

**PART XIII—OTHER RELATED PROVISIONS OF
LAW**

**FEDERAL HOME LOAN BANKS COMMUNITY
INVESTMENT AND AFFORDABLE HOUSING PROGRAMS**

EXCERPT FROM FEDERAL HOME LOAN BANK ACT

[Public Law 101-73; 103 Stat. 183; 12 U.S.C. 1430]

ADVANCES TO MEMBERS

SEC. 10. (a) * * *

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(i) [12 U.S.C. 1430] COMMUNITY INVESTMENT PROGRAM.—

(1) **IN GENERAL.**—Each Bank¹ shall establish a program to provide funding for members to undertake community-oriented mortgage lending. Each Bank shall designate a community investment officer to implement community lending and affordable housing advance programs of the Banks under this subsection and subsection (j) and provide technical assistance and outreach to promote such programs. Advances under this program shall be priced at the cost of consolidated Federal Home Loan Bank obligations of comparable maturities, taking into account reasonable administrative costs.

(2) **COMMUNITY-ORIENTED MORTGAGE LENDING.**—For purposes of this subsection, the term “community-oriented mortgage lending” means providing loans—

(A) to finance home purchases by families whose income does not exceed 115 percent of the median income for the area,

(B) to finance purchase or rehabilitation of housing for occupancy by families whose income does not exceed 115 percent of median income for the area,

(C) to finance commercial and economic development activities that benefit low- and moderate-income families or activities that are located in low- and moderate-income neighborhoods, and

(D) to finance projects that further a combination of the purposes described in subparagraphs (A) through (C).

(j) AFFORDABLE HOUSING PROGRAM.—

¹Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422) provides that, for purposes of such Act, the “term ‘Federal Home Loan Bank’ or ‘Bank’ means a bank established under the authority of the Federal Home Loan Bank Act.”

(1) IN GENERAL.—Pursuant to regulations promulgated by the Board,¹ each Bank shall establish an Affordable Housing Program to subsidize the interest rate on advances to members engaged in lending for long term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates.

(2) STANDARDS.—The Board's regulations shall permit Bank members to use subsidized advances received from the Banks to—

(A) finance homeownership by families with incomes at or below 80 percent of the median income for the area; or

(B) finance the purchase, construction, or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term.

(3) PRIORITIES FOR MAKING ADVANCES.—In using advances authorized under paragraph (1), each Bank member shall give priority to qualified projects such as the following:

(A) purchase² of homes by families whose income is 80 percent or less of the median income for the area,³

(B) purchase² or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States; and

(C) purchase² or rehabilitation of housing sponsored by any nonprofit organization, any State or political subdivision of any State, any local housing authority or State housing finance agency.

(4) REPORT.—Each member receiving advances under this program shall report annually to the Bank making such advances concerning the member's use of advances received under this program.

(5) CONTRIBUTION TO PROGRAM.—Each Bank shall annually contribute the percentage of its annual net earnings prescribed in the following subparagraphs to support subsidized advances through the Affordable Housing Program:

(A) In 1990, 1991, 1992, and 1993, 5 percent of the preceding year's net income, or such prorated sums as may be required to assure that the aggregate contribution of all the Banks shall not be less than \$50,000,000 for each such year.

(B) In 1994, 6 percent of the preceding year's net income, or such prorated sum as may be required to assure that the aggregate contribution of the Banks shall not be less than \$75,000,000 for such year.

(C) In 1995, and subsequent years, 10 percent of the preceding year's net income, or such prorated sums as may

¹Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422) provides that, for purposes of such Act, the "term 'Board' means the Federal Housing Finance Board established under section 2A".

²So in law. In subparagraphs (A) through (C) the first letter of the first word probably should be capitalized and subparagraphs (A) and (B) should probably end with a period.

³So in law. The comma probably should be a semicolon.

be required to assure that the aggregate contribution of the Banks shall not be less than \$100,000,000 for each such year.

(6) GROUNDS FOR SUSPENDING CONTRIBUTIONS.—

(A) IN GENERAL.—If a Bank finds that the payments required under this paragraph are contributing to the financial instability of such Bank, it may apply to the Federal Housing Finance Board for a temporary suspension of such payments.

(B) FINANCIAL INSTABILITY.—In determining the financial instability of a Bank, the Federal Housing Finance Board shall consider such factors as (i) whether the Bank's earnings are severely depressed, (ii) whether there has been a substantial decline in membership capital, and (iii) whether there has been a substantial reduction in advances outstanding.

(C) REVIEW.—The Board shall review the application and any supporting financial data and issue a written decision approving or disapproving such application. The Board's decision shall be accompanied by specific findings and reasons for its action.

(D) MONITORING SUSPENSION.—If the Board grants a suspension, it shall specify the period of time such suspension shall remain in effect and shall continue to monitor the Bank's financial condition during such suspension.

(E) LIMITATIONS ON GROUNDS FOR SUSPENSION.—The Board shall not suspend payments to the Affordable Housing Program if the Bank's reduction in earnings is a result of (i) a change in the terms for advances to members which is not justified by market conditions, (ii) inordinate operating and administrative expenses, or (iii) mismanagement.

(F) The Federal Housing Finance Board shall notify the Committee on Banking, Finance and Urban Affairs of the House of Representatives¹ and the Committee on Banking, Housing, and Urban Affairs of the Senate not less than 60 days before such suspension takes effect. Such suspension shall become effective unless a joint resolution is enacted disapproving such suspension.

(7) FAILURE TO USE AMOUNTS FOR AFFORDABLE HOUSING.—If any Bank fails to utilize or commit the full amount provided in this subsection in any year, 90 percent of the amount that has not been utilized or committed in that year shall be deposited by the Bank in an Affordable Housing Reserve Fund administered by the Board. The 10 percent of the unutilized and uncommitted amount retained by a Bank should be fully utilized or committed by that Bank during the following year and any remaining portion must be deposited in the Affordable Housing Reserve Fund. Under regulations established by the Board, funds from the Affordable Housing Reserve Fund may

¹Section 1(a) of Public Law 104-14, 109 Stat. 186, provides, in part, that "any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives".

be made available to any Bank to meet additional affordable housing needs in such Bank's district pursuant to this section.

(8) NET EARNINGS.—The net earnings of any Federal Home Loan Bank shall be determined for purposes of this paragraph—

(A) after reduction for any payment required under section 21 or 21B of this Act; and

(B) before declaring any dividend under section 16.

(9) REGULATIONS.—The Federal Housing Finance Board shall promulgate regulations to implement this subsection. Such regulations shall, at a minimum—

(A) specify activities eligible to receive subsidized advances from the Banks under this program;

(B) specify priorities for the use of such advances;

(C) ensure that advances made under this program will be used only to assist projects for which adequate long-term monitoring is available to guarantee that affordability standards and other requirements of this subsection are satisfied;

(D) ensure that a preponderance of assistance provided under this subsection is ultimately received by low- and moderate-income households;

(E) ensure that subsidies provided by Banks to member institutions under this program are passed on to the ultimate borrower;

(F) establish uniform standards for subsidized advances under this program and subsidized lending by member institutions supported by such advances, including maximum subsidy and risk limitations for different categories of loans made under this subsection; and

(G) coordinate activities under this subsection with other Federal or federally-subsidized affordable housing activities to the maximum extent possible.

(10) OTHER PROGRAMS.—No provision of this subsection or subsection (i) shall preclude any Bank from establishing additional community investment cash advance programs or contributing additional sums to the Affordable Housing Reserve Fund.

(11) ADVISORY COUNCIL.—Each Bank shall appoint an Advisory Council of 7 to 15 persons drawn from community and nonprofit organizations actively involved in providing or promoting low- and moderate-income housing in its district. The Advisory Council shall meet with representatives of the board of directors of the Bank quarterly to advise the Bank on low- and moderate-income housing programs and needs in the district and on the utilization of the advances for these purposes. Each Advisory Council established under this paragraph shall submit to the Board at least annually its analysis of the low-income housing activity of the Bank by which it is appointed.

(12) REPORTS TO CONGRESS.—

(A) The Board shall monitor and report annually to the Congress and the Advisory Council for each Bank the support of low-income housing and community develop-

ment by the Banks and the utilization of advances for these purposes.

(B) The analyses submitted by the Advisory Councils to the Board under paragraph (11) shall be included as part of the report required by this paragraph.

(C) The Comptroller General of the United States shall audit and evaluate the Affordable Housing Program established by this subsection after such program has been operating for 2 years. The Comptroller General shall report to Congress on the conclusions of the audit and recommend improvements or modifications to the program.

(13) DEFINITIONS.—For purposes of this subsection—

(A) LOW- OR MODERATE-INCOME HOUSEHOLD.—The term “low- or moderate-income household” means any household which has an income of 80 percent or less of the area median.

(B) VERY LOW-INCOME HOUSEHOLD.—The term “very low-income household” means any household that has an income of 50 percent or less of the area median.

(C) LOW- OR MODERATE-INCOME NEIGHBORHOOD.—The term “low- or moderate-income neighborhood” means any neighborhood in which 51 percent or more of the households are low- or moderate-income households.

(D) AFFORDABLE FOR VERY-LOW INCOME HOUSEHOLDS.—For purposes of paragraph (2)(B) the term “affordable for very-low income households” means that rents charged to tenants for units made available for occupancy by low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the income for the area (as determined by the Secretary of Housing and Urban Development) with adjustment for family size.

(C) The Comptroller General of the United States shall audit and evaluate the Affordable Housing Program established by this subsection after such program has been operating for 2 years. The Comptroller General shall report to Congress on the conclusions of the audit and recommend improvements or modifications to the program.

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(C) LOW- OR MODERATE-INCOME NEIGHBORHOOD.—The term “low- or moderate-income neighborhood” means any neighborhood in which 51 percent or more of the households are low- or moderate-income households.

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by low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the income for the area (as determined by the Secretary of Housing and Urban Development) with adjustment for family size.

**FEDERAL DEPOSIT INSURANCE CORPORATION
AFFORDABLE HOUSING PROGRAM**

EXCERPT FROM FEDERAL DEPOSIT INSURANCE ACT

[Public Law 102-242; 105 Stat. 2317; 12 U.S.C. 1831q]

SEC. 40. [12 U.S.C. 1831q] FDIC AFFORDABLE HOUSING PROGRAM.

(a) **PURPOSE.**—The purpose of this section is to provide homeownership and rental housing opportunities for very low-income, low-income, and moderate-income families.

(b) **FUNDING AND LIMITATIONS OF PROGRAM.**—

(1) **DURATION OF PROGRAM.**—The provisions of this section shall be effective, subject to the provisions of paragraph (2), only during the 3-year period beginning upon the commencement of the first fiscal year for which amounts are provided pursuant to paragraph (2)(A).

(2) **ANNUAL FISCAL LIMITATIONS.**—

(A) **IN GENERAL.**—In each fiscal year during the 3-year period referred to in paragraph (1), the provisions of this section shall apply only—

(i) to such extent or in such amounts as are provided in appropriations Acts for any losses resulting during the fiscal year from the sale of properties under this section, except that such amounts for losses may not exceed \$30,000,000 in any fiscal year; and

(ii) to the extent that amounts are provided in appropriations Acts pursuant to subparagraph (C) for any other costs relating to the program under this section.

(B) **DEFINITION OF LOSSES.**—For purposes of this paragraph, the amount of losses resulting from the sale of properties under this section during any fiscal year shall be the amount equal to the sum of any affordable housing discounts reasonably anticipated to accrue during the fiscal year.

(C) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated, for each fiscal year during the 3-year period referred to in paragraph (1), such sums as may be necessary for any costs of the program under this section other than losses resulting from the sale of properties under this section.

(D) **OTHER DEFINITIONS.**—For purposes of this paragraph:

(i) **AFFORDABLE HOUSING DISCOUNT.**—The term “affordable housing discount” means, with respect to any eligible residential or eligible condominium property transferred under this section by the Corporation, the difference (if any) between the realizable disposi-

tion value of the property and the actual sale price of the property under this section.

(ii) **REALIZABLE DISPOSITION VALUE.**—The term “realizable disposition value” means the estimated sale price that the Corporation reasonably would be able to obtain upon the sale of a property by the Corporation under the provisions of this Act, not including this section, and any other applicable laws. Not later than the expiration of the 120-day period beginning upon the commencement of the first fiscal year for which amounts are provided pursuant to paragraph (2)(A), the Corporation shall establish, and publish in the Federal Register, procedures for determining the realizable disposition value of a property transferred under this section, which shall take into consideration such factors as the Corporation considers appropriate, including the actual sale prices of properties disposed of by the Resolution Trust Corporation under section 21A(c) of the Federal Home Loan Bank Act, the prices of other properties sold under similar programs, and the appraised value of the property transferred under this section. Until such procedures are established, the Corporation may consider the realizable disposition value of any eligible residential or condominium property to be equal to the appraised value of the property.

(3) **EXISTING CONTRACTS.**—The provisions of this section shall not apply to any eligible residential property or any eligible condominium property that is subject to an agreement entered into by the Corporation before the commencement of the first fiscal year for which amounts are provided pursuant to paragraph (2)(A) that provides for any other disposition of the property.

(c) **RULES GOVERNING DISPOSITION OF ELIGIBLE SINGLE FAMILY PROPERTIES.**—

(1) **NOTICE TO CLEARINGHOUSES.**—Within a reasonable period of time after acquiring title to an eligible single family property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property, including but not limited to location, condition, and information relating to the estimated fair market value of the property. Each clearinghouse shall make such information available, upon request, to other public agencies, other nonprofit organizations, and qualifying households. The Corporation shall allow public agencies, nonprofit organizations, and qualifying households reasonable access to eligible single family property for purposes of inspection.

