

MARK-TO-MARKET EXTENSION AND ENHANCEMENT ACT
OF 2007

APRIL 10, 2008.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial
Services, submitted the following

R E P O R T

[To accompany H.R. 3965]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3965) to extend the Mark-to-Market program of the Department of Housing and Urban Development, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Mark-to-Market Extension and Enhancement Act of 2007”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.
- Sec. 4. Extension of Mark-to-Market program.
- Sec. 5. Funding for tenant and other participation and capacity building.
- Sec. 6. Exception rents.
- Sec. 7. Otherwise eligible projects.
- Sec. 8. Disaster-damaged eligible projects.
- Sec. 9. Period of eligibility for nonprofit debt relief.
- Sec. 10. Acquisition of restructured projects by nonprofit organizations.
- Sec. 11. Mark-to-market for moderate rehabilitation projects.
- Sec. 12. Enhanced voucher assistance upon contract termination.
- Sec. 13. Correcting harm caused by late subsidy payments.
- Sec. 14. Effective date.

SEC. 2. PURPOSES.

The purpose of this Act is to—

- (1) continue the progress of the Multifamily Assisted Housing Reform and Affordability Act of 1997, as amended by the Mark-To-Market Extension Act of 2001;
- (2) expand eligibility for Mark-to-Market restructuring so as to further the preservation of affordable housing in a cost-effective manner; and
- (3) provide for the preservation and rehabilitation of projects damaged by Hurricanes Katrina, Rita, and Wilma, or by other natural disasters.

SEC. 3. DEFINITIONS.

Section 512 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by adding at the end the following:

“(20) **DISASTER-DAMAGED ELIGIBLE PROJECT.**—

“(A) **IN GENERAL.**—The term ‘disaster-damaged eligible project’ means an otherwise eligible multifamily housing project—

“(i) that is located in a county that was designated a major disaster area on or after January 1, 2005, by the President pursuant to title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.);

“(ii) whose owner carried casualty and liability insurance covering such project in an amount required by the Secretary;

“(iii) that suffered damages not covered by such insurance that the Secretary determines is likely to exceed \$5,000 per unit in connection with the natural disaster that was the subject of the designation described in subparagraph (A); and

“(iv) whose owner requests restructuring of the project not later than 2 years after the date that such damage occurred.

“(B) **RULE OF CONSTRUCTION.**—A disaster-damaged eligible project shall be eligible for amounts under this Act without regard to the relationship between rent levels for the assisted units in such project and comparable rents for the relevant market area.”.

SEC. 4. EXTENSION OF MARK-TO-MARKET PROGRAM.

Section 579 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by striking “October 1, 2011” each place such term appears and inserting “October 1, 2012”.

SEC. 5. FUNDING FOR TENANT AND OTHER PARTICIPATION AND CAPACITY BUILDING.

Paragraph (3) of section 514(f) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended—

(1) in subparagraph (A)—

(A) in the first sentence—

(i) by striking “not more than” and inserting “not less than”;

(ii) by striking “of low-income housing for which project-based rental assistance is provided at below market rent levels and may not be renewed” and inserting the following: “and improvement of low-income housing for which project-based rental assistance, subsidized loans, or enhanced vouchers under section 8(t) are provided”; and

(iii) in the second parenthetical clause, by inserting before the closing parenthesis the following: “, and predevelopment assistance to enable such transfers”; and

(B) by inserting after the period at the end the following: “For outreach and training of tenants and technical assistance, the Secretary shall implement a grant program utilizing performance-based outcome measures for eligible costs incurred. Recipients providing capacity building or technical assistance services to tenant groups shall be qualified nonprofit Statewide, countywide, areawide or citywide organizations with demonstrated experience including at least a two-year recent track record of organizing and providing assistance to tenants, and independence from the owner, a prospective purchaser, or their managing agents. The Secretary may provide assistance and training to grantees in administrative and fiscal management to ensure compliance with applicable Federal requirements. The Secretary shall expedite the provision of funding for fiscal year 2008 by entering into new multi-year contracts with any prior grantee without adverse audit findings or whose adverse audit findings have been cleared, and by entering into an interagency agreement for not less than \$1,000,000 with the Corporation for National and Community Service or any other agency of the Federal Government, that is selected by the Secretary and the Secretary determines is qualified to conduct such program, to conduct a tenant outreach and training program under the same or similar terms and conditions as was most recently conducted by the Corporation. The Secretary shall also make available flexible grants to qualified nonprofit organizations that do not own eligible multifamily properties, for tenant outreach in underserved areas, and to experienced national or regional nonprofit organizations to provide specialized training or support to grantees assisted under this section. Notwithstanding any other provision of law, funds authorized under this section for any fiscal year shall be available for obligation in subsequent fiscal years. The Secretary shall require each recipient of amounts made available pursuant to this subparagraph to submit to the Secretary reports, on a quarterly basis, detailing the use of such funds and including such information as the Secretary shall require.”; and

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

“(D) PROHIBITIONS.—None of the funds made available under subparagraph (A) may be used for any political activities, political advocacy, or lobbying (as such terms are defined by Circular A-122 of the Office of Management and Budget, entitled ‘Cost Principles for Non-Profit Organizations’), or for expenses for travel to engage in political activities or preparation of or provision of advice on tax returns.

“(E) PROGRAM COMPLIANCE SYSTEMS.—Each recipient of amounts made available under subparagraph (A) shall develop systems to ensure compliance with the program and the requirements of this paragraph.

“(F) PENALTIES.—The Secretary may impose penalties on any recipient of amounts made available under subparagraph (A) that fails to comply with any requirement under this paragraph or of the program established pursuant to this paragraph, which penalties may include—

“(i) ineligibility for further assistance from amounts made available under subparagraph (A); and

“(ii) requiring the recipient to reimburse the Secretary for any amounts that were so misused.”.

SEC. 6. EXCEPTION RENTS.

In the matter preceding clause (i) of section 514(g)(2)(A) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended—

(1) by inserting “disaster-damaged eligible projects and” after “waive this limit for”; and

(2) by striking “five percent” and inserting “9 percent”.

SEC. 7. OTHERWISE ELIGIBLE PROJECTS.

