EXISTING MORTGAGES.—Notwithstanding any
 2 other provision of law, the Secretary, in connection with
 3 a mortgage restructuring under section 104 of the Multi-
 4 family Assisted Housing Reform and Affordability Act of
 5 1996, may make a one time, nondefault partial payment
 6 of the claim under the mortgage insurance contract, which
 7 shall include a determination by the Secretary or the par-
 8 ticipating administrative entity, in accordance with the
 9 Multifamily Assisted Housing Reform and Affordability
 10 Act of 1996, of the market value of the project and a re-
 11 structuring of the mortgage, under such terms and condi-
 12 tions as the Secretary may establish.”.

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

14 (a) IN GENERAL.—Except as provided in subsection
 15 (b), this title is repealed effective October 1, 2001.

16 (b) EXCEPTION.—The repeal under this section does
 17 not apply with respect to projects and programs for which
 18 binding commitments have been entered into before Octo-
 19 ber 1, 2001.

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

22 **SEC. 201. IMPLEMENTATION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (2) in paragraph (2)—

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (2) in subsection (d)(1)—

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

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

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

4 **Subtitle B—FHA Multifamily**

5 **SEC. 220. CIVIL MONEY PENALTIES AGAINST GENERAL** 6 **PARTNERS, OFFICERS, DIRECTORS, AND CER-** 7 **TAIN MANAGING AGENTS OF MULTIFAMILY** 8 **PROJECTS.**

9 (a) CIVIL MONEY PENALTIES AGAINST MULTIFAM-
10 ILY MORTGAGORS.—Section 537 of the National Housing
11 Act (12 U.S.C. 1735f–15) is amended—

12 (1) in subsection (b)(1), by striking “on that
13 mortgagor” and inserting the following: “on that
14 mortgagor, on a general partner of a partnership
15 mortgagor, or on any officer or director of a cor-
16 porate mortgagor”;

17 (2) in subsection (c)—

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

20 “(c) OTHER VIOLATIONS.—”; and

21 (B) in paragraph (1)—

22 (i) by striking “VIOLATIONS.—The
23 Secretary may” and all that follows
24 through the colon and inserting the follow-
25 ing:

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

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

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

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

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

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

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

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

3 (ii) in subparagraph (B), as des-
4 ignated by clause (i), by redesignating the
5 subparagraph designations (A) through
6 (L) as clauses (i) through (xii), respec-
7 tively;

8 (iii) by adding after clause (xii), as re-
9 designated by clause (ii), the following new
10 clauses:

11 “(xiii) Failure to maintain the prem-
12 ises, accommodations, any living unit in
13 the project, and the grounds and equip-
14 ment appurtenant thereto in good repair
15 and condition in accordance with regula-
16 tions and requirements of the Secretary,
17 except that nothing in this clause shall
18 have the effect of altering the provisions of
19 an existing regulatory agreement or feder-
20 ally insured mortgage on the property.

21 “(xiv) Failure, by a mortgagor, a gen-
22 eral partner of a partnership mortgagor, or
23 an officer or director of a corporate mort-
24 gagor, to provide management for the
25 project that is acceptable to the Secretary

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

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

6 (3) in subsection (d)—

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

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

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

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

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

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

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

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

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

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

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

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

19 (b) IMPLEMENTATION.—

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

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

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

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

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

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

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

19 **WITH SECTION 8 HAP CONTRACTS.**

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

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

24 **OWNERS.**

25 **“(a) IN GENERAL.—**

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

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

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

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

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

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

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

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

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

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

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

16 “(c) AGENCY PROCEDURES.—

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

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

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

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

9 “(2) FINAL ORDERS.—

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

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

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

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

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

7 “(A) the gravity of the offense;

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

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

13 “(D) any injury to tenants;

14 “(E) any injury to the public;

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

17 “(G) deterrence of future violations; and

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

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

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

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

3 “(e) REMEDIES FOR NONCOMPLIANCE.—

4 “(1) JUDICIAL INTERVENTION.—

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

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

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

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

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

6 “(g) DEPOSIT OF PENALTIES.—

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

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

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

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

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

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

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

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

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

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

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

1 (c) IMPLEMENTATION.—

2 (1) REGULATIONS.—

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

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

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

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

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

21 (1) in subsection (a)(1)—

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

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

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

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

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

4 (4) in subsection (c)—

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

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

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

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

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

○