(2) **OFFERS TO SELL TO NONPROFIT ORGANIZATIONS, PUBLIC AGENCIES, AND QUALIFYING HOUSEHOLDS.**—During the 180-day period beginning on the date on which the Corporation makes an eligible single family property available for sale, the Corporation shall offer to sell the property to—

(A) qualifying households (including qualifying households with members who are veterans); or

(B) public agencies or nonprofit organizations that agree to (i) make the property available for occupancy by and maintain it as affordable for low-income families (including low-income families with members who are veterans) for the remaining useful life of such property, or (ii) make the property available for purchase by any such family who, except as provided in paragraph (4), agrees to occupy the property as a principal residence for at least 12 months and certifies in writing that the family intends to occupy the property for at least 12 months.

The restrictions described in clause (i) of subparagraph (B) shall be contained in the deed or other recorded instrument. If, upon the expiration of such 180-day period, no qualifying household, public agency, or nonprofit organization has made a bona fide offer to purchase the property, the Corporation may offer to sell the property to any purchaser. The Corporation shall actively market eligible single family properties for sale to low-income families and to low-income families with members who are veterans.

(3) RECAPTURE OF PROFITS FROM RESALE.—Except as provided in paragraph (4), if any eligible single family property sold (A) to a qualifying household, or (B) to a low-income family pursuant to paragraph (2)(B)(ii), subsection (j)(3)(A), or subsection (k)(2), is resold by the qualifying household or low-income family during the 1-year period beginning upon initial acquisition by the household or low-income family, the Corporation shall recapture 75 percent of the amount of any proceeds from the resale that exceed the sum of (i) the original sale price for the acquisition of the property by the qualifying household or low-income family, (ii) the costs of any improvements to the property made after the date of the acquisition, and (iii) any closing costs in connection with the acquisition.

(4) EXCEPTIONS TO RECAPTURE REQUIREMENT.—

(A) RELOCATION.—The Corporation may in its discretion waive the applicability (i) to any qualifying household of the requirement under paragraph (3) and the requirements relating to residency of a qualifying household under subparagraphs (B) and (C) of subsection (p)(12), and (ii) to any low-income family of the requirement under paragraph (3) and the residency requirements under paragraph (2)(B)(ii). The Corporation may grant any such waiver only for good cause shown, including any necessary relocation of the qualifying household or low-income family.

(B) OTHER RECAPTURE PROVISIONS.—The requirement under paragraph (3) shall not apply to any eligible single family property for which, upon resale by the qualifying household or low-income family during the 1-year period beginning upon initial acquisition by the household or family, a portion of the sale proceeds or any subsidy provided in connection with the acquisition of the property by the household or family is required to be recaptured or repaid under any other Federal, State, or local law (including section 143(m) of the Internal Revenue Code of 1986) or regulation or under any sale agreement.

(5) EXCEPTION TO AVOID DISPLACEMENT OF EXISTING RESIDENTS.—Notwithstanding the first sentence of paragraph (2), during the 180-day period following the date on which the Corporation makes an eligible single family property available for sale, the Corporation may sell the property to the household residing in the property, but only if (A) such household was residing in the property at the time notice regarding the property was provided to clearinghouses under paragraph (1), (B) such sale is necessary to avoid the displacement of, and unnecessary hardship to, the resident household, (C) the resident household intends to occupy the property as a principal residence for at least 12 months, and (D) the resident household certifies in writing that the household intends to occupy the property for at least 12 months.

(d) RULES GOVERNING DISPOSITION OF ELIGIBLE MULTIFAMILY HOUSING PROPERTIES.—

(1) NOTICE TO CLEARINGHOUSES.—Within a reasonable period of time after acquiring title to an eligible multifamily housing property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property, including but not limited to location, number of units (identified by number of bedrooms), and information relating to the estimated fair market value of the property. Each clearinghouse shall make such information available, upon request, to qualifying multifamily purchasers. The Corporation shall allow qualifying multifamily purchasers reasonable access to eligible multifamily housing properties for purposes of inspection.

(2) EXPRESSION OF SERIOUS INTEREST.—Qualifying multifamily purchasers may give written notice of serious interest in a property during a period ending 90 days after the time the Corporation provides notice under paragraph (1). The notice of serious interest shall be in such form and include such information as the Corporation may prescribe.

(3) NOTICE OF READINESS FOR SALE.—Upon the expiration of the period referred to in paragraph (2) for a property, the Corporation shall provide written notice to any qualifying multifamily purchaser that has expressed serious interest in the property. Such notice shall specify the minimum terms and conditions for sale of the property.

(4) OFFERS BY QUALIFYING MULTIFAMILY PURCHASERS.—A qualifying multifamily purchaser receiving notice in accordance with paragraph (3) shall have 45 days (from the date notice is received) to make a bona fide offer to purchase the property. The Corporation shall accept an offer that complies with the terms and conditions established by the Corporation. If, before the expiration of such 45-day period, any offer to purchase a property initially accepted by the Corporation is subsequently rejected or fails (for any reason), the Corporation shall accept another offer to purchase the property made during such period that complies with the terms and conditions established by the Corporation (if such another offer is made). The preceding sentence may not be construed to require a qualifying multifamily purchaser whose offer is accepted during the 45-day

period to purchase the property before the expiration of the period.

(5) EXTENSION OF RESTRICTED OFFER PERIODS.—The Corporation may provide notice to clearinghouses regarding, and offer for sale under the provisions of paragraphs (1) through (4), any eligible multifamily housing property—

(A) in which no qualifying multifamily purchaser has expressed serious interest during the period referred to in paragraph (2), or

(B) for which no qualifying multifamily purchaser has made a bona fide offer before the expiration of the period referred to in paragraph (4),

except that the Corporation may, in the discretion of the Corporation, alter the duration of the periods referred to in paragraphs (2) and (4) in offering any property for sale under this paragraph.

(6) SALE OF MULTIFAMILY PROPERTIES TO OTHER PURCHASERS.—

(A) TIMING.—If, upon the expiration of the period referred to in paragraph (2), no qualifying multifamily purchaser has expressed serious interest in a property, the Corporation may offer to sell the property, individually or in combination with other properties, to any purchaser.

(B) LIMITATION ON COMBINATION SALES.—The Corporation may not sell in combination with other properties any property for which a qualifying multifamily purchaser has expressed serious interest in purchasing individually.

(C) EXPIRATION OF OFFER PERIOD.—If, upon the expiration of the period referred to in paragraph (4), no qualifying multifamily purchaser has made an offer to purchase a property, the Corporation may offer to sell the property, individually or in combination with other properties, to any purchaser.

(7) LOW-INCOME OCCUPANCY REQUIREMENTS.—

(A) SINGLE PROPERTY PURCHASES.—With respect to any purchase of a single eligible multifamily housing property by a qualifying multifamily purchaser under paragraph (4) or (5)—

(i) not less than 35 percent of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for low-income and very low-income families during the remaining useful life of the property in which the units are located; provided that

(ii) not less than 20 percent of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for very low-income families during the remaining useful life of the property in which the units are located.

(B) AGGREGATION REQUIREMENTS FOR MULTIPROPERTY PURCHASES.—With respect to any purchase under paragraph (4) or (5) by a qualifying multifamily purchaser involving more than one eligible multifamily housing property as a part of the same negotiation, with respect to

which the purchaser intends to aggregate the low-income occupancy required under this paragraph over the total number of units so purchased—

(i) not less than 40 percent of the aggregate number of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for low-income and very low-income families during the remaining useful life of the building or structure in which the units are located; provided that

(ii) not less than 20 percent of the aggregate number of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for very low-income families during the remaining useful life of the building or structure in which the units are located; and further provided that

(iii) not less than 10 percent of the dwelling units in each separate property purchased shall be made available for occupancy by and maintained as affordable for low-income families during the remaining useful life of the property in which the units are located.

The requirements of this paragraph shall be contained in the deed or other recorded instrument.

(8) EXEMPTIONS.—

(A) CONTINUED OCCUPANCY OF CURRENT RESIDENTS.—

No purchaser of an eligible multifamily property may terminate the occupancy of any person residing in the property on the date of purchase for purposes of meeting the low-income occupancy requirement applicable to the property under paragraph (7). The purchaser shall be considered to be in compliance with this subsection if each newly vacant dwelling unit is reserved for low-income occupancy until the low-income occupancy requirement is met.

(B) FINANCIAL INFEASIBILITY.—The Secretary or the State housing finance agency for the State in which an eligible multifamily housing property is located may temporarily reduce the low-income occupancy requirements under paragraph (7) applicable to the property, if the Secretary or such agency determines that an owner's compliance with such requirements is no longer financially feasible. The owner of the property shall make a good-faith effort to return low-income occupancy to the level required under paragraph (7), and the Secretary or the State housing finance agency, as appropriate, shall review the reduction annually to determine whether financial infeasibility continues to exist.

(e) RENT LIMITATIONS.—

(1) IN GENERAL.—With respect to properties under paragraph (2), rents charged to tenants for units made available for occupancy by very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the median income for the area, as determined by the Secretary, with adjustment for family size. Rents charged to tenants for units made available for occupancy by low-income families other than very low-income families shall

not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

(2) **APPLICABILITY.**—The rent limitations under this subsection shall apply to any eligible single family property sold pursuant to subsection (c)(2)(B)(i) and to any eligible multifamily housing property sold pursuant to subsection (d).

(f) **PREFERENCES FOR SALES.**—

(1) **IN GENERAL.**—In selling any eligible multifamily housing property or combinations of eligible residential properties, the Corporation shall give preference, among substantially similar offers, to the offer that would reserve the highest percentage of dwelling units for occupancy or purchase by very low-income and low-income families and would retain such affordability for the longest term.

(2) **MULTIPROPERTY PURCHASES.**—The Corporation shall give preference, among substantially similar offers made under paragraph (4) or (5) of subsection (d) to purchase more than one eligible multifamily housing property as a part of the same negotiation, to offers made by purchasers who agree to maintain low-income occupancy in each separate property purchased in compliance with the levels required for properties under subsection (d)(7)(A).

(3) **DEFINITION OF SUBSTANTIALLY SIMILAR OFFERS.**—For purposes of this subsection, a given offer to purchase eligible multifamily housing property or combinations of such properties shall be considered to be substantially similar to another offer if the purchase price under such given offer is not less than 85 percent of the purchase price under the other offer.

(g) **FINANCING SALES.**—

(1) **ASSISTANCE BY CORPORATION.**—

(A) **SALE PRICE.**—The Corporation shall establish a market value for each eligible multifamily housing property. The Corporation shall sell eligible multifamily housing property at the net realizable market value, except that the Corporation may agree to sell eligible multifamily housing property at a price below the net realizable market value to the extent necessary to facilitate an expedited sale of such property and enable a public agency or nonprofit organization to comply with the low-income occupancy requirements applicable to such property under subsection (d)(7). The Corporation may sell eligible single family property or eligible condominium property to qualifying households, nonprofit organizations, and public agencies without regard to any minimum sale price.

(B) **PURCHASE LOAN.**—The Corporation may provide a loan at market interest rates to any purchaser of eligible residential property for all or a portion of the purchase price, which loan shall be secured by a first or second mortgage on the property. The Corporation may provide the loan at below market interest rates to the extent necessary to facilitate an expedited sale of eligible residential property and permit (i) a low-income family to purchase an

eligible single family property under subsection (c), or (ii) a public agency or nonprofit organization to comply with the low-income occupancy requirements applicable to the purchase of an eligible residential property under subsection (c) or (d). The Corporation shall provide loans under this subparagraph in a form permitting sale or transfer of the loan to a subsequent holder. In providing financing for combinations of eligible multifamily housing properties under this section, the Corporation may hold a participating share, including a subordinate participation. The Corporation shall periodically provide, to a wide range of minority- and women-owned businesses engaged in providing affordable housing and to nonprofit organizations, more than 50 percent of the control of which is held by 1 or more minority individuals, that are engaged in providing affordable housing, information that is sufficient to inform such businesses and organizations of the availability and terms of financing under this subparagraph; such information may be provided directly, by notices published in periodicals and other publications that regularly provide information to such businesses or organizations, and through persons and organizations that regularly provide information or services to such businesses or organizations. For purposes of this subparagraph, the terms “women-owned business” and “minority-owned business” have the meanings given such terms in section 21A(r) of the Federal Home Loan Bank Act, and the term “minority” has the meaning given such term in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(2) ASSISTANCE BY HUD.—The Secretary shall take such action as may be necessary to expedite the processing of applications for assistance under section 202 of the Housing Act of 1959, the United States Housing Act of 1937, title IV of the Stewart B. McKinney Homeless Assistance Act, and the National Housing Act, to enable any organization or individual to purchase eligible residential property.

(3) ASSISTANCE BY FMHA.—The Secretary of Agriculture shall take such action as may be necessary to expedite the processing of applications for assistance under title V of the Housing Act of 1949 to enable any organization or individual to purchase eligible residential property.

(4) EXCEPTION TO DISPOSITION RULES.—Notwithstanding the requirements under paragraphs (1), (2), (3), (4), (6), and (8) of subsection (d), the Corporation may provide for the disposition of eligible multifamily housing properties as necessary to facilitate purchase of such properties for use in connection with section 202 of the Housing Act of 1959.