Section 514 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by adding at the end the following:

“(i) OTHER ELIGIBLE PROJECTS.—

“(1) IN GENERAL.—Notwithstanding any other provision of this subtitle, a project that meets the requirements of subparagraphs (B) and (C) of section 512(2) but does not meet the requirements of subparagraph (A) of section 512(2), may be treated as an eligible multifamily housing project on an exception basis if the Secretary determines, subject to paragraph (2), that such treatment is necessary to preserve the project in the most cost-effective manner in relation to other alternative preservation options.

“(2) OWNER REQUEST.—

“(A) REQUEST REQUIRED.—The Secretary shall not treat an otherwise eligible project described under paragraph (1) as an eligible multifamily housing project unless the owner of the project requests such treatment.

“(B) NO ADVERSE TREATMENT IF NO REQUEST MADE.—If the owner of a project does not make a request under subparagraph (A), the Secretary shall not withhold from such project any other available preservation option.

“(3) CANCELLATION.—

“(A) TIMING.—At any time prior to the completion of a mortgage restructuring under this subtitle, the owner of a project may—

“(i) withdraw any request made under paragraph (2)(A); and

“(ii) pursue any other option with respect to the renewal of such owner’s section 8 contract pursuant to any applicable statute or regulation.

“(B) DOCUMENTATION.—If an owner of a project withdraws such owner’s request and pursues other renewal options under this paragraph, such owner shall be entitled to submit documentation or other information to replace the documentation or other information used during processing for mortgage restructuring under this subtitle.

“(4) LIMITATION.—The Secretary may exercise the authority to treat projects as eligible multifamily housing projects pursuant to this subsection only to the extent that the number of units in such projects do not exceed 10 percent of all units for which mortgage restructuring pursuant to section 517 is completed.”.

SEC. 8. DISASTER-DAMAGED ELIGIBLE PROJECTS.

(a) MARKET RENT DETERMINATIONS.—Section 514(g)(1)(B) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by striking “determined, are equal” and inserting the following: “determined—

“(i) with respect to a disaster-damaged eligible property, are equal to 100 percent of the fair market rents for the relevant market area (as such rents were in effect at the time of such disaster); and

“(ii) with respect to other eligible multifamily housing projects, are equal”.

(b) OWNER INVESTMENT.—Section 517(c) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by adding at the end the following:

“(3) PROPERTIES DAMAGED BY NATURAL DISASTERS.—With respect to a disaster-damaged eligible property, the owner contribution toward rehabilitation needs shall be determined in accordance with paragraph (2)(C).”.

SEC. 9. PERIOD OF ELIGIBILITY FOR NONPROFIT DEBT RELIEF.

Section 517(a)(5) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by adding at the end the following: “If such purchaser acquires such project subsequent to the date of recordation of the affordability agreement described in section 514(e)(6)—

“(A) such purchaser shall acquire such project on or before the later of—

“(i) 5 years after the date of recordation of the affordability agreement; or

“(ii) 2 years after the date of enactment of the Mark-to-Market Extension and Enhancement Act of 2007; and

“(B) the Secretary shall have received, and determined acceptable, such purchaser’s application for modification, assignment, or forgiveness prior to the acquisition of the project by such purchaser.”.

SEC. 10. ACQUISITION OF RESTRUCTURED PROJECTS BY NONPROFIT ORGANIZATIONS.

Paragraph (5) of section 517(a) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437 note) is amended by inserting “, or the sole general partner of the limited partnership owning the project,” after “if the project”.

SEC. 11. MARK-TO-MARKET FOR MODERATE REHABILITATION PROJECTS.

(a) RENEWAL OF EXPIRING PROJECT-BASED SECTION 8 MODERATE REHABILITATION CONTRACTS.—Section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended—

(1) in subsection (a)(4)(A)(iv)—

(A) in subclause (I), by inserting “or” after the semicolon;

(B) by striking subclause (II); and

(C) by redesignating subclause (III) as subclause (II); and

(2) in subsection (b), by striking paragraph (3).

(b) RENT ADJUSTMENTS FOR COVERED PROJECTS.—

(1) **RENT DETERMINATION AT INITIAL RENEWAL AFTER ENACTMENT.**—Upon the first request by an owner of a covered housing project for renewal of project-based assistance pursuant to section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 made after the date of the enactment of this Act—

(A) the rent levels at which assistance will be provided pursuant to such renewal shall be determined as if such renewal were the initial renewal of a contract for assistance under section 524, as amended by subsection (a) of this section; and

(B) solely for purposes of determining the rent levels at which assistance will be provided pursuant to such first renewal after the date of the enactment of this Act, in the case of a project for which contract rents were reduced upon a prior renewal of an expiring contract pursuant to subsection (b)(3) of section 524, as in effect on the day before the date of the enactment of this Act, the contract rent levels in effect immediately prior to such first renewal after the date of the enactment of this Act shall be the considered to be the deemed rent levels described in paragraph (3)(C).

(2) **RENT ADJUSTMENTS AFTER INITIAL RENEWAL AFTER ENACTMENT.**—After the first renewal of a contract for assistance of a covered housing project after the date of the enactment of this Act in accordance with paragraph (1) of this subsection, the Secretary of Housing and Urban Development shall adjust rents in accordance with subsection (c) of section 524.

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

(A) The term “section 524” means section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note).

(B) The term “covered housing project” means a project that receives project-based assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) which was renewed prior to the date of the enactment of this Act pursuant to subsection (b)(3) of section 524, as in effect on the day before the date of the enactment of this Act.

(C) The term “deemed rent levels” means the contract rent levels in effect immediately prior to the first renewal of assistance pursuant to subsection (b)(3) of section 524, as in effect on the day before the date of the enactment of this Act, upon which contract rent levels were reduced, as adjusted by the applicable operating cost adjustment factor established by the Secretary at the date of such renewal and at the date of any subsequent renewal pursuant to such subsection (b)(3).

(D) The term “Secretary” means the Secretary of Housing and Urban Development or any public housing agency approved by the Secretary to serve as the contracting party in lieu of the Secretary.

SEC. 12. ENHANCED VOUCHER ASSISTANCE UPON CONTRACT TERMINATION.

Subsection (d) of section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437 note) is amended—

(1) in the subsection heading, by inserting “OR TERMINATION” after “CONTRACT EXPIRATION”; and

(2) in paragraph (1)—

(A) by inserting “or termination” after “the date of the expiration”;

(B) by striking “shall make” and inserting “shall provide”;

(C) by striking “available on behalf of” and inserting “for”; and

(D) by inserting “or termination” after “the date of such expiration”.

SEC. 13. CORRECTING HARM CAUSED BY LATE SUBSIDY PAYMENTS.

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) is amended by adding at the end the following new subsection:

“(ff) **LATE PAYMENTS.**—

“(1) **GENERAL.**—The Secretary shall make payments of project-based rental assistance provided under this section for each month on or before the due date under paragraph (2) for the payment.

“(2) **DUE DATE.**—The due date under this paragraph for a monthly payment is the first business day of the month.

“(3) **NOTIFICATION OF LATE PAYMENT.**—The Secretary shall notify a project owner at least 10 days before the due date for a housing assistance payment if such payment will be late and shall inform the project owner of the approximate date the payment will be made.

“(4) **USE OF RESERVES.**—If a housing assistance payment for a project has not been received before the expiration of the 10-day period beginning upon the due date for such payment, the project owner shall, after the expiration of such period, be entitled to obtain funds from a project replacement reserve, residual re-

ceipts reserve, or other project reserve in order to pay operating and debt service costs for the project. Upon receipt of the monthly housing assistance payment from the Secretary, the project owner shall promptly replace or replenish any such funds advanced pursuant to the preceding sentence.

“(5) INTEREST PAYMENT.—If a monthly housing assistance payment is not made before the expiration of the 30-day period beginning upon the due date for such payment, the Secretary shall pay to the owner simple interest on the amount of such monthly payment, from the due date until the date of payment, at a rate determined by the Secretary of Treasury in accordance with section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611). Interest payments under this paragraph shall be made from amounts made available for management and administration of the Department of Housing and Urban Development.”.

SEC. 14. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on the earlier of—

- (1) the date of enactment of this Act; or
- (2) September 30, 2008.

PURPOSE AND SUMMARY

H.R. 3965, the “Mark-to-Market Extension and Enhancement Act of 2007,” reauthorizes the Mark-to-Market program, which allows for mortgage and rent restructuring for certain section 8 projects. This legislation, which was introduced on October 25, 2007 by Representatives Waters, Frank (MA), and Pryce (OH), would extend the Mark to Market program of the Multifamily Assisted Housing Restructuring and Affordability Act of 1997 through the end of Fiscal Year 2012.

H.R. 3965 includes all the provisions from H.R. 647, the “Mark to Market Extension Act,” which was the subject of a hearing by the Subcommittee on Housing and Community Opportunity on October 23, 2007. In addition, H.R. 3965 as introduced includes the following provisions: (1) extending the program for one additional year, until October 1, 2012; (2) changing the effective date of the bill to the earlier of the date of enactment of the legislation or September 30, 2008; and (3) adding a provision to address the problem of late housing assistance payments by the Department of Housing and Urban Development to owners of project-based Section 8 properties, which was the subject of a separate hearing held by the Subcommittee on October 17, 2007.

The Committee also notes that this bill is similar to legislation introduced in the 109th Congress by Reps. Pryce (OH), Frank (MA), Tiberi, and Waters (H.R. 6115), which passed the House under suspension of the rules by a vote of 416 to 1 on September 27, 2006, but was not acted upon by the Senate prior to adjournment.

During the markup of H.R. 3965, several amendments were agreed to that improved the bill. These amendments are described in Sections 5 and 9 through 12 of the Section-by-Section analysis below.

BACKGROUND AND NEED FOR LEGISLATION

At the inception of the project-based Section 8 program, the Department of Housing and Urban Development (HUD) allowed owners to set rents higher than market rents in order to encourage owner participation. Owners entered into 20 year contracts, over

the course of which, many of the rents were adjusted to compensate for increased property costs.

A review of the portfolio of Federal Housing Administration insured-properties receiving project-based assistance found that by 1997, many of the properties had rents higher than those charged for comparable units in the private market. In addition, many of these properties were financially or physically distressed, including a number that were mismanaged.

In 1997, Congress created the Mark-to-Market program through the Multifamily Assisted Housing Reform and Affordability Act (MAHRA), which was passed as Title V of the VA–HUD Appropriations Act for Fiscal Year 1998 (Public Law 105–65) and authorized the program through Fiscal Year 2001. The program was amended and reauthorized through Fiscal Year 2006 in Title VI of the Labor, Health, and Human Services, Education, and Related Appropriation Act for Fiscal Year 2002 (Public Law 107–116). The most recent reauthorization was in H.J. Res. 20 (Public Law 110–5), which extended the program through Fiscal Year 2011.

The Mark-to-Market program reduces Section 8 subsidies to FHA-insured properties with above-market rents and restructures the mortgages of these properties so that owners can operate more effectively on less income and by charging more competitive rents. The purpose of the program is to provide cost savings for the government, encourage continued participation by owners, and to protect tenants by maintaining the low-income affordability of the properties.

Properties with expiring contracts are eligible for the program if they are insured by an FHA mortgage or have a HUD-held mortgage (excluding Section 202 properties or properties financed by a state or local government), receive project-based Section 8 assistance, have rents in excess of market rents, and have an owner in good standing.

Through February 2008, 3,303 properties representing 248,696 units were restructured through the Mark-to-Market program. Of those, 1,640 properties with 130,421 units received full debt restructuring. An additional 126 properties representing 10,990 units were in the restructuring pipeline as of this date. Based on eligibility requirements, HUD estimated that there were 772 properties with 83,253 units that could potentially be restructured through the Mark-to-Market program.

In addition to these properties, HUD reported that it has effectively reached the five percent portfolio cap limit on exception rents. The portfolio cap limit applies to properties that have rents that are above market (e.g. above market rents can go up to 120 percent of the fair market rent). While the exception rent authority is utilized when the restructured transaction closes, HUD considers the authority utilized when the transaction has received Department approval and a binding restructuring commitment has been executed by both the Department and the property owner. As of mid-March, all but 43 units have been utilized. Approximately 385 of the nearly 9,000 units in the current pipeline will require an increase in the exception rent authority to be eligible for restructuring. As such, HUD requested the Committee to act on this legislation, which would increase the portfolio cap from five to nine percent.