(5) BULK ACQUISITIONS UNDER HOME INVESTMENT PARTNERSHIPS ACT.—

(A) PURCHASE PRICE.—In providing for bulk acquisition of eligible single family properties by participating jurisdictions for inclusion in affordable housing activities under title II of the Cranston-Gonzalez National Afford-

able Housing Act, the Corporation shall agree to an amount to be paid for acquisition of such properties. The acquisition price shall include discounts for bulk purchase and for holding of the property such that the acquisition price for each property shall not exceed the fair market value of the property, as valued individually.

(B) EXEMPTIONS.—To the extent necessary to facilitate sale of properties under this paragraph, the requirements of subsections (c) and (f) and of paragraph (1) of this subsection shall not apply to such transactions and properties involved in such transactions.

(C) INVENTORIES.—To facilitate acquisitions by such participating jurisdictions, the Corporation shall provide the participating jurisdictions with inventories of eligible single family properties not less than 4 times each year.

(h) COORDINATION WITH OTHER PROGRAMS.—

(1) USE OF SECONDARY MARKET AGENCIES.—In the disposition of eligible residential properties, the Corporation (in consultation with the Secretary) shall explore opportunities to work with secondary market entities to provide housing for low- and moderate-income families.

(2) CREDIT ENHANCEMENT.—

(A) IN GENERAL.—With respect to such properties, the Secretary may, consistent with statutory authorities, work through the Federal Housing Administration, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and other secondary market entities to develop risk-sharing structures, mortgage insurance, and other credit enhancements to assist in the provision of property ownership, rental, and cooperative housing opportunities for low- and moderate-income families.

(B) CERTAIN TAX-EXEMPT BONDS.—The Corporation may provide credit enhancements with respect to tax-exempt bonds issued on behalf of nonprofit organizations pursuant to section 103, and subpart A of part IV of subchapter A of chapter 1, of the Internal Revenue Code of 1986, with respect to the disposition of eligible residential properties for the purposes described in subparagraph (A).

(3) NATIONAL AFFORDABLE HOUSING ACT.—The Corporation shall coordinate the disposition of eligible residential property under this section with appropriate programs and provisions of, and amendments made by, the Cranston-Gonzalez National Affordable Housing Act, including titles II and IV of such Act.

(i) EXEMPTION FOR CERTAIN TRANSACTIONS WITH INSURED DEPOSITORY INSTITUTIONS.—The provisions of this section shall not apply with respect to any eligible residential property after the date the Corporation enters into a contract to sell such property to an insured depository institution (as defined in section 3), including any sale in connection with a transfer of all or substantially all of the assets of a closed insured depository institution (including such property) to another insured depository institution.

(j) TRANSFER OF CERTAIN ELIGIBLE RESIDENTIAL PROPERTIES TO STATE HOUSING AGENCIES FOR DISPOSITION.—Notwithstanding

subsections (c), (d), (f), and (g), the Corporation may transfer eligible residential properties to the State housing finance agency or any other State housing agency for the State in which the property is located, or to any local housing agency in whose jurisdiction the property is located. Transfers of eligible residential properties under this subsection may be conducted by direct sale, consignment sale, or any other method the Corporation considers appropriate and shall be subject to the following requirements:

(1) **INDIVIDUAL OR BULK TRANSFER.**—The Corporation may transfer such properties individually or in bulk, as agreed to by the Corporation and the State housing finance agency or State or local housing agency.

(2) **ACQUISITION PRICE.**—The acquisition price paid by the State housing finance agency or State or local housing agency to the Corporation for properties transferred under this subsection shall be an amount agreed to by the Corporation and the transferee agency.

(3) **LOW-INCOME USE.**—Any State housing finance agency or State or local housing agency acquiring properties under this subsection shall offer to sell or transfer the properties only as follows:

(A) **ELIGIBLE SINGLE FAMILY PROPERTIES.**—For eligible single family properties—

(i) to purchasers described under subparagraphs (A) and (B) of subsection (c)(2);

(ii) if the purchaser is a purchaser described under subsection (c)(2)(B)(i), subject to the rent limitations under subsection (e)(1);

(iii) subject to the requirement in the second sentence of subsection (c)(2); and

(iv) subject to recapture by the Corporation of excess proceeds from resale of the properties under paragraphs (3) and (4) of subsection (c).

(B) **ELIGIBLE MULTIFAMILY HOUSING PROPERTIES.**—For eligible multifamily housing properties—

(i) to qualifying multifamily purchasers;

(ii) subject to the low-income occupancy requirements under subsection (d)(7);

(iii) subject to the provisions of subsection (d)(8);

(iv) subject to a preference, among financially acceptable offers, to the offer that would reserve the highest percentage of dwelling units for occupancy or purchase by very low- and low-income families and would retain such affordability for the longest term; and

(v) subject to the rent limitations under subsection (e)(1).

(4) **AFFORDABILITY.**—The State housing finance agency or State or local housing agency shall endeavor to make the properties transferred under this subsection more affordable to low-income families based upon the extent to which the acquisition price of a property under paragraph (2) is less than the market value of the property.

(k) EXCEPTION FOR SALES TO NONPROFIT ORGANIZATIONS AND PUBLIC AGENCIES.—

(1) SUSPENSION OF OFFER PERIODS.—With respect to any eligible residential property, the Corporation may (in the discretion of the Corporation) suspend any of the requirements of paragraphs (1) and (2) of subsection (c) and paragraphs (1) through (4) of subsection (d), as applicable, but only to the extent that for the duration of the suspension the Corporation negotiates the sale of the property to a nonprofit organization or public agency. If the property is not sold pursuant to such negotiations, the requirements of any provisions suspended shall apply upon the termination of the suspension. Any time period referred to in such subsections shall toll for the duration of any suspension under this paragraph.

(2) USE RESTRICTIONS.—

(A) ELIGIBLE SINGLE FAMILY PROPERTY.—Any eligible single family property sold under this subsection shall be (i) made available for occupancy by and maintained as affordable for low-income families for the remaining useful life of the property, or made available for purchase by such families, (ii) subject to the rent limitations under subsection (e)(1), (iii) subject to the requirements relating to residency of a qualifying household under subsection (p)(12) and to residency of a low-income family under subsection (c)(2)(B), and (iv) subject to recapture by the Corporation of excess proceeds from resale of the property under paragraphs (3) and (4) of subsection (c).

(B) ELIGIBLE MULTIFAMILY HOUSING PROPERTY.—Any eligible multifamily housing property sold under this subsection shall comply with the low-income occupancy requirements under subsection (d)(7) and shall be subject to the rent limitations under subsection (e)(1).

(l) RULES GOVERNING DISPOSITION OF ELIGIBLE CONDOMINIUM PROPERTY.—

(1) NOTICE TO CLEARINGHOUSES.—Within a reasonable period of time after acquiring title to an eligible condominium property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property. Each clearinghouse shall make such information available, upon request, to purchasers described in subparagraphs (A) through (D) of paragraph (2). The Corporation shall allow such purchasers reasonable access to an eligible condominium property for purposes of inspection.

(2) OFFERS TO SELL.—For the 180-day period following the date on which the Corporation makes an eligible condominium property available for sale, the Corporation may offer to sell the property, at the discretion of the Corporation, to 1 or more of the following purchasers:

- (A) Qualifying households.
- (B) Nonprofit organizations.
- (C) Public agencies.
- (D) For-profit entities.

(3) LOW-INCOME OCCUPANCY REQUIREMENTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any nonprofit organization, public agency, or for-profit entity that purchases an eligible condominium property shall (i) make the property available for occupancy by and maintain it as affordable for low-income families for the remaining useful life of the property, or (ii) make the property available for purchase by any such family who, except as provided in paragraph (5), agrees to occupy the property as a principal residence for at least 12 months and certifies in writing that the family intends to occupy the property for at least 12 months. The restriction described in clause (i) of the preceding sentence shall be contained in the deed or other recorded instrument.

(B) MULTIPLE-UNIT PURCHASES.—If any nonprofit organization, public agency, or for-profit entity purchases more than 1 eligible condominium property as a part of the same negotiation or purchase, the Corporation may (in the discretion of the Corporation) waive the requirement under subparagraph (A) and provide instead that not less than 35 percent of all eligible condominium properties purchased shall be (i) made available for occupancy by and maintained as affordable for low-income families for the remaining useful life of the property, or (ii) made available for purchase by any such family who, except as provided in paragraph (5), agrees to occupy the property as a principal residence for at least 12 months and certifies in writing that the family intends to occupy the property for at least 12 months. The restriction described in clause (i) of the preceding sentence shall be contained in the deed or other recorded instrument.

(C) SALE TO OTHER PURCHASERS.—If, upon the expiration of the 180-day period referred to in paragraph (2), no purchaser described in subparagraphs (A) through (D) of paragraph (2) has made a bona fide offer to purchase the property, the Corporation may offer to sell the property to any other purchaser.

(4) RECAPTURE OF PROFITS FROM RESALE.—Except as provided in paragraph (5), if any eligible condominium property sold (A) to a qualifying household, or (B) to a low-income family pursuant to paragraph (3)(A)(ii) or (3)(B)(ii), is resold by the qualifying household or low-income family during the 1-year period beginning upon initial acquisition by the household or family, the Corporation shall recapture 75 percent of the amount of any proceeds from the resale that exceed the sum of (i) the original sale price for the acquisition of the property by the qualifying household or low-income family, (ii) the costs of any improvements to the property made after the date of the acquisition, and (iii) any closing costs in connection with the acquisition.

(5) EXCEPTION TO RECAPTURE REQUIREMENT.—The Corporation (or its successor) may in its discretion waive the applicability to any qualifying household or low-income family of the requirement under paragraph (4) and the requirements relating to residency of a qualifying household or low-income family

(under subsection (p)(12) and paragraph (3) of this subsection, respectively). The Corporation may grant any such a waiver only for good cause shown, including any necessary relocation of the qualifying household or low-income family.

(6) LIMITATIONS ON MULTIPLE UNIT PURCHASES.—The Corporation may not sell or offer to sell as part of the same negotiation or purchase any eligible condominium properties that are not located in the same condominium project (as such term is defined in section 604 of the Housing and Community Development Act of 1980). The preceding sentence may not be construed to require all eligible condominium properties offered or sold as part of the same negotiation or purchase to be located in the same structure.

(7) RENT LIMITATIONS.—Rents charged to tenants of eligible condominium properties made available for occupancy by very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the median income for the area, as determined by the Secretary, with adjustment for family size. Rents charged to tenants of eligible condominium properties made available for occupancy by low-income families other than very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

(m) LIABILITY PROVISIONS.—

(1) IN GENERAL.—The provisions of this section, or any failure by the Corporation to comply with such provisions, may not be used by any person to attack or defeat any title to property after it is conveyed by the Corporation.

(2) LOW-INCOME OCCUPANCY.—The low-income occupancy requirements under subsections (c), (d), (j)(3), (k)(2), and (l)(3) shall be judicially enforceable against purchasers of property under this section and their successors in interest by affected very low- and low-income families, State housing finance agencies, and any agency, corporation, or authority of the United States. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

(3) CLEARINGHOUSES.—A clearinghouse shall not be subject to suit for its failure to comply with the requirements of this section.

(4) CORPORATION.—The Corporation shall not be liable to any depositor, creditor, or shareholder of any insured depository institution for which the Corporation has been appointed receiver or conservator, or of any subsidiary corporation of a depository institution under receivership or conservatorship, or any claimant against such institution or subsidiary, because the disposition of assets of the institution or the subsidiary under this section affects the amount of return from the assets.

(n) UNIFIED AFFORDABLE HOUSING PROGRAMS.—

(1) IN GENERAL.—Not later than 4 months after the date of enactment of the Resolution Trust Corporation Completion

Act,¹ the Corporation shall enter into an agreement, as described in paragraph (3), with the Resolution Trust Corporation that sets out a plan for the orderly unification of the Corporation's activities, authorities, and responsibilities under this section with the authorities, activities, and responsibilities of the Resolution Trust Corporation pursuant to section 21A(c) of the Federal Home Loan Bank Act in a manner that best achieves an effective and comprehensive affordable housing program management structure. The agreement shall be entered into after consultation with the Affordable Housing Advisory Board under section 14(b) of the Resolution Trust Corporation Completion Act.

(2) **AUTHORITY AND IMPLEMENTATION.**—The Corporation shall have the authority to carry out the provisions of the agreement entered into pursuant to paragraph (1) and shall implement such agreement as soon as practicable but in no event later than 8 months after the date of enactment of the Resolution Trust Corporation Completion Act.¹

(3) **TERMS OF AGREEMENT.**—The agreement required under paragraph (1) shall provide a plan for—

(A) a program unifying all activities and responsibilities of the Corporation and the Resolution Trust Corporation, and the design of the unified program shall take into consideration the substantial experience of the Resolution Trust Corporation regarding—

- (i) seller financing;
- (ii) technical assistance;
- (iii) marketing skills and relationships with public and nonprofit entities; and
- (iv) staff resources;

(B) the elimination of duplicative and unnecessary administrative costs and resources;

(C) the management structure of the unified program;

(D) a timetable for the unification; and

(E) a methodology to determine the extent to which the provisions of this section shall be effective, in accordance with the limitations under subsection (b)(2).