As noted above, the bill is similar to H.R. 647, the “Mark to Market Extension Act of 2007,” which was the subject of a hearing by the Subcommittee on Housing and Community Opportunity on October 23, 2007.

HEARINGS

The Subcommittee on Housing and Community Opportunity held a hearing on October 23, 2007, on H.R. 647, the “Mark-to-Market Extension Act of 2007.” The following witnesses testified:

PANEL ONE

- Mr. Theodore K. Toon, Deputy Assistant Secretary, Office of Affordable Housing Preservation, U.S. Department of Housing and Urban Development

PANEL TWO

- Ms. Amy Anthony, President and Executive Director, Preservation of Affordable Housing, Inc.
- Ms. Sheila Malynowski, President, National Leased Housing Association, and President of Preservation Management, Inc.
- Mr. Bill Faith, Executive Director, Coalition on Homelessness and Housing in Ohio
- Ms. Paula Foster, Vice President Western Region, National Alliance of HUD Tenants

The Subcommittee also held a hearing on October 17, 2007, entitled “The Impacts of Late Housing Assistance Payments on Tenants and Owners in the Project-Based Rental Assistance Program.” The following witnesses testified:

PANEL ONE

- Mr. John W. Cox, Chief Financial Officer, U.S. Department of Housing and Urban Development
- Mr. David Wood, Director, Financial Markets and Community Investment, U.S. Government Accountability Office

PANEL TWO

- Mr. Michael Bodaken, President, National Housing Trust
- Mr. Lawrence J. Lipton, Chief Financial Officer, Related Companies, Inc. on behalf of the National Leased Housing Association
- Mr. J. Kenneth Pagano, President and Chief Executive Officer, Essex Plaza Management on behalf of the National Affordable Housing Management Association
- Mr. Donald L. Beebout, Vice President, Showe Management Corporation
- Ms. Carolann Livingstone, President of 1890 House Tenants Association and Vice President of the Eastern Region of the National Alliance of HUD Tenants
- Dr. William L. Minnix, Jr., President and Chief Executive Officer, American Association of Homes and Services for the Aging

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on October 31, 2007, and ordered H.R. 3965, the “Mark-to-Market Extension Act of 2007,” to be reported to the House.

sion and Enhancement Act of 2007”, as amended, favorably reported to the House by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken in conjunction with the consideration of this legislation. A motion by Mr. Frank (MA) to report the bill, as amended, to the House with a favorable recommendation was agreed to by a voice vote. During the consideration of the bill, the following amendments were considered:

An amendment by Mr. Frank (MA), No. 1, regarding acquisition of restructured projects by nonprofit organizations, was agreed to by a voice vote.

An amendment by Mr. Frank (MA), No. 2, applying mark-to-market for moderate rehabilitation projects, was agreed to by a voice vote.

An amendment by Mr. Frank (MA), No. 3, making technical corrections, was agreed to by a voice vote.

An amendment by Ms. Waters, No. 4, providing enhanced voucher assistance upon contract termination, was agreed to by a voice vote.

An amendment by Mr. Al Green (TX), No. 5, regarding funding for tenant and other participation and capacity building, was offered and withdrawn.

An amendment by Mr. Al Green (TX), No. 6, regarding funding for tenant and other participation and capacity building (revised), was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 3965, the Mark-to-Market Extension and Enhancement Act of 2007, reauthorizes the Mark-to-Market program, which allows for mortgage and rent restructuring for certain section 8 projects. The Mark-to-Market program reduces Section 8 subsidies to FHA-insured properties with above-market rents and restructures the mortgages of these properties so that owners can operate more effectively on less income and by charging more competitive rents. The purpose of the program is to provide cost savings for the government, encourage continued participation by owners, and to protect tenants by maintaining the low-income affordability of the properties.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

NOVEMBER 30, 2007.

Hon. BARNEY FRANK,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3965, the Mark-to-Market Extension and Enhancement Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Chad Chirico.

Sincerely,

PETER R. ORSZAG.

Enclosure.

*H.R. 3965—Mark-to-Market Extension and Enhancement Act of
2007*

Summary: H.R. 3965 would extend the Multifamily Assisted Housing Restructuring and Affordability Act of 1997 (MAHRA) for one year to September 30, 2012. The bill contains several provisions that would affect loans and loan guarantees made by the Department of Housing and Urban Development (HUD). The bill also would change how rents are set and how HUD makes payments to property owners.

CBO estimates that enacting H.R. 3965 would increase direct spending by \$137 million in 2008 because the bill would modify the terms of existing federal loans and loan guarantees—reducing the present value of expected cash flows for such loans. We also estimate that implementing the bill would have a discretionary cost of \$227 million over the 2008–2012 period, assuming appropriation of the necessary amounts.

H.R. 3965 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would extend an existing preemption of state and local law. CBO estimates, however, that the mandate would impose no costs on state, local,

or tribal governments. The bill contains no new private-sector mandates as defined by UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3965 is shown in the following table. The costs of this legislation fall within budget functions 370 (commerce and housing credit) and 600 (income security).

ESTIMATED BUDGETARY EFFECTS OF H.R. 3965

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN DIRECT SPENDING					
Expand Debt Restructuring Eligibility:					
Estimated Budget Authority	77	0	0	0	0
Estimated Outlays	77	0	0	0	0
Nonprofit Debt Relief:					
Estimated Budget Authority	60	0	0	0	0
Estimated Outlays	60	0	0	0	0
Total Changes in Direct Spending:					
Estimated Budget Authority	137	0	0	0	0
Estimated Outlays	137	0	0	0	0
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Moderate Rehabilitation Rents:					
Estimated Authorization Level	50	46	43	39	35
Estimated Outlays	30	48	44	41	37
Late Subsidy Payments:					
Estimated Authorization Level	4	4	4	4	4
Estimated Outlays	4	4	4	4	4
Exception Rents:					
Estimated Authorization Level	*	1	2	2	2
Estimated Outlays	*	1	2	2	2
Total Changes in Spending Subject to Appropriation:					
Estimated Authorization Level	54	51	49	45	41
Estimated Outlays	34	53	50	47	43

Note: * = less than \$500,000.

Basis of estimate: For this estimate, CBO assumes that H.R. 3965 will be enacted near the beginning of calendar year 2008, that the full amounts authorized will be appropriated for each year and that outlays will follow historical patterns. Components of the estimated costs are described below.

Background

In 1997, MAHRA was enacted to address financial problems in the Section 8 program that provides affordable housing assistance. At that time, over 4,000 multifamily properties with mortgages insured by the Federal Housing Administration were receiving project-based rent subsidies under Section 8 of the United States Housing Act of 1937. The original rental contracts for those properties typically ranged from 15 to 40 years and most properties had units with rents that exceeded the rents for comparable units that did not receive rent subsidies.

The mark-to-market process usually involves reducing a property's rental rates to market levels and then either modifying or refinancing the existing mortgage for an amount that could be supported by the new lower rates. Specifically, HUD prepays all or a portion of the owner's existing mortgage debt through a partial payment of claim (PPC) and then issues a secondary mortgage to recover some of the PPC. Property owners can defer payments on

the junior debt while the first mortgage remains outstanding unless some excess project income remains after the owner pays all other expenses. At least 75 percent of any excess income must be applied to the second mortgage and the full amount is due when the first mortgage is terminated or the property is sold.

Direct spending

Because several provisions of the legislation would change the expected cash flows associated with existing federal loans and loan guarantees, those changes constitute a modification of the existing loans. Under credit reform procedures, the costs of loan modifications are estimated on a present value basis and recorded as changes in direct spending in the year in which the legislation is enacted. In total, CBO estimates that enacting H.R. 3965 would increase direct spending by \$137 million in 2008.

Expand Debt Restructuring Eligibility. Under section 7 of the bill, properties that are otherwise eligible for debt restructuring, but have rents that are at or below those for comparable market units, would be eligible to have their insured mortgages restructured. The provision would allow HUD to exercise this authority for up to 10 percent of all units for which mortgage restructuring is completed. Based on information provided by HUD, CBO estimates that about 30 properties per year (out of 1,400 properties that would be newly eligible) would have their debt restructured under this provision.

Based on HUD data, CBO estimates that the average unpaid principal balance for properties eligible for the mark-to-market process is about \$2 million. The average PPC for properties that have had their debt restructured is about 80 percent of the unpaid balance and the repayment rate on the new secondary mortgages averages about 2 percent per year. On average, CBO estimates that for those properties that would have defaulted on their loans, restructuring mortgage debt would save about \$1 million per project on a present value basis. However, restructuring debt for properties that would not have otherwise defaulted, would cost about \$1 million per project on a present value basis.

Because the properties made eligible by this provision would either receive rent increases or maintain current rent levels upon expiration of their Section 8 contracts, CBO expects that they would have low default rates in the absence of debt restructuring. As a result, CBO estimates such restructurings would cost \$77 million in 2008 on a present value basis.

Nonprofit Debt Relief. Both section 9 and section 10 of the bill would increase the number of properties that receive debt relief. In total, CBO estimates that enacting those provisions would cost \$60 million in 2008 on a present value basis.

Section 9 would expand the period of eligibility for qualified nonprofits to receive debt relief when acquiring a property that has been through the mark-to-market debt restructuring process. Under current law, HUD can forgive or assign a property's secondary mortgage if the property is acquired by a qualified nonprofit entity and HUD's guidelines require that any transactions resulting in debt relief must occur within three years of debt restructuring. The provision would extend that period to the later of five years or two years after the date of enactment.

HUD has completed 57 such transactions to date, the majority of which were completed in the past few years. Based on HUD data, CBO estimates that the federal government loses about \$700,000 of expected secondary mortgage payments (on a present value basis) per property as a result of such debt forgiveness. This loss is partially offset by HUD's requirement that the seller of a restructured property pay at least half of any cash-out proceeds at the time of sale as a partial repayment of the second mortgage (such payments have averaged about \$290,000).

About 1,000 properties that are beyond the current three-year window would be eligible for debt relief if acquired by a qualified nonprofit. Based on the program's recent experience, CBO estimates that about 5 percent of those properties would be transferred to a qualified nonprofit and have their debt forgiven or assigned. Thus, CBO estimates that expanding the period of eligibility for nonprofit debt relief would cost \$25 million in 2008 on a present value basis.

Similarly, section 10 would allow debt relief if a qualified nonprofit becomes the general partner of a limited partnership that owns a property (general partners may hold as little as one-half of one percent interest in the limited partnership). In some instances, CBO expects that becoming the general partner would be a more attractive transaction for a qualified nonprofit than acquiring title to the property. Based on information from HUD and industry groups, CBO estimates that this provision would roughly double the number of transactions resulting in debt relief. CBO estimates that allowing debt relief for such transactions would cost \$35 million in 2008 on a present value basis.

Spending subject to appropriation

CBO estimates that implementing provisions of H.R. 3965 would have a discretionary cost of \$227 million over the 2008–2012 period, assuming appropriation of the necessary amounts.

Moderate Rehabilitation Rents. Section 11 would change the manner in which rents are determined upon contract renewal for properties assisted through the Moderate Rehabilitation (Mod Rehab) program which provides a rental subsidy to properties that have been previously rehabilitated. Currently, rents for such properties are renewed at the lesser of existing rents (adjusted by an operating cost factor), 120 percent of the fair market rent (as determined by HUD), or comparable market rents, which are generally higher than the other options. The provision would allow rents for those properties to be renewed at comparable market rents.

About 29,000 units are currently assisted through the Mod Rehab program and owners may choose to leave the program when their contract expires and instead receive enhanced tenant-based vouchers. A common reason for opting out of the Mod Rehab program is that the rents under that program are often below market rates and tenants with enhanced vouchers would pay market rent. Based on data provided by the Government Accountability Office (GAO) and HUD, CBO estimates that approximately 5,000 units have left the program each year since 1998.

Allowing rents under the Mod Rehab program to be set at market levels would increase the estimated cost of rental assistance if the owner of that property would not have otherwise opted to leave

the program to take tenants with enhanced vouchers. Based on HUD data, CBO estimates that about 70 percent of Mod Rehab units have rents that are about 25 percent below market rates. Increasing the rents to match market rates would have an annual cost of about \$2,500 per unit for each year that the property would have stayed in the program.