(4) **TRANSFER TO FDIC.**—Beginning not later than October 1, 1995, the Corporation shall carry out any remaining authority and responsibilities of the Resolution Trust Corporation, as set forth in section 21A(c) of the Federal Home Loan Bank Act.

(o) **REPORT.**—To the extent applicable, in the annual report submitted by the Secretary to the Congress under section 8 of the Department of Housing and Urban Development Act, the Secretary shall include a detailed description of any activities under this section, including recommendations for any additional authority the Secretary considers necessary to implement the provisions of this section.

(p) **DEFINITIONS.**—For purposes of this section:

(1) **ADJUSTED INCOME AND INCOME.**—The terms “adjusted income” and “income” shall have the meaning given such terms in section 3(b) of the United States Housing Act of 1937.

¹The date of enactment was December 17, 1993.

- (2) CLEARINGHOUSE.—The term “clearinghouse” means—
- (A) the State housing finance agency for the State in which an eligible residential property or eligible condominium property is located;
 - (B) the Office of Community Investment (or other comparable division) within the Federal Housing Finance Board; and
 - (C) any national nonprofit organizations (including any nonprofit entity established by the corporation established under title IX of the Housing and Community Development Act of 1968) that the Corporation determines has the capacity to act as a clearinghouse for information.
- (3) CORPORATION.—The term “Corporation” means the Federal Deposit Insurance Corporation acting in its corporate capacity or its capacity as receiver.
- (4) ELIGIBLE CONDOMINIUM PROPERTY.—The term “eligible condominium property” means a condominium unit, as such term is defined in section 604 of the Housing and Community Development Act of 1980—
- (A) to which such Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property); and
 - (B) that has an appraised value that does not exceed the amount provided in section 203(b)(2)(A) of the National Housing Act except that such amount shall not exceed \$101,250 in the case of a 1-family residence, \$114,000 in the case of a 2-family residence, \$138,000 in the case of a 3-family residence, and \$160,000 in the case of a 4-family residence.
- (5) ELIGIBLE MULTIFAMILY HOUSING PROPERTY.—The term “eligible multifamily housing property” means a property consisting of more than 4 dwelling units—
- (A) to which the Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property); and
 - (B) that has an appraised value that does not exceed the applicable dollar amount specified in section 221(d)(3)(ii) of the National Housing Act for elevator-type structures, as such dollar amount is increased under such section for geographical areas or on a project-by-project basis (except that any such increase on a project-by-project basis shall be made pursuant to a determination by the Corporation that such increase is necessary).
- (6) ELIGIBLE RESIDENTIAL PROPERTY.—The term “eligible residential property” includes eligible single family properties and eligible multifamily housing properties.

(7) **ELIGIBLE SINGLE FAMILY PROPERTY.**—The term “eligible single family property” means a 1- to 4-family residence (including a manufactured home)—

(A) to which the Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property); and

(B) that has an appraised value that does not exceed the amount provided in section 203(b)(2)(A) of the National Housing Act except that such amount shall not exceed \$101,250 in the case of a 1-family residence, \$114,000 in the case of a 2-family residence, \$138,000 in the case of a 3-family residence, and \$160,000 in the case of a 4-family residence.

(8) **LOW-INCOME FAMILIES.**—The term “low-income families” means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary, with adjustment for family size.

(9) **NET REALIZABLE MARKET VALUE.**—The term “net realizable market value” means a price below the market value that takes into account (A) any reductions in holding costs resulting from the expedited sale of a property, including foregone real estate taxes, insurance, maintenance costs, security costs, and loss of use of funds, and (B) the avoidance, if applicable, of fees paid to real estate brokers, auctioneers, or other individuals or organizations involved in the sale of property owned by the Corporation.

(10) **NONPROFIT ORGANIZATION.**—The term “nonprofit organization” means a private organization (including a limited equity cooperative)—

(A) no part of the earnings of which inures to the benefit of any member, shareholder, founder, contributor, or individual; and

(B) that is approved by the Corporation as to financial responsibility.

(11) **PUBLIC AGENCY.**—The term “public agency” means any Federal, State, local, or other governmental entity, and includes any public housing agency.

(12) **QUALIFYING HOUSEHOLD.**—The term “qualifying household” means a household—

(A) who intends to occupy eligible single family property as a principal residence;

(B) who agrees to occupy the property as a principal residence for at least 12 months;

(C) who certifies in writing that the household intends to occupy the property as a principal residence for at least 12 months; and

(D) whose income does not exceed 115 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

(13) **QUALIFYING MULTIFAMILY PURCHASER.**—The term “qualifying multifamily purchaser” means—

- (A) a public agency;
- (B) a nonprofit organization; or
- (C) a for-profit entity, which makes a commitment (for itself or any related entity) to comply with the low-income occupancy requirements under subsection (d)(7) for any eligible multifamily housing property for which an offer to purchase is made during or after the periods specified under subsection (d).

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

(15) **STATE HOUSING FINANCE AGENCY.**—The term “State housing finance agency” means the public agency, authority, corporation, or other instrumentality of a State that has the authority to provide residential mortgage loan financing throughout the State.

(16) **VERY LOW-INCOME FAMILIES.**—The term “very low-income families” means families and individuals whose incomes do not exceed 50 percent of the median income of the area involved, as determined by the Secretary, with adjustment for family size.

(q) **NOTICE TO CLEARINGHOUSES REGARDING INELIGIBLE PROPERTIES.**—

(1) **IN GENERAL.**—Within a reasonable period of time after acquiring title to an ineligible residential property, the Corporation shall, to the extent practicable, provide written notice to clearinghouses.

(2) **CONTENT.**—For ineligible single family properties, such notice shall contain the same information about such properties that the notice required under subsection (c)(1) contains with respect to eligible single family properties. For ineligible multifamily housing properties, such notice shall contain the same information about such properties that the notice required under subsection (d)(1) contains with respect to eligible multifamily housing properties. For ineligible condominium properties, such notice shall contain the same information about such properties that the notice required under subsection (1)(1) contains with respect to eligible condominium properties.

(3) **AVAILABILITY.**—The clearinghouses shall make such information available, upon request, to other public agencies, other nonprofit organizations, qualifying households, qualifying multifamily purchasers, and other purchasers, as appropriate.

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

(A) **INELIGIBLE CONDOMINIUM PROPERTY.**—The term “ineligible condominium property” means any eligible condominium property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A).

(B) **INELIGIBLE MULTIFAMILY HOUSING PROPERTY.**—The term “ineligible multifamily housing property” means any eligible multifamily housing property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A).

(C) INELIGIBLE SINGLE FAMILY PROPERTY.—The term “ineligible single family property” means any eligible single family property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A).

(D) INELIGIBLE RESIDENTIAL PROPERTY.—The term “ineligible residential property” includes ineligible single family properties, ineligible multifamily housing properties, and ineligible condominium properties.

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NATIONAL INSTITUTE OF BUILDING SCIENCES
EXCERPT FROM HOUSING AND COMMUNITY DEVELOPMENT ACT OF
1974

[Public Law 93-383; 88 Stat. 729; 12 U.S.C. 1701j-2]

NATIONAL INSTITUTE OF BUILDING SCIENCES

SEC. 809. [12 U.S.C. 1701j-2] (a)(1) The Congress finds (A) that the lack of an authoritative national source to make findings and to advise both the public and private sectors of the economy with respect to the use of building science and technology in achieving nationally acceptable standards and other technical provision for use in Federal, State, and local housing and building regulations is an obstacle to efforts by and imposes severe burdens upon all those who procure, design, construct, use, operate, maintain, and retire physical facilities, and frequently results in the failure to take full advantage of new and useful developments in technology which could improve our living environment; (B) that the establishment of model buildings codes or of a single national building code will not completely resolve the problem because of the difficulty at all levels of government in updating their housing and building regulations to reflect new developments in technology, as well as the irregularities and inconsistencies which arise in applying such requirements to particular localities or special local conditions; (C) that the lack of uniform housing and building regulatory provisions increases the costs of construction and thereby reduces the amount of housing and other community facilities which can be provided; and (D) that the existence of a single authoritative nationally recognized institution to provide for the evaluation of new technology could facilitate introduction of such innovations and their acceptance at the Federal, State, and local levels.

(2) The Congress further finds, however, that while an authoritative source of technical findings is needed, various private organizations and institutions, private industry, labor, and Federal and other governmental agencies and entities are presently engaged in building research, technology development, testing, and evaluation, standards and model code development and promulgation, and information dissemination. These existing activities should be encouraged and these capabilities effectively utilized wherever possible and appropriate to the purposes of this section.

(3) The Congress declares that an authoritative nongovernmental instrument needs to be created to address the problems and issues described in paragraph (1), that the creation of such an instrument should be initiated by the Government, with the advice and assistance of the National Academy of Sciences-National Academy of Engineering-National Research Council (hereinafter referred to as the "Academies-Research Council") and of the various

sectors of the building community, including labor and management, technical experts in building science and technology, and the various levels of government.

(b)(1) There is authorized to be established, for the purposes described in subsection (a)(3), an appropriate nonprofit, nongovernmental instrument to be known as the National Institute of Building Sciences (hereinafter referred to as the "Institute"), which shall not be an agency or establishment of the United States Government. The Institute shall be subject to the provisions of this section and, to the extent consistent with this section, to a charter of the Congress if such a charter is requested and issued or to the District of Columbia Nonprofit Corporation Act if that is deemed preferable.

(2) The Academies-Research Council, along with other agencies and organizations which are knowledgeable in the field of building technology, shall advise and assist in (A) the establishment of the Institute; (B) the development of an organizational framework to encourage and provide for the maximum feasible participation of public and private scientific, technical, and financial organizations, institutions, and agencies now engaged in activities, pertinent to the development, promulgation, and maintenance of performance criteria, standards, and other technical provisions for building codes and other regulations, and (C) the promulgation of appropriate organizational rules and procedures including those for the selection and operation of a technical staff, such rules and procedures to be based upon the primary object of promoting the public interest and insuring that the widest possible variety of interests and experience essential to the functions of the Institute are represented in the Institute's operations. Recommendations of the Academies-Research Council shall be based upon consultations with and recommendations from various private organizations and institutions, labor, private industry, and governmental agencies entities operating in the field, and the Consultative Council as provided for under subsection (c)(8).

(3) Nothing in this section shall be construed as expressing the intent of the Congress that the Academies-Research Council itself be required to assume any function or operation vested in the Institute by or under this section.

(c)(1) The Institute shall have a Board of Directors (hereinafter referred to as the "Board") consisting of not less than fifteen nor more than twenty-one members, appointed by the President of the United States by and with the advice and consent of the Senate. The Board shall be representative of the various segments of the building community, of the various regions of the country, and of the consumers who are or would be affected by actions taken in the exercise of the functions and responsibilities of the Institute, and shall include (A) representatives of the construction industry, including representatives of construction labor organizations, product manufacturers, and builders, housing management experts, and experts in building standards, codes, and fire safety, and (B) members representative of the public interest in such numbers as may be necessary to assure that a majority of the members of the Board represent the public interest and that there is adequate consideration by the Institute of consumer interests in the exercise of its functions and responsibilities. Those representing the public inter-

est on the Board shall include architects, professional engineers, officials of Federal, State, and local agencies, and representatives of consumer organizations. Such members of the Board shall hold no financial interest or membership in, nor be employed by, or receive other compensation from, any company, association, or other group associated with the manufacture, distribution, installation, or maintenance of specialized building products, equipment, systems, subsystems, or other construction materials and techniques for which there are available substitutes.

(2) The members of the initial Board shall serve as incorporators and shall take whatever actions are necessary to establish the Institute as provided for under subsection (b)(1).

(3) The term of office of each member of the initial and succeeding Boards shall be three years; except that (A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (B) the terms of office of members first taking office shall begin on the date of incorporation and shall expire, as designated at the time of their appointment, one-third at the end of one year, one-third at the end of two years, and one-third at the end of three years. No member shall be eligible to serve in excess of three consecutive terms of three years each. Notwithstanding the preceding provisions of this subsection, a member whose term has expired may serve until his successor has qualified.

(4) Any vacancy in the initial and succeeding Boards shall not affect its power, but shall be filled in the manner in which the original appointments were made, or, after the first five years of operation, as provided for by the organizational rules and procedures of the Institute; except that, notwithstanding any such rules and procedures as may be adopted by the Institute, the President of the United States, by and with the advice and consent of the Senate, shall appoint, as representative of the public interest, two of the members of the Board of Directors selected each year for terms commencing in that year.

(5) The President shall designate one of the members appointed to the initial Board as Chairman; thereafter, the members of the initial and succeeding Boards shall annually elect one of their number as Chairman. The Members of the Board shall also elect one or more of their Members as Vice Chairman. Terms of the Chairman and Vice Chairman shall be for one year and no individual shall serve as Chairman or Vice Chairman for more than two consecutive terms.

(6) The members of the initial or succeeding Boards shall not, by reason of such membership, be deemed to be employees of the United States Government. They shall, while attending meetings of the Board or while engaged in duties related to such meetings or in other activities of the Board pursuant to this section, be entitled to receive compensation at the rate of \$100 per day including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, equal to that authorized under section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(7) The Institute shall have a president and such other executive officers and employees as may be appointed by the Board at rates of compensation fixed by the Board. No such executive officer or employee may receive any salary or other compensation from any source other than the Institute during the period of his employment by the Institute.