Assuming an attrition rate similar to the past few years and appropriation of the necessary amounts, CBO estimates that this provision would cost \$200 million over the 2008–2012 period.

Late Subsidy Payments. Section 13 would require HUD to make Housing Assistance Payments (HAP) for project-based rental assistance by the first business day of each month. If a HAP payment is not made within 30 days of the due date, HUD would be required to pay the property owner simple interest on the amount of such payment at a rate determined by the Secretary of Treasury. Interest payments would be made from amounts made available for the management and administration of HUD. Based on data from GAO, CBO estimates that approximately 6 percent of HAP payments are more than 30 days late with an average delay of about 60 days. Assuming an average interest rate of 5.7 percent, CBO estimates that the payment of interest for late HAP payments would cost about \$20 million over the 2008–2012 period, assuming availability of the necessary amounts.

Exception Rents. Under current law, HUD can set rents above 120 percent of the fair market rent (FMR) for up to 5 percent of all units subject to debt restructuring. Section 6 would increase this authority for up to 9 percent of all such units. Based on HUD data, CBO estimates that such exception rents are, on average, about 14 percent higher (or \$870 per year) than they would be if limited to 120 percent of the FMR, and that the expansion of this authority would affect about 500 units per year, on average. CBO estimates that expanding the exception rent authority would cost \$7 million over the 2008–2012 period, assuming availability of the necessary amounts.

Intergovernmental and private-sector impact: H.R. 3965 would extend an existing preemption of state and local law. Under current law, state and local governments may not have laws that conflict with federal regulations governing how surplus funds are distributed from housing projects that receive assistance under the mark-to-market program. Extending that preemption would be an intergovernmental mandate as defined by UMRA. However, because the preemption would simply limit the application of state and local law, the mandate would not impose costs on state, local, or tribal governments.

In general, state, local, and tribal governments that participate in affordable housing projects and programs would benefit from activities authorized in the bill. Any costs those governments incur to comply with program conditions would be incurred voluntarily. The bill contains no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Chad Chirico and Susanne S. Mehlman; Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum; Impact on the Private Sector: Keisuke Nakagawa.

Estimate approved by: Keith Fontenot, Deputy Assistant Director for Health and Human Resources, Budget Analysis Division.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 3965 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Short title identifying the bill as the “Mark-to-Market Extension and Enhancement Act of 2007.”

Section 2. Purposes

Sets forth purposes of the legislation: (1) continue the progress of the Multifamily Assisted Housing Reform and Affordability Act of 1997; (2) expand eligibility for Mark-to-Market restructuring to further preservation in a cost-effective manner; and (3) provide for the preservation and rehabilitation of projects damaged by natural disasters, including those damaged by Hurricanes Katrina, Rita, and Wilma.

Section 3. Definitions

Sets forth a definition for disaster-eligible projects.

Section 4. Extension of the Mark-to-Market Program

Amends the Multifamily Assisted Housing Reform and Affordability Act of 1997 to reauthorize the following programs until October 1, 2012: (1) the Mark-to-Market program; and (2) provisions

of the FHA-insured Multifamily Housing Mortgage and Housing Assistance Restructuring program regarding projects and programs for which binding commitments have been entered into under such Act.

Section 5. Funding for tenant and other participation and capacity building

Authorizes not less than \$10 million in grant funds for training and technical assistance. While current law provides that HUD may make available up to \$10 million, no funds have been made available since 2002.

Requires HUD to: (1) make modifications to a new technical assistance program called TRIO (Tenant Resources Information and Outreach Program); (2) resume an inter-agency agreement with the Corporation for National and Community Service (CNCS) to restart the VISTA program, which helps to train volunteers who provide technical assistance to residents; and (3) use \$1 million of the \$10 million in authorized funds for the VISTA program. CNCS would match HUD's funding dollar-for-dollar resulting in \$2 million for technical assistance.

Establishes reporting requirements and other measures to ensure that funds are used solely for authorized activities. Specifically, this section requires each grant recipient to submit to the HUD Secretary on a quarterly basis reports detailing the use of such funds and including such information as the Secretary requires. Also requires recipients to develop systems to ensure compliance with the new TRIO program and requirements. In addition, this section ensures that no funds may be used for political activities, political advocacy or lobbying, or for expenses to travel to engage in political activities or preparation of or provision of advice on tax returns.

Finally, this section authorizes the HUD Secretary to impose penalties on any recipient of grant funds for failure to comply with any requirement.

Section 6. Exception rents

Permits the Secretary of Housing and Urban Development to waive rent level limits for up to 9 percent (currently 5 percent) of all units subject to restructured mortgages in any fiscal year, based on certain findings of special need.

Section 7. Otherwise eligible projects

Revises requirements for an approved mortgage restructuring and rental assistance sufficiency plan with respect to modification or forgiveness of all or part of a second mortgage held by the Secretary (debt relief) if the project concerned is acquired by a tenant organization or tenant-endorsed community-based nonprofit or public agency. Sets forth requirements for alternative periods of eligibility for such nonprofit debt relief if the purchaser acquires the project subsequent to the date of recordation of the related affordability agreement, and two years after the date of enactment of this Act.

Section 8. Disaster-damaged eligible properties

Declares disaster-damaged eligible projects eligible without regard to the relationship between rent level for the assisted units and comparable market rents.

Requires each mortgage restructuring and rental assistance sufficiency plan to determine for units assisted with project-based assistance in eligible multifamily housing projects, if rents cannot be determined, adjusted rent levels: (1) for disaster-damaged eligible projects equal to 100 percent of the fair market rents for the relevant market area; and (2) for other eligible multifamily housing projects equal to 90 percent of the fair market rents for the relevant market area.

States that, with respect to a disaster-damaged eligible project, the owner contribution toward rehabilitation needs shall be determined in accordance with specified requirements.

Section 9. Period of eligibility for non-profit debt relief

Facilitates the transfer of properties from exiting owners to qualified not-for-profit preservation owners by extending the time for which the Secretary is authorized to exercise not-for-profit purchase incentives from the later of five years after the date of recordation of the affordability agreement (currently it is three years) or two years after the date of enactment of this title.

Section 10. Acquisition of restructured projects by nonprofit organizations

Allows debt relief if a qualified nonprofit becomes the general partner of a limited partnership that owns a multi-family property. While HUD recognized that either acquisition of title, or acquisition of control, of a property constitutes a transfer of physical assets, HUD has expressed uncertainty as to whether the term “acquired”, as used in Section 517(a)(5) of MAHRA, applies to the acquisition of control over the ownership of a project. This provision would clarify that in addition to acquiring title to restructured projects, a qualified nonprofit organization may qualify for forgiveness or modification of secondary debt held by HUD if it acquires control over the limited partnership owning the project by becoming the sole general partner of the partnership.

Section 11. Mark-to-market for moderate rehabilitation projects

Subjects properties assisted under HUD’s Moderate Rehabilitation program to the same standards that apply to project-based Section 8 contracts by making such properties eligible for the mark-to market process. This section also would require that public agencies renew Section 8 moderate rehabilitation contracts when requested by owners. This section does not provide retroactive rent hikes for moderate rehabilitation properties that have already been renewed.

Section 12. Enhanced voucher assistance upon contract termination

Clarifies that enhanced vouchers shall be made available to residents if the project-based Section 8 housing assistance contract is terminated by the owner. Thus, the provision clarifies Congressional intent by ensuring that residents are protected against being

subject to rent increases in the event a contract is terminated. Such protections already exist for cases where a contract expires.

Section 13. Correcting harm caused by late subsidy payments

Requires HUD to make monthly project-based rental assistance housing assistance payments to owners upon the first day of each month. Also requires HUD to notify owners at least 10-days prior to the due date if the payment will be late and when such payment will be made. Authorizes owners who have not received the monthly housing assistance payment within 10-days of the due date to use project replacement reserves, residual receipt reserves or other project reserves for the purpose of paying operating and debt service. Requires HUD to pay simple interest on the amount of such monthly payment, from the due date until the date of payment. Interest is determined by the Secretary of Treasury in accordance with the Contract Disputes Act of 1978 (currently, the interest rate is 5.750 percent).

Section 14. Effective date

Makes the bill effective upon the earlier of the date of enactment of the legislation or September 30, 2008.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

MULTIFAMILY ASSISTED HOUSING REFORM AND AFFORDABILITY ACT OF 1997

TITLE V—HUD MULTIFAMILY HOUSING REFORM

* * * * *

Subtitle A—FHA-Insured Multifamily Housing Mortgage and Housing Assistance Restructuring

* * * * *

SEC. 512. DEFINITIONS.

In this subtitle:

(1) * * *

* * * * *

(20) *DISASTER-DAMAGED ELIGIBLE PROJECT.*—

(A) *IN GENERAL.*—*The term “disaster-damaged eligible project” means an otherwise eligible multifamily housing project—*

(i) that is located in a county that was designated a major disaster area on or after January 1, 2005, by the President pursuant to title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.);

(ii) whose owner carried casualty and liability insurance covering such project in an amount required by the Secretary;

(iii) that suffered damages not covered by such insurance that the Secretary determines is likely to exceed \$5,000 per unit in connection with the natural disaster that was the subject of the designation described in subparagraph (A); and

(iv) whose owner requests restructuring of the project not later than 2 years after the date that such damage occurred.

(B) *RULE OF CONSTRUCTION.*—A disaster-damaged eligible project shall be eligible for amounts under this Act without regard to the relationship between rent levels for the assisted units in such project and comparable rents for the relevant market area.

* * * * *

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

(a) * * *

* * * * *

(f) **TENANT AND OTHER PARTICIPATION AND CAPACITY BUILDING.**—

(1) * * *

* * * * *

(3) **FUNDING.**—

(A) *IN GENERAL.*—The Secretary shall make available [not more than] *not less than* \$10,000,000 annually in funding, which amount shall be in addition to any amounts made available under this subparagraph and carried over from previous years, from which the Secretary may make obligations to tenant groups, nonprofit organizations, and public entities for building the capacity of tenant organizations, for technical assistance in furthering any of the purposes of this subtitle (including transfer of developments to new owners), for technical assistance for preservation [of low-income housing for which project-based rental assistance is provided at below market rent levels and may not be renewed] *and improvement of low-income housing for which project-based rental assistance, subsidized loans, or enhanced vouchers under section 8(t) are provided* (including transfer of developments to tenant groups, nonprofit organizations, and public entities, *and predevelopment assistance to enable such transfers*), for tenant services, and for tenant groups, nonprofit organizations, and public entities described in section 517(a)(5), from those amounts made available under appropriations Acts for implementing this subtitle or previously made available for technical assistance in connection with the preservation of affordable rental housing for low-income persons. *For outreach and training of tenants and technical assistance, the Secretary shall implement a grant program utilizing performance-based outcome measures for eligible costs incurred. Recipients providing capacity building*

or technical assistance services to tenant groups shall be qualified nonprofit Statewide, countywide, areawide or citywide organizations with demonstrated experience including at least a two-year recent track record of organizing and providing assistance to tenants, and independence from the owner, a prospective purchaser, or their managing agents. The Secretary may provide assistance and training to grantees in administrative and fiscal management to ensure compliance with applicable Federal requirements. The Secretary shall expedite the provision of funding for fiscal year 2008 by entering into new multi-year contracts with any prior grantee without adverse audit findings or whose adverse audit findings have been cleared, and by entering into an interagency agreement for not less than \$1,000,000 with the Corporation for National and Community Service or any other agency of the Federal Government, that is selected by the Secretary and the Secretary determines is qualified to conduct such program, to conduct a tenant outreach and training program under the same or similar terms and conditions as was most recently conducted by the Corporation. The Secretary shall also make available flexible grants to qualified nonprofit organizations that do not own eligible multifamily properties, for tenant outreach in underserved areas, and to experienced national or regional nonprofit organizations to provide specialized training or support to grantees assisted under this section. Notwithstanding any other provision of law, funds authorized under this section for any fiscal year shall be available for obligation in subsequent fiscal years. The Secretary shall require each recipient of amounts made available pursuant to this subparagraph to submit to the Secretary reports, on a quarterly basis, detailing the use of such funds and including such information as the Secretary shall require.

* * * * *

(D) PROHIBITIONS.—None of the funds made available under subparagraph (A) may be used for any political activities, political advocacy, or lobbying (as such terms are defined by Circular A-122 of the Office of Management and Budget, entitled “Cost Principles for Non-Profit Organizations”), or for expenses for travel to engage in political activities or preparation of or provision of advice on tax returns.