(8) The Institute shall establish, with the advice and assistance of the Academies-Research Council and other agencies and organizations which are knowledgeable in the field of building technology, a Consultative Council, membership in which shall be available to representatives of all appropriate private trade, professional, and labor organizations, private and public standards, code, and testing bodies, public regulatory agencies, and consumer groups, so as to insure a direct line of communication between such groups and the Institute and a vehicle for representative hearings on matters before the Institute.

(d)(1) The Institute shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income, or assets of the Institute shall inure to the benefit of any director, officer, employee, or other individual except as salary or reasonable compensation for services.

(3) The Institute shall not contribute to or otherwise support any political party or candidate for elective public office.

(e)(1) The Institute shall exercise its functions and responsibilities in four general areas, relating to building regulations, as follows:

(A) Development, promulgation, and maintenance of nationally recognized performance criteria, standards, and other technical provisions for maintenance of life, safety, health, and public welfare suitable for adoption by building regulations jurisdictions and agencies, including test methods and other evaluative techniques relating to building systems, subsystems, components, products, and materials with due regard for consumer problems.

(B) Evaluation and prequalification of existing and new building technology in accordance with subparagraph (A).

(C) Conduct of needed investigations in direct support of subparagraphs (A) and (B).

(D) Assembly, storage, and dissemination of technical data and other information directly related to subparagraphs (A), (B), and (C).

(2) The Institute in exercising its functions and responsibilities described in paragraph (1) shall assign and delegate, to the maximum extent possible, responsibility for conducting each of the needed activities described in paragraph (1) to one or more of the private organizations, institutions, agencies, and Federal and other governmental entities with a capacity to exercise or contribute to the exercise of such responsibility, monitor the performance achieved through assignment and delegation and, when deemed necessary, reassign and delegate such responsibility.

(3) The Institute in exercising its functions and responsibilities under paragraphs (1) and (2) shall (A) give particular attention to the development of methods for encouraging all sectors of the economy to cooperate with the Institute and to accept and use its tech-

nical findings, and to accept and use the nationally recognized performance criteria, standards, and other technical provisions developed for use in Federal, State, and local building codes and other regulations which result from the program of the Institute; (B) seek to assure that its actions are coordinated with related requirements which are imposed in connection with community and environmental development generally; and (C) consult with the Department of Justice and other agencies of government to the extent necessary to insure that the national interest is protected and promoted in the exercise of its functions and responsibilities.

(f)(1) The Institute is authorized to accept contracts and grants from Federal, State, and local governmental agencies and other entities, and grants and donations from private organizations, institutions, and individuals.

(2) The Institute may, in accordance with rates and schedules established with guidance as provided under subsection (b)(2), establish fees and other charges for services provided by the Institute or under its authorization.

(3) Amounts received by the Institute under this section shall be in addition to any amounts which may be appropriated to provide its initial operating capital under subsection (h).

(g)(1) Every department, agency, and establishment of the Federal Government, in carrying out any building or construction, or any building- or construction-related programs, which involves direct expenditures, and in developing technical requirements for any such building or construction, shall be encouraged to accept the technical findings of the Institute, or any nationally recognized performance criteria, standards, and other technical provisions for building regulations brought about by the Institute, which may be applicable.

(2) All projects and programs involving Federal assistance in the form of loans, grants, guarantees, insurance, or technical aid, or in any other form, shall be encouraged to accept, use, and comply with any of the technical findings of the Institute or any nationally recognized performance criteria, standards, and other technical provisions for building codes and other regulations brought about by the Institute, which may be applicable to the purposes for which the assistance is to be used.

(3) Every department, agency, and establishment of the Federal Government having responsibility for building or construction, or for building- or construction-related programs, is authorized and encouraged to request authorization and appropriations for grants to the Institute for its general support, and is authorized to contract with and accept contracts from the Institute for specific services where deemed appropriate by the responsible Federal official involved.

(4) The Institute shall establish and carry on a specific and continuing program of cooperation with the States and their political subdivisions designed to encourage their acceptance of its technical findings and of nationally recognized performance criteria, standards, and other technical provisions for building regulations brought about by the Institute. Such program shall include (A) efforts to encourage any changes in existing State and local law to utilize or embody such findings and regulatory provisions; and (B)

assistance to States in the development of inservice training programs for building officials, and in the establishment of fully staffed and qualified State technical agencies to advise local officials on questions of technical interpretation.

(h) **ADVANCED BUILDING TECHNOLOGY PROGRAM.**—

(1) **ESTABLISHMENT OF ADVANCED BUILDING TECHNOLOGY COUNCIL.**—There is established within the Institute, the Advanced Building Technology Council (hereafter referred to as the “Council”).

(2) **PURPOSES.**—The Council shall carry out an Advanced Building Technology Program for the purposes of—

(A) identifying, selecting, and evaluating existing and new building technologies, including energy cost savings technologies, that conform to recognized performance criteria and meet applicable test standards for maintenance of life, safety, health, and public welfare when used in occupied buildings;

(B) to the extent necessary, developing criteria for the use of such technology;

(C) conducting economic analyses of proposed new technologies when produced and installed in buildings at volumes associated with comparable conventional technologies;

(D) in cooperation with the appropriate Federal agencies, advising building designers, installers, subcontractors, contractors and supervisory officials on the appropriate design and use of new building technology incorporated in federally owned or operated buildings;

(E) in cooperation with the appropriate Federal agencies, monitoring and evaluating the performance of new building technologies for at least 1 year after installation and building occupancy; and

(F) disseminating resulting data to affected parties through automated information management systems.

(3) **COUNCIL MEMBERSHIP.**—The Council shall be comprised of not less than 6 and not more than 11 members selected by the Secretary of Housing and Urban Development from among representatives of the various segments of the nationwide building community that have extensive experience in building industries, including, but not limited to—

(A) product manufacturers;

(B) experts in the fields of health, fire hazards, and safety; and

(C) independent representatives of the public interest such as architects, professional engineers, and representatives of consumer organizations,

except that serving members of the National Institute of Building Sciences Advisory Council shall not be eligible to serve simultaneously on the Council.

(4) **FEDERAL PARTICIPATION.**—

(A) **IN GENERAL.**—Any agency of the Federal Government involved in any building or construction may participate in the Advanced Building Technology Program with the Council to develop and implement programs to incor-

porate one or more of the recommended new technologies in a new or existing building within the agency.

(B) REQUIRED ASSURANCES.—Upon agreement between a participating Federal agency and the Council, with respect to the selection of the appropriate technology and the schedule of necessary work, the Council shall—

(i) provide the Federal agency with a 5-year guarantee from the technology manufacturer that—

(I) all necessary corrections to the technology will be made in the design, installation, and maintenance of the technology;

(II) all malfunctions will be repaired without delay; and

(III) the technology manufacturer will be responsible for removal of the technology in the event of its failure to perform as required;

(ii) provide the Federal agency and its officials responsible for constructing or renovating buildings utilizing the new technology, as well as the designers, installers, subcontractors, and contractors responsible for the design, construction, or renovation of the buildings utilizing such technology with the technical information necessary to ensure its most appropriate use,

(iii) in cooperation with the Federal agency, monitor and evaluate the performance of the new technology, and

(iv) prepare reports to be made available to public agencies at all levels of government, the industry, and the public on the performance of the new technology.

(5) REPORT TO THE INSTITUTE.—The Council shall submit to the Institute annually a description of its activities under the Advanced Building Technology Program for inclusion in the Institute's annual report to the Congress under subsection (j).

(i) There is authorized to be appropriated to the Institute not to exceed \$5,000,000 for the fiscal year 1975, and \$5,000,000 for the fiscal year 1976, and \$5,000,000 for each of the fiscal years 1977 and 1978, and any amounts not appropriated in fiscal years 1977 and 1978 may be appropriated in any fiscal year through 1984 (with not more than \$500,000 to be appropriated for each of the fiscal years 1982, 1983, and 1984 and with each appropriation to be available until expended), to provide the Institute with initial capital adequate for the exercise of its functions and responsibilities during such years; and thereafter the Institute shall be financially self-sustaining through the means described in subsection (f). In addition to the amounts authorized to be appropriated under the first sentence of this section, there are authorized to be appropriated to the Institute to carry out the provisions of this section not to exceed \$512,000 for fiscal year 1991 and \$534,000 for fiscal year 1992. Any amount appropriated under the preceding sentence shall be made available for expenditure or obligation by the Institute only to the extent of an equal amount received by the Institute after the effective date of this sentence from persons or entities other than the Federal Government.

(j) The Institute shall submit an annual report for the preceding fiscal year to the President for transmittal to the Congress within sixty days of its receipt. The report shall include a comprehensive and detailed report of the Institute's operations, activities, financial condition, and accomplishments under this section and may include such recommendations as the Institute deems appropriate.

NATIONAL HOUSING PARTNERSHIPS

EXCERPTS FROM HOUSING AND URBAN DEVELOPMENT ACT OF 1968

[Public Law 90-448; 82 Stat. 547; 42 U.S.C. 3931 et seq.]

TITLE IX—NATIONAL HOUSING PARTNERSHIPS

STATEMENT OF PURPOSE

SEC. 901. [42 U.S.C. 3931] The Congress finds that the volume of housing being produced for families and individuals of low or moderate income must be increased to meet the national goal of a decent home and a suitable living environment for every American family, and declare that it is the policy of the United States to encourage the widest possible participation by private enterprise in the provision of housing for low or moderate income families. The Congress has therefore determined that one or more private organizations should be created to encourage maximum participation by private investors in programs and projects to provide low and moderate income housing.

CREATION OF CORPORATIONS

SEC. 902. [42 U.S.C. 3932] (a) There is hereby authorized to be created a private corporation for profit (hereinafter in this title referred to as the "corporation"). The corporation will not be an agency or establishment of the United States Government. The corporation shall be subject to the provisions of this title and, to the extent consistent with this title, to the District of Columbia Business Corporation Act (D.C. Code, sec. 29-901 et seq.).

(b) Whenever the President finds it in the national interest to do so, he may cause the creation of an additional corporation or additional corporations to carry out the purposes of this title. All the provisions of this title shall thereupon become applicable to each such corporation, and to the limited partnership formed by it pursuant to section 907.

(c) Nothing in this title shall be construed to preclude private persons from creating other corporations and organizing other partnerships, joint ventures, or associations for the purposes set forth in this title as the purposes of the corporation and the partnership described in section 907.

PROCESS OF ORGANIZATION

SEC. 903. [42 U.S.C. 3933] (a) The President of the United States shall appoint, by and with the advice and consent of the Senate, incorporators of the corporation, one of whom shall be designated by the President to serve as chairman. The incorporators shall serve as the initial board of directors until the first annual

meeting of stockholders or until their successors are elected and have qualified.

(b) The incorporators shall take whatever actions are necessary or appropriate to establish the corporation, including the filing of articles of incorporation as approved by the President.

(c) The incorporators shall arrange for an initial offering of shares of stock in the corporation and of interests in the partnership described in section 907 of this title. If the incorporators deem it advisable in order to carry out the purposes of this title, the initial offering may be made upon terms which require the purchase of other securities of the corporation or of interests in such partnership.

DIRECTORS

SEC. 904. [42 U.S.C. 3934] The corporation shall have a board of directors (hereinafter in this section referred to as the "board"), consisting of fifteen members. Three members of the board shall be appointed by the President of the United States, by and with the advice and consent of the Senate, effective on the date on which the other members are elected, and for terms of three years or until their successors have been appointed and have qualified, except that the first three members of the board so appointed shall continue in office for terms of one, two, and three years, respectively, and any member so appointed to fill a vacancy shall be appointed only for the unexpired term of the director whom he succeeds. Twelve members of the board shall be elected by the stockholders.

FINANCING THE CORPORATION

SEC. 905. [42 U.S.C. 3935] The corporation shall have the power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, voting powers, and special or relative rights and such limitations, restrictions, or qualifications thereof as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting power of the shares of any class.

PURPOSES AND POWERS OF THE CORPORATION

SEC. 906. [42 U.S.C. 3936] (a) In order to achieve the objectives and carry out the purposes of this title, the corporation is authorized to—

(1) plan, initiate, and carry out, pursuant to Federal programs or otherwise, the building, rehabilitation, acquisition, and financing of housing and related facilities primarily for the benefit of families and individuals of low or moderate income;

(2) buy, own, manage, lease, or otherwise acquire or dispose of property in connection with the developments, projects, or undertakings referred to in paragraph (1);

(3) provide such funds as may be necessary to accomplish the developments, projects, or undertakings referred to in paragraph (1); and

(4) for the purpose of generating income to support the building or rehabilitation of housing primarily for the benefit of families and individuals of low or moderate income (A) design, develop, manufacture and sell products and services for use in the construction, sale, or financing of housing, and (B) design and develop commercial, industrial, or retail facilities, that are not directly related to housing, except that the development and preservation of housing for families and individuals of low or moderate income shall be the primary activity of the corporation.

(b) Included in the activities authorized to the corporation for the accomplishment of the purposes indicated in subsection (a) of this section are, among others not specifically named—

(1) to enter into partnerships, limited partnerships, joint ventures, and other associations with individuals, corporations, and private and governmental agencies, organizations, and institutions;

(2) to act as manager or general partner of any such partnership, venture, or association;

(3) to conduct or contract for research and studies related to the development, demonstration, and evaluation of improved techniques and methods of constructing, rehabilitating, and maintaining housing;

(4) to provide technical assistance to nonprofit corporations, limited dividend corporations, and others with respect to the planning, financing, construction, rehabilitation, maintenance, and management of housing for low and moderate income families and individuals;

(5) to make loans or grants including grants of interests in housing and related facilities, to nonprofit corporations, limited dividend corporations, and others, in carrying out its activities under subsection (a) of this section; and

(6) to hire or accept the voluntary services of consultants, experts, advisory boards, and panels to aid the corporation in carrying out the purposes of this title.

(c) To carry out the foregoing purposes and engage in the foregoing activities, the corporation shall have the usual powers conferred upon a stock corporation by the District of Columbia Business Corporation Act.

(d) Nothing in this title shall have the effect of waiving or otherwise affecting the applicability of the provisions of the Davis-Bacon Act (40 U.S.C. 267a—276a-5), or any other law requiring compliance with labor standards, in the case of any construction to which such provisions would otherwise apply.

(e) The combined outstanding equity commitment of the corporation and the partnership with respect to activities undertaken under subsection (a)(4) may not exceed (1) 7 percent of their total combined equity commitment outstanding during the first 12-month period following the date of enactment of this subsection;¹ (2) 14 percent of their total combined equity commitment outstanding during the second 12-month period following the date of enact-

¹The date of enactment was October 17, 1984.

ment of this subsection; or (3) 20 percent of their total combined equity commitment outstanding at any time thereafter.

NATIONAL HOUSING PARTNERSHIP

SEC. 907. [42 U.S.C. 3937] (a) The corporation is authorized to arrange for the formation, as a separate organization, of a limited partnership (hereinafter in this title referred to as the "partnership") under the District of Columbia Uniform Limited Partnership Act (D.C. Code, sec. 41-401 et seq.) for the purpose of engaging in any of the activities authorized for the corporation under section 906 of this title, and to enter into a partnership agreement governing the affairs of such limited partnership.

(b) The partnership shall be subject to the provisions, to the extent consistent with this title, of (1) the District of Columbia Uniform Limited Partnership Act and (2) those provisions of the District of Columbia Uniform Partnership Act (D.C. Code, sec. 41-301 et seq.) made applicable by section 6(2) of that Act (D.C. Code, sec. 41-305(2)). Notwithstanding any inconsistency between the provisions of such Acts, or of any other law, and the provisions of this section, the partnership organized pursuant to this section shall be deemed to have the legal status of a limited partnership.

(c) The partnership is authorized to enter into partnerships, limited partnerships, or joint ventures organized under applicable State or local law for the purpose of engaging in low and moderate income housing developments, projects, or undertakings in particular localities.

(d) The corporation shall be the general partner in the partnership. The capital of the partnership and the contributions of the partners shall be in such amounts and at such times as are set forth in or pursuant to the partnership agreement.

(e) The partnership agreement shall include provisions designed to assure that (1) the partnership shall participate in low and moderate income housing developments, projects, or undertakings in a manner designed to encourage the participation therein of local interests, and (2) in any such development, project, or undertaking the partnership shall not subscribe to more than 25 percent (including equity investments made in services or property) of the aggregate initial equity investment unless, in the judgment of the corporation as general partner, the balance of the required equity investment is not readily obtainable from other responsible investors residing or doing business in the local community.

(f) The partnership agreement may without limitation (1) permit each of the stockholders of the corporation to become a member of the partnership as a limited partner, (2) authorize the inclusion of other limited partners in addition to the stockholders of the corporation, (3) provide that the assignee of the partnership interest of a limited partner of the partnership who is also a stockholder of the corporation may not become a substituted limited partner unless he also acquires the assignor's stock of the corporation, and (4) include provisions requiring that the corporation as a general partner approve the substitution or addition of a member of the partnership.

(g) A corporation which is a limited partner in the partnership shall not become liable as a general partner by reason of the fact that (1) such corporation is a holder of shares of voting stock of the corporation constituting not more than 5 per centum of the total number of outstanding shares of such stock and exercises any of the rights (including voting rights) of a holder of such shares, and/or (2) a person who is an officer or director of such corporation (or of another corporation which controls or is subject to the control of or is under common control with, such corporation) is a director of the corporation and performs the duties of that office. The interest of a limited partner in the partnership shall not be treated as a stock interest in the corporation, notwithstanding that such interest of a limited partner may be proportionate to his stock interest in the corporation.

(h) The certificate of the partnership and any amendment thereof required by the District of Columbia Uniform Limited Partnership Act shall be executed and acknowledged by the corporation as member and by each other member of the partnership or his attorney-in-fact duly authorized by power of attorney in writing. The corporation may execute and acknowledge the certificate and any amendment thereof as attorney-in-fact for any member, member to be substituted or added, or assigning member, by whom the certificate or amendment is required to be executed and acknowledged and who has appointed the corporation as such attorney.

REPORT TO CONGRESS AND RECORDS

SEC. 908. [42 U.S.C. 3938] (a)(1) The corporation shall submit an annual report to the President for transmittal to the Congress within six months after the end of its fiscal year. The report shall include a comprehensive and detailed report of the operations, activities, and financial condition of the corporation and the partnership under this title.

(2) The report shall contain a description of the activities undertaken under section 906(a)(4), and shall specify, as a percentage of equity and in dollars, the extent of the corporation's and the partnership's investment in housing for the benefit of families and individuals of low or moderate income, the extent of the corporation's and the partnership's investment in other housing, and the extent of the corporation's and the partnership's activities which are undertaken under section 906(a)(4).

(b) The accounts of the corporation and of the partnership shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States.

ANTITRUST LAWS

SEC. 909. [42 U.S.C. 3939] Nothing contained herein shall affect the applicability of the Federal antitrust laws to the activities of the corporation and the partnership created under this title and of the persons participating therein or in partnerships, limited partnership, or joint ventures with either of them.

RIGHT TO REPEAL, ALTER, OR AMEND

SEC. 910. [42 U.S.C. 3940] The right to repeal, alter, or amend this title at any time is expressly reserved.

* * * * *

STATE REGULATION

SEC. 912. [42 U.S.C. 3941] Nothing contained in this title shall preclude a State or other local jurisdiction from imposing, in accordance with the laws of such State or other local jurisdiction, any valid nondiscriminatory tax, obligation, or regulation on the partnership as a taxable and/or legal entity, but no limited partner of the partnership not otherwise subject to taxation or regulation by or judicial process of a State or other local jurisdiction shall be subject to taxation or regulation by or subject to or denied access to judicial process of such State or other local jurisdiction, or be so subject or denied access to any greater extent, because of activities of the corporation or partnership within such State or local jurisdiction.

**CONDOMINIUM AND COOPERATIVE CONVERSION
PROTECTION AND ABUSE RELIEF**

**EXCERPT FROM HOUSING AND COMMUNITY DEVELOPMENT ACT OF
1980**

[Public Law 96-399; 94 Stat. 1672; 15 U.S.C. 3601 et seq.]

**TITLE VI—CONDOMINIUM AND COOPERATIVE
CONVERSION PROTECTION AND ABUSE RELIEF**

SHORT TITLE

SEC. 601. [15 U.S.C. 3601 note] This title may be cited as the “Condominium and Cooperative Abuse Relief Act of 1980”.

FINDINGS AND PURPOSE

SEC. 602. [15 U.S.C. 3601] (a) The Congress finds and declares that—

(1) there is a shortage of adequate and affordable housing throughout the Nation, especially for low- and moderate-income and elderly and handicapped persons;

(2) the number of conversions of rental housing to condominiums and cooperatives is accelerating, which in some communities may restrict the shelter options of low- and moderate-income and elderly and handicapped persons;

(3) certain long-term leasing arrangements for recreation and other condominium- or cooperative-related facilities which have been used in the formation of cooperative and condominium projects may be unconscionable; in certain situations State governments are unable to provide appropriate relief; as a result of these leases, economic and social hardships may have been imposed upon cooperative and condominium owners, which may threaten the continued use and acceptability of these forms of ownership and interfere with the interstate sale of cooperatives and condominiums; appropriate relief from these abuses requires Federal action; and

(4) there is a Federal involvement with the cooperative and condominium housing markets through the operation of Federal tax, housing, and community development laws, through the operation of federally chartered and insured financial institutions, and through other Federal activities; that the creation of many condominiums and cooperatives is undertaken by entities operating on an interstate basis.

(b) The purposes of this title are to seek to minimize the adverse impacts of condominium and cooperative conversions particularly on the housing opportunities of low- and moderate-income and elderly and handicapped persons, to assure fair and equitable principles are followed in the establishment of condominium and coop-

erative opportunities, and to provide appropriate relief where long-term leases of recreation and other cooperative- and condominium-related facilities are determined to be unconscionable.

CONVERSION LENDING

SEC. 603. [15 U.S.C. 3602] It is the sense of the Congress that lending by federally insured lending institutions for the conversion of rental housing to condominiums and cooperative housing should be discouraged where there are adverse impacts on housing opportunities of the low- and moderate-income and elderly and handicapped tenants involved.

DEFINITIONS

SEC. 604. [15 U.S.C. 3603] For the purpose of this title—

(1) “affiliate of a developer” means any person who controls, is controlled by, or is under common control with a developer. A person “controls” a developer if the person (A) is a general partner, officer, director, or employer of the developer, (B) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 per centum of the voting interests of the developer, (C) controls in any manner the election of a majority of the directors of the developer, or (D) has contributed more than 20 per centum of the capital of the developer. A person “is controlled by” a developer if the developer (i) is a general partner, officer, director or employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 per centum of the voting interests of the person, (iii) controls in any manner the election of a majority of the directors, or (iv) has contributed more than 20 per centum of the capital of the person;

(2) “automatic rent increase clause” means a provision in a lease permitting periodic increases in the fee under the lease which is effective automatically or at the sole option of the lessor, and which provides that the fee shall increase at the rate of an economic, commodity, or consumer price index or at a percentage rate such that the actual increases in the rental payment over the lease term cannot be established with specificity at the time the lease is entered into;

(3) “common elements” means all portions of the cooperative or condominium project, other than the units designated for separate ownership or for exclusive possession or use;

(4) “condominium association” means the organization, whose membership consists exclusively of all the unit owners in the condominium project, which is, or will be, responsible for the operation, administration, and management of the condominium project;

(5) “condominium project” means real estate (A) which has five or more residential condominium units, in each residential structure, and the remaining portions of the real estate are

designated for common ownership solely by the owners of those units, each owner having an undivided interest in the common elements, and (B) where such units are or have been offered for sale or sold, directly or indirectly, through the use of any means or instruments of transportation or communication of interstate commerce, or the mails;

(6) "condominium unit" means a portion of a condominium project designated for separate ownership;

(7) "conversion project" means a project, which has five or more residential units, which was used primarily for residential rental purposes immediately prior to being converted to a condominium or cooperative project;

(8) "convey or conveyance" means (A) a transfer to a purchaser of legal title in a unit at settlement, other than as security for an obligation, or (B) the acquisition by a purchaser of a leasehold interest for more than five years;

(9) "cooperative association" means an organization that owns the record interest in the residential cooperative property or a leasehold of the residential property of a cooperative project and that is responsible for the operation of the cooperative project;

(10) "cooperative project" means real estate (A) which has five or more residential cooperative units, in each residential structure, subject to separate use and possession by one or more individual cooperative unit owners whose interest in such units and in the undivided assets of the cooperative association which are appurtenant to the unit are evidenced by a membership or share interest in a cooperative association and a lease or other muniment of title or possession granted by the cooperative association as the owner of all the cooperative property, and (B) an interest in which is or has been offered for sale or lease or sold, or leased directly or indirectly, through use of any means or instruments of transportation or communication in interstate commerce or of the mails;

(11) "cooperative property" means the real estate and personal property subject to cooperative ownership and all other property owned by the cooperative association;

(12) "cooperative unit" means a part of the cooperative property which is subject to exclusive use and possession by a cooperative unit owner. A unit may be improvements, land, or land and improvements together, as specified in the cooperative documents;

(13) "cooperative unit owner" means the person having a membership or share interest in the cooperative association and holding a lease, or other muniment of title or possession, of a cooperative unit that is granted by the cooperative association as the owner of the cooperative property;

(14) "developer" means (A) any person who offers to sell or sells his interest in a cooperative or condominium unit not previously conveyed, or (B) any successor of such person who offers to sell or sells his interest in units in a cooperative or condominium project and who has the authority to exercise special developer control in the project including the right to: add, convert, or withdraw real estate from the cooperative or condomin-

ium project, and maintain sales offices, management offices and rental units; exercise easements through common elements for the purpose of making improvements within the cooperative or condominium; or exercise control of the owners' association;

(15) "interstate commerce" means trade, traffic, transportation, communication, or exchange among the States, or between any foreign country and a State, or any transaction which affects such trade, traffic, transportation, communication, or exchange;

(16) "lease" includes any agreement or arrangement containing a condominium or cooperative unit owner's obligation, individually, collectively, or through an association to make payments for a leasehold interest or for other rights to use or possess real estate, or personal property (which rights may include the right to receive services with respect to such real estate or personal property), except a lease does not include mortgages or other such agreements for the purchase of real estate;

(17) "person" means a natural person, corporation, partnership, association, trust or other entity, or any combination thereof;

(18) "purchaser" means any person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a unit, other than (A) a leasehold interest (including renewal options) of less than five years, or (B) as security for an obligation;

(19) "real estate" means any leasehold or other estate or interest in, over or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water;

(20) "residential" means used as a dwelling;

(21) "sale", "sale of a cooperative unit" or "sale of a condominium unit" means any obligation or arrangement for consideration for conveyance to a purchaser of a cooperative or condominium unit, excluding options or reservations not binding on the purchaser;

(22) "special developer control" means any right arising under State law, cooperative or condominium instruments, the association's bylaws, charter of articles of association or incorporation, or power of attorney or similar agreement, through which the developer may control or direct the unit owners' association or its executive board. A developer's right to exercise the voting share allocated to any condominium or cooperative unit which he owns is not deemed a right of special developer control if the voting share allocated to that condominium or cooperative unit is the same voting share as would be allocated to the same condominium or cooperative unit were that unit owned by any other unit owner at that time;

(23) "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States; and

(24) "tenants' organization" means a bona fide organization of tenants who represent a majority of the occupied rental units in a rental housing project.

EXEMPTIONS

SEC. 605. [15 U.S.C. 3604] The provisions of this title shall not apply to—

(1) a cooperative or condominium unit sold or offered for sale by the Federal Government, by any State or local government, by any corporate instrumentality of the United States, or by any agency thereof;

(2) a cooperative or condominium project in which all units are restricted to nonresidential purposes or uses; or

(3) any lease or portion thereof—

(A) which establishes any leasehold or other estate or interest in, over or under land on or in which one or more residential condominium or cooperative units are located, the termination of which will terminate the condominium or cooperative project, or reduce the number of units in such project, or

(B) which establishes a leasehold interest in, or other rights to use, possess, or gain access to, a condominium or cooperative unit.

CONDOMINIUM AND COOPERATIVE CONVERSIONS

SEC. 606. [15 U.S.C. 3605] It is the sense of the Congress that, when multifamily rental housing projects are converted to condominium or cooperative use, tenants in those projects are entitled to adequate notice of the pending conversion and to receive the first opportunity to purchase units in the converted projects and that State and local governments which have not already provided for such notice and opportunity for purchase should move toward that end. The Congress believes it is the responsibility of State and local governments to provide for such notice and opportunity to purchase in a prompt manner. The Congress has decided not to intervene and therefore leaves this responsibility to State and local governments to be carried out.

FEDERAL HOUSING ADMINISTRATION INSURANCE

SEC. 607. [15 U.S.C. 3606] Where an application for mortgage or loan insurance in connection with a conversion or purchase of a rental housing project being undertaken by a tenants' organization is submitted, the Secretary of Housing and Urban Development shall expedite the processing of the application in every way and shall make a final decision on such application at the earliest practicable time.

OPTIONAL TERMINATION OF SELF-DEALING CONTRACTS

SEC. 608. [15 U.S.C. 3607] (a) Any contract or portion thereof which is entered into after the effective date of this title, and which—

(1) provides for operation, maintenance, or management of a condominium or cooperative association in a conversion project, or of property serving the condominium or cooperative unit owners in such project;

(2) is between such unit owners or such association and the developer or an affiliate of the developer;

(3) was entered into while such association was controlled by the developer through special developer control or because the developer held a majority of the votes in such association; and

(4) is for a period of more than three years, including any automatic renewal provisions which are exercisable at the sole option of the developer or an affiliate of the developer, may be terminated without penalty by such unit owners or such association.

(b) Any termination under this section may occur only during the two-year period beginning on the date on which—

(1) special developer control over the association is terminated; or

(2) the developer owns 25 per centum or less of the units in the conversion project, whichever occurs first.

(c) A termination under this section shall be by a vote of owners of not less than two-thirds of the units other than the units owned by the developer or an affiliate of the developer.

(d) Following the unit owners' vote, the termination shall be effective ninety days after hand delivering notice or mailing notice by prepaid United States mail to the parties to the contract.

CIVIL ACTION; UNCONSCIONABLE LEASES

SEC. 609. [15 U.S.C. 3608] (a) Cooperative and condominium unit owners through the unit owners' association may bring an action seeking a judicial determination that a lease or leases, or portions thereof, were unconscionable at the time they were made. An action may be brought under this section if each such lease has all of the following characteristics:

(1) it was made in connection with a cooperative or condominium project;

(2) it was entered into while the cooperative or condominium owners' association was controlled by the developer either through special developer control or because the developer held a majority of the votes in the owners' association;

(3) it had to be accepted or ratified by purchasers or through the unit owners' association as a condition of purchase of a unit in the cooperative or condominium project;

(4) it is for a period of more than twenty-one years or is for a period of less than twenty-one years but contains automatic renewal provisions for a period of more than twenty-one years;

(5) it contains an automatic rent increase clause; and

(6) it was entered into prior to June 4, 1975.

Such action must be authorized by the cooperative or condominium unit owners through a vote of not less than two-thirds of the owners of the units other than units owned by the developer or an affiliate of the developer, and may be brought by the cooperative or condominium unit owners through the units owners' association. Prior to instituting such action, the cooperative or condominium unit owners must, through a vote of not less than two-thirds of the owners of the units other than units owned by the developer or an affiliate of the developer, agree to enter into negotiation with the lessor and must seek through such negotiation to eliminate or modify any lease terms that are alleged to be unconscionable; if an agreement is not reached in ninety days from the date on which the authorizing vote was taken, the unit owners may authorize an action after following the procedure specified in the preceding sentence.

(b) A rebuttable presumption of unconscionability exists if it is established that, in addition to the characteristics set forth in subsection (a) of this section, the lease—

(1) creates a lien subjecting any unit to foreclosure for failure to make payments;

(2) contains provisions requiring either the cooperative or condominium unit owners or the cooperative or condominium association as lessees to assume all or substantially all obligations and liabilities associated with the maintenance, management and use of the leased property, in addition to the obligation to make lease payments;

(3) contains an automatic rent increase clause without establishing a specific maximum lease payment; and

(4) requires an annual rental which exceeds 25 per centum of the appraised value of the leased property as improved: *Provided*, That, for purposes of this paragraph "annual rental" means the amount due during the first twelve months of the lease for all units, regardless of whether such units were occupied or sold during that period, and "appraised value" means the appraised value placed upon the leased property the first tax year after the sale of a unit in the condominium or after the sale of a membership or share interest in the cooperative association to a party who is not an affiliate of the developer.

Once the rebuttable presumption is established, the court, in making its finding, shall consider the lease or portion of the lease to be unconscionable unless proven otherwise by a preponderance of the evidence to the contrary.

(c) Whenever it is claimed, or appears to the court, that a lease or any portion thereof is, or may have been, unconscionable at the time it was made, the parties shall be afforded a reasonable opportunity to present evidence at least as to—

(1) the commercial setting of the negotiations;

(2) whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests;

(3) the effect and purpose of the lease or portion thereof, including its relationship to other contracts between the asso-

ciation, the unit owners and the developer or an affiliate of the developer; and

(4) the disparity between the amount charged under the lease and the value of the real estate subject to the lease measured by the price at which similar real estate was readily obtainable in similar transactions.

(d) Upon finding that any lease, or portion thereof, is unconscionable, the court shall exercise its authority to grant remedial relief as necessary to avoid an unconscionable result, taking into consideration the economic value of the lease. Such relief may include, but shall not be limited to rescission, reformation, restitution, the award of damages and reasonable attorney fees and court costs. A defendant may recover reasonable attorneys' fees if the court determines that the cause of action filed by the plaintiff is frivolous, malicious, or lacking in substantial merit.

(e) Nothing in this section may be construed to authorize the bringing of an action by cooperative and condominium unit owners' association, seeking a judicial determination that a lease or leases, or portions thereof, are unconscionable, where such unit owners or a unit owners' association representing them has, after the termination of special developer control, reached an agreement with a holder of such lease or leases which either—

(1) sets forth the terms and conditions under which such lease or leases is or shall be purchased by such unit owners or associations; or

(2) reforms any cause in the lease which contained an automatic rent increase clause, unless such agreement was entered into when the leaseholder or his affiliate held a majority of the votes in the owners' association.

PROHIBITIONS

SEC. 610. [15 U.S.C. 3609] Any provision in any lease or contract requiring unit owners or the owners' association, in any conversion project involving a contract meeting the requirements of section 608 of this title or in any project involving a lease meeting the requirements of section 609 of this title, to reimburse, regardless of outcome, the developer, his successor, or affiliate of the developer for attorneys' fees or money judgments, in a suit between unit owners or the owners' association and the developer arising under the lease or agreement, is against public policy and void.

STATE AND LOCAL JURISDICTION

SEC. 611. [15 U.S.C. 3610] Nothing in this title may be construed to prevent or limit the authority of any State or local government to enact and enforce any law, ordinance, or code with regard to any condominium, cooperative, or conversion project, if such law, ordinance, or code does not abridge, deny, or contravene any standard for consumer protection established under this title. Notwithstanding the preceding sentence, the provisions of this title, except for the application of section 609 and the prohibition included in section 610 as it relates to a lease with respect to which a cause of action may be established under section 609, shall not apply in the case of any State or local government which has the

authority to enact and enforce such a law, ordinance, or code, if, during the three-year period following the date of enactment of this title, such State or local government enacts a law, ordinance, or code, or amendments thereto, stating in substance that such provisions of this title shall not apply in that State or local government jurisdiction.

ADDITIONAL REMEDIES

SEC. 612. [15 U.S.C. 3611] (a) Unless otherwise limited as in section 608 or 609 of this title, any person aggrieved by a violation of this title may sue at law or in equity.

(b) In any action authorized by this section for a violation of section 608 or 610 where actual damages have been suffered, such damages may be awarded or such other relief granted as deemed fair, just, and equitable.

(c) Every person who becomes liable to make any payment under this section may recover contributions from any person who, if sued separately, would have been liable to make the same payment.

(d) The amounts recoverable under this section may include interest paid, reasonable attorneys' fees, independent engineer and appraisers' fees, and court costs. A defendant may recover reasonable attorneys' fees if the court determines that the cause of action filed by the plaintiff is frivolous, malicious, or lacking in substantial merit.

JURISDICTION

SEC. 613. [15 U.S.C. 3612] The district courts of the United States, the United States courts of any territory, and the United States District Court for the District of Columbia shall have jurisdiction under this title and, concurrent with State courts, of actions at law or in equity brought under this title without regard to the amount in controversy. Any such action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the sale took place, and process in such cases may be served in other districts of which the defendant is an inhabitant or wherever the defendant may be found. No case arising under this title and brought in any State court of competent jurisdiction shall be removed to any court of the United States, except where any officer or employee of the United States in his official capacity is a party.

LIMITATION OF ACTIONS

SEC. 614. [15 U.S.C. 3613] No action shall be maintained to enforce any right or liability created by this title unless brought within six years after such cause of action, accrued, except that an action pursuant to section 609 must be brought within four years after the date of enactment of this title.

CONTRARY STIPULATIONS VOID

SEC. 615. [15 U.S.C. 3614] Any condition, stipulation, or provision binding any person to waive compliance with any provisions of this title shall be void.

ADDITIONAL REMEDIES

SEC. 616. [15 U.S.C. 3615] The rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist under Federal or State law.

SEPARABILITY

SEC. 617. [15 U.S.C. 3616] If any provisions of this title or the application thereof to any person or circumstance is held invalid, the remainder of this title shall not be affected thereby.

EFFECTIVE DATE

SEC. 618. [15 U.S.C. 3601 note] The provisions of this title shall become effective upon enactment,¹ except that section 609, and the prohibition included in section 610 as it relates to a lease with respect to which a cause of action may be established under section 609, shall become effective one year after enactment.

¹The date of enactment was October 8, 1980.

RATE OF WAGES FOR LABORERS AND MECHANICS

EXCERPT FROM ACT OF MARCH 3, 1931 (DAVIS-BACON ACT)

[Ch. 411; 46 Stat. 1494; 40 U.S.C. 276a et seq.]

(a) [40 U.S.C. 276a] That the advertised specifications for every contract in excess of \$2,000, to which the United States or the District of Columbia is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States or the District of Columbia within the geographical limits of the States of the Union or the District of Columbia, and which requires or involves the employment of mechanics, and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there; and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics, and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and the further stipulation that there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents.

(b) [40 U.S.C. 276a] As used in this Act the term “wages”, “scale of wages”, “wage rates”, “minimum wages”, and “prevailing wages” shall include—

- (1) the basic hourly rate of pay; and
- (2) the amount of—

(A) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected,

for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits:

Provided, That the obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, insofar as this Act and other Acts incorporating this Act by reference are concerned may be discharged by the making of payments in cash, by the making of contributions of a type referred to in paragraph (2)(A), or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in paragraph (2)(B), or any combination thereof, where the aggregate of any such payments, contributions, and costs is not less than the rate of pay described in paragraph (1) plus the amount referred to in paragraph (2).

In determining the overtime pay to which the laborer or mechanic is entitled under any Federal law, his regular or basic hourly rate of pay (or other alternative rate upon which premium hour of overtime compensation is computed) shall be deemed to be the rate computed under paragraph (1), except that where the amount of payments, contributions, or costs incurred with respect to him exceeds the prevailing wage applicable to him under this Act, such regular or basic hourly rate of pay (or such other alternative rate) shall be arrived at by deducting from the amount of payments, contributions, or costs actually incurred with respect to him, the amount of contributions or costs of the types described in paragraph (2) actually incurred with respect to him, or the amount determined under paragraph (2) but not actually paid, whichever amount is the greater.

SEC. 2. [40 U.S.C. 276a-1] Every contract within the scope of this Act shall contain the further provision that in the event it is found by the contracting officer that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

SEC. 3. [40 U.S.C. 276a-2] (a) The Comptroller General of the United States is hereby authorized and directed to pay directly to laborers and mechanics from any accrued payments withheld under the terms of the contract any wages found to be due laborers and mechanics pursuant to this Act; and the Comptroller General of the United States is further authorized and is directed to distribute a list to all departments of the Government giving the names of persons or firms whom he has found to have disregarded their obligations to employees and subcontractors. No contract shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of such persons or firms.

(b) If the accrued payments withheld under the terms of the contract, as aforesaid, are insufficient to reimburse all the laborers and mechanics with respect to whom there has been a failure to pay the wages required pursuant to this Act, such laborers and mechanics shall have the right of action and/or of intervention against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in such proceedings it shall be no defense that such laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

SEC. 4. [40 U.S.C. 276a-3] This Act shall not be construed to supersede or impair any authority otherwise granted by Federal law to provide for the establishment of specific wage rates.

SEC. 5. [40 U.S.C. 276a-4] This Act shall take effect thirty days after its passage, but shall not affect any contract then existing or any contract that may thereafter be entered into pursuant to invitations for bids that are outstanding at the time of the passage of this Act.

SEC. 6. [40 U.S.C. 276a-5] In the event of a national emergency the President is authorized to suspend the provisions of this Act.

EXCERPT FROM ACT OF MARCH 23, 1941

[Ch. 26; 55 Stat. 53; 40 U.S.C. 276a-7]

That the fact that any contract authorized by this or any other Act is entered into without regard to section 3709 of the Revised Statutes of the United States, or upon a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, shall not be construed to render inapplicable the provisions of the Act of March 3, 1931, as amended by the Act of August 30, 1935 (49 Stat. 1011; U.S.C., title 40, sec. 276 (a)), if such Act would otherwise be applicable to such contract.

EXCERPT FROM ACT OF AUGUST 21, 1941

[Ch. 395; 55 Stat. 658; 40 U.S.C. 276a-7]

That the fact that any contract authorized by this or any other Act is entered into without regard to section 3709 of the Revised Statutes of the United States, or upon a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, shall not be con-

structed to render inapplicable the provisions of the Act of March 3, 1931, as amended by the Act of August 30, 1935 (49 Stat. 1011; U.S.C., Supp. V, title 40, sec. 276 (a)), if such Act would otherwise be applicable to such contract.

EXCERPT FROM ACT OF JUNE 13, 1934

[Ch. 482; 48 Stat. 948; 40 U.S.C. 276c]

SEC. 2. **[40 U.S.C. 276c]** The Secretary of Labor shall make reasonable regulations for contractors and subcontractors engaged in the construction, prosecution, completion or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States, including a provision that each contractor and subcontractor shall furnish weekly a statement with respect to the wages paid each employee during the preceding week. Section 1001 of title 18 of the United States Code (Criminal Code and Criminal Procedure) shall apply to such statements.

TRANSFER OF SURPLUS REAL PROPERTY

EXCERPT FROM HOUSING AND URBAN-RURAL RECOVERY ACT OF 1983

[Public Law 98-181; 97 Stat. 1153, 1175; 40 U.S.C. 484b note]

REPEALERS

SEC. 126. **[40 U.S.C. 484b note]** (a)(1) Section 414 of the Housing and Urban Development Act of 1969¹ hereby is repealed.

(2) Notwithstanding paragraph (1), the Secretary of Housing and Urban Development and the Secretary of Agriculture may dispose of Federal surplus real property pursuant to the terms of section 414 of such Act if, prior to the date of the enactment of this Act, either Secretary had requested the Administrator of General Services to transfer such property for such disposition.

(3) Notwithstanding paragraph (1), section 414(b) of such Act shall continue to apply, where applicable, to all property transferred by either Secretary pursuant to section 414 of such Act, including properties transferred pursuant to paragraph (2).

¹ See 40 U.S.C. 484b.

**LIMITATION ON WITHHOLDING OR CONDITIONING OF
ASSISTANCE**

**EXCERPT FROM HOUSING AND COMMUNITY DEVELOPMENT ACT OF
1974**

[Public Law 93-383; 88 Stat. 633; 42 U.S.C. 5301 note]

LIMITATION ON WITHHOLDING OR CONDITIONING OF ASSISTANCE

SEC. 817. [42 U.S.C. 5301 note] Assistance provided for in this Act, the National Housing Act, the United States Housing Act of 1937, the Housing Act of 1949, the Demonstration Cities and Metropolitan Development Act of 1966, the Housing and Urban Development Acts of 1965, 1968, 1969, and 1970, and section 17 of the United States Housing Act of 1937 shall not be withheld or made subject to conditions or preference by reason of the tax-exempt status of bonds or other obligations issued or to be issued to provide financing for use in connection with such assistance, except where otherwise expressly provided or authorized by law.

FAIR HOUSING INITIATIVES PROGRAM

EXCERPT FROM HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1987

[Public Law 100-242; 101 Stat. 1942; 42 U.S.C. 3616a]

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

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

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

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

(b) PRIVATE ENFORCEMENT INITIATIVES.—

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

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

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

(B) discover and remedy discrimination in the public and private real estate markets and real estate-related

transactions, including, but not limited to, the making or purchasing of loans or the provision of other financial assistance sales and rentals of housing and housing advertising;

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

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

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

(c) FUNDING OF FAIR HOUSING ORGANIZATIONS.—

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

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

(d) EDUCATION AND OUTREACH.—

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

(A) public service announcements, both audio and video;

(B) television, radio and print advertisements;

(C) posters; and

(D) pamphlets and brochures.

The Secretary shall designate a portion of the amounts provided in subsection (g)(4) for a national program specifically for

activities related to the annual national fair housing month. The Secretary shall encourage cooperation with real estate industry organizations in the national education and outreach program. The Secretary shall also encourage the dissemination of educational information and technical assistance to support compliance with the housing adaptability and accessibility guidelines contained in the Fair Housing Act Amendments of 1988.¹

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

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

(e) PROGRAM ADMINISTRATION.—

(1) Not less than 30 days before providing a grant or entering into any contract or cooperative agreement to carry out activities authorized by this section, the Secretary shall submit notification of such proposed grant, contract, or cooperative agreement (including a description of the geographical distribution of such contracts) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives².

[(2) [Repealed.]]

(f) REGULATIONS.—

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

(2) The Secretary shall, for use during the demonstration authorized in this section, establish guidelines for testing activities funded under the private enforcement initiative of the fair housing initiatives program. The purpose of such guidelines shall be to ensure that investigations in support of fair housing enforcement efforts described in subsection (a)(1) shall develop credible and objective evidence of discriminatory housing practices. Such guidelines shall apply only to activities

¹ So in law. Probably intended to refer to the Fair Housing Amendments Act of 1988.

² Section 1(a) of Public Law 104-14, 109 Stat. 186, provides, in part, that "any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives".

funded under this section, shall not be construed to limit or otherwise restrict the use of facts secured through testing not funded under this section in any legal proceeding under Federal fair housing laws, and shall not be used to restrict individuals or entities, including those participating in the fair housing initiatives program, from pursuing any right or remedy guaranteed by Federal law. Not later than 6 months after the end of the demonstration period authorized in this section, the Secretary shall submit to Congress the evaluation of the Secretary of the effectiveness of such guidelines in achieving the purposes of this section.

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

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

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

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

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

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

(F) any additional information required by the Secretary.

(4) Regulations issued under this subsection shall not become effective prior to the expiration of 90 days after the Secretary transmits such regulations, in the form such regulations are intended to be published, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives¹.

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

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

(1) not less than \$3,820,000 for fiscal year 1993 and \$8,500,000 for fiscal year 1994 shall be for private enforcement

¹Section 1(a) of Public Law 104–14, 109 Stat. 186, provides, in part, that “any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives”.

initiatives authorized under subsection (b), divided equally between activities specified under subsection (b)(1) and those specified under subsection (b)(2);

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

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

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

(h) QUALIFIED FAIR HOUSING ENFORCEMENT ORGANIZATION.—

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

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

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

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

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

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

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

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

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

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

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

(j) REPORTING REQUIREMENTS.—Not later than 180 days after the close of each fiscal year in which assistance under this section

is furnished, the Secretary shall prepare and submit to the Congress a comprehensive report which shall contain—

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

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

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

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

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

TREATMENT OF OCCUPANCY STANDARDS

EXCERPT FROM QUALITY HOUSING AND WORK RESPONSIBILITY ACT OF 1998

[Public Law 105-276; 112 Stat. 2651; 42 U.S.C. 3608 note]

SEC. 589. [42 U.S.C. 3608 note] TREATMENT OF OCCUPANCY STANDARDS.

(a) ESTABLISHMENT OF POLICY.—Not later than 60 days after the date of the enactment of this Act¹, the Secretary of Housing and Urban Development shall publish a notice in the Federal Register for effect that takes effect upon publication and provides that the specific and unmodified standards provided in the March 20, 1991, Memorandum from the General Counsel of the Department of Housing and Urban Development to all Regional Counsel shall be the policy of the Department of Housing and Urban Development with respect to complaints of discrimination under the Fair Housing Act (42 U.S.C. 3601 et seq.) on the basis of familial status which involve an occupancy standard established by a housing provider.

(b) PROHIBITION OF NATIONAL STANDARD.—The Secretary of Housing and Urban Development shall not directly or indirectly establish a national occupancy standard.²

¹The date of enactment was October 21, 1998.

²Section 503 of the Quality Housing and Work Responsibility Act of 1998, Public Law 105-276, approved October 21, 1998 (set forth in the footnote on page 114 of this compilation), provides that such Act takes effect on October 1, 1999, except as otherwise specifically provided in such Act and except to the extent that the Secretary provides by notice for earlier implementation of any provision of such Act.

COLLECTION OF CERTAIN DATA

EXCERPT FROM HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1987

[Public Law 100-242; 101 Stat. 1944; 42 U.S.C. 3608a]

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

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

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

MEDIAN AREA INCOME

EXCERPT FROM HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1987

[Public Law 100-242; 101 Stat. 1948; 42 U.S.C. 1437a note]

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

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

- (1) the median income of the county in which the area is located; or
- (2) the median income of the entire nonmetropolitan area of the State.

SOLAR ASSISTANCE FINANCING ENTITY

EXCERPT FROM HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992

[Public Law 102-550; 106 Stat. 3875; 42 U.S.C. 5511a]

SEC. 912. [42 U.S.C. 5511a] SOLAR ASSISTANCE FINANCING ENTITY.

(a) **ESTABLISHMENT.**—The Secretary of Housing and Urban Development shall establish within the Department of Housing and Urban Development the Solar Assistance Financing Entity (in this section referred to as the “Entity”).

(b) **PURPOSE.**—The purpose of the Entity shall be to assist in financing solar and renewable energy capital investments and projects for eligible buildings under subsection (c).

(c) **ELIGIBLE BUILDINGS.**—The Entity may provide assistance under this section only for the following buildings:

(1) **SINGLE FAMILY HOUSING.**—Any building consisting of 1 to 4 dwelling units that has a system for heating or cooling, or both.

(2) **MULTIFAMILY HOUSING.**—Any building consisting of more than 4 dwelling units that has a system for heating or cooling, or both.

(3) **COMMERCIAL BUILDINGS.**—Any building used primarily to carry on a business (including any nonprofit business) that is not used primarily for the manufacture or production of raw materials, products, or agricultural commodities.

(4) **SCHOOLS, HOSPITALS, AND AGRICULTURAL BUILDINGS.**—Any school, any hospital, and any building used exclusively in connection with the harvesting, storage, or drying of agricultural commodities.

(5) **OTHER BUILDINGS.**—Any other building of a type that the Entity considers appropriate.

(d) **FINANCING OPTIONS.**—Assistance provided under this section by the Entity may be provided only for programs for financing solar and renewable energy capital investments and projects, which may include programs for making loans, making grants, reducing the principal obligations of loans, prepayment of interest on loans, purchase and sale of loans and advances of credit, providing loan guarantees, providing loan downpayment assistance, and providing rebates and other incentives for the purchase and installation of solar and renewable energy measures.

(e) **AUTHORITY TO LEVERAGE OTHER FUNDS.**—The Entity may encourage or require programs receiving assistance under this section to supplement the assistance received under this section with amounts from other public and private sources, and, in making assistance under this section available, may give preference to programs that leverage amounts from such other sources.

(f) **PROVISION OF ASSISTANCE.**—The Entity shall provide assistance under this section through State agencies responsible for developing State energy conservation plans pursuant to section 362 of the Energy Policy and Conservation Act, or any other entity or agency authorized to specifically carry out the purposes of this section.

(g) **REGULATIONS.**—Not later than the expiration of the 12-month period beginning on the date of the enactment of this Act¹, the Secretary of Housing and Urban Development, in consultation with the Secretary of Energy, shall issue any regulations necessary to carry out this section, which shall ensure maximum flexibility in utilizing amounts made available under this section.

(h) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section \$10,000,000 for fiscal year 1993 and \$10,420,000 for fiscal year 1994. Such sums are to be available until expended.

(i) **REPEALS.**—

(1) **SOLAR ENERGY AND ENERGY CONSERVATION BANK ACT.**—Subtitle A of title V of the Energy Security Act (12 U.S.C. 3601 et seq.) is repealed.

(2) **FEDERAL NATIONAL MORTGAGE ASSOCIATION CHARTER ACT.**—Sections 315 and 316 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723g, 1723h) are repealed.

¹The date of enactment was October 28, 1992.