(E) PROGRAM COMPLIANCE SYSTEMS.—Each recipient of amounts made available under subparagraph (A) shall develop systems to ensure compliance with the program and the requirements of this paragraph.

(F) PENALTIES.—The Secretary may impose penalties on any recipient of amounts made available under subparagraph (A) that fails to comply with any requirement under this paragraph or of the program established pursuant to this paragraph, which penalties may include—

- (i) ineligibility for further assistance from amounts made available under subparagraph (A); and
- (ii) requiring the recipient to reimburse the Secretary for any amounts that were so misused.

(g) RENT LEVELS.—

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

(A) * * *

(B) if those rents cannot be [determined, are equal] *determined*—

(i) *with respect to a disaster-damaged eligible property, are equal to 100 percent of the fair market rents for the relevant market area (as such rents were in effect at the time of such disaster); and*

(ii) *with respect to other eligible multifamily housing projects, are equal to 90 percent of the fair market rents for the relevant market area.*

(2) EXCEPTIONS.—

(A) IN GENERAL.—A contract under this section may include rent levels that exceed the rent level described in paragraph (1) at rent levels that do not exceed 120 percent of the fair market rent for the market area (except that the Secretary may waive this limit for *disaster-damaged eligible projects* and not more than [five percent] *9 percent* of all units subject to portfolio restructuring agreements, based on a finding of special need), if the participating administrative entity—

(i) * * *

* * * * *

(i) OTHER ELIGIBLE PROJECTS.—

(1) IN GENERAL.—*Notwithstanding any other provision of this subtitle, a project that meets the requirements of subparagraphs (B) and (C) of section 512(2) but does not meet the requirements of subparagraph (A) of section 512(2), may be treated as an eligible multifamily housing project on an exception basis if the Secretary determines, subject to paragraph (2), that such treatment is necessary to preserve the project in the most cost-effective manner in relation to other alternative preservation options.*

(2) OWNER REQUEST.—

(A) REQUEST REQUIRED.—*The Secretary shall not treat an otherwise eligible project described under paragraph (1) as an eligible multifamily housing project unless the owner of the project requests such treatment.*

(B) NO ADVERSE TREATMENT IF NO REQUEST MADE.—*If the owner of a project does not make a request under subparagraph (A), the Secretary shall not withhold from such project any other available preservation option.*

(3) CANCELLATION.—

(A) TIMING.—*At any time prior to the completion of a mortgage restructuring under this subtitle, the owner of a project may—*

(i) *withdraw any request made under paragraph (2)(A); and*

(ii) pursue any other option with respect to the renewal of such owner's section 8 contract pursuant to any applicable statute or regulation.

(B) DOCUMENTATION.—If an owner of a project withdraws such owner's request and pursues other renewal options under this paragraph, such owner shall be entitled to submit documentation or other information to replace the documentation or other information used during processing for mortgage restructuring under this subtitle.

(4) LIMITATION.—The Secretary may exercise the authority to treat projects as eligible multifamily housing projects pursuant to this subsection only to the extent that the number of units in such projects do not exceed 10 percent of all units for which mortgage restructuring pursuant to section 517 is completed.

* * * * *

SEC. 517. RESTRUCTURING TOOLS.

(a) MORTGAGE RESTRUCTURING.—

(1) * * *

* * * * *

(5) The Secretary may modify the terms of the second mortgage, assign the second mortgage to the acquiring organization or agency, or forgive all or part of the second mortgage if the Secretary holds the second mortgage and if the project, or the sole general partner of the limited partnership owning the project, is acquired by a tenant organization or tenant-endorsed community-based nonprofit or public agency, pursuant to guidelines established by the Secretary. If such purchaser acquires such project subsequent to the date of recordation of the affordability agreement described in section 514(e)(6)—

(A) such purchaser shall acquire such project on or before the later of—

(i) 5 years after the date of recordation of the affordability agreement; or

(ii) 2 years after the date of enactment of the Market-to-Market Extension and Enhancement Act of 2007; and

(B) the Secretary shall have received, and determined acceptable, such purchaser's application for modification, assignment, or forgiveness prior to the acquisition of the project by such purchaser.

* * * * *

(c) REHABILITATION NEEDS AND ADDITION OF SIGNIFICANT FEATURES.—

(1) * * *

* * * * *

(3) PROPERTIES DAMAGED BY NATURAL DISASTERS.—With respect to a disaster-damaged eligible property, the owner contribution toward rehabilitation needs shall be determined in accordance with paragraph (2)(C).

* * * * *

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

(a) IN GENERAL.—

(1) * * *

* * * * *

(4) RENEWAL RENTS.—Except as provided in subsection (b), the contract for assistance shall provide assistance at the following rent levels:

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

(i) * * *

* * * * *

(iv) is not—

(I) owned by a nonprofit entity; *or*

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

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

* * * * *

(b) EXCEPTION RENTS.—

(1) * * *

* * * * *

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

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

[(B) FAIR MARKET RENTS.—Fair market rents (less any amounts allowed for tenant-purchased utilities).

[(C) MARKET RENTS.—Comparable market rents for the market area.]

* * * * *

(d) ENHANCED VOUCHERS UPON CONTRACT EXPIRATION *OR* TERMINATION.—

(1) IN GENERAL.—In the case of a contract for project-based assistance under section 8 for a covered project that is not renewed under subsection (a) or (b) of this section (or any other authority), to the extent that amounts for assistance under this subsection are provided in advance in appropriation Acts, upon

the date of the expiration or termination of such contract the Secretary [shall make] shall provide enhanced voucher assistance under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)) [available on behalf of] for each low-income family who, upon the date of such expiration or termination, is residing in an assisted dwelling unit in the covered project.

* * * * *

Subtitle C—Enforcement Provisions

* * * * *

PART 2—FHA Multifamily Provisions

* * * * *

SEC. 579. TERMINATION.

(a) REPEALS.—

(1) MARK-TO-MARKET PROGRAM.—Subtitle A (except for section 524) is repealed effective October 1, [2011] 2012.

* * * * *

(b) EXCEPTION.—Notwithstanding the repeal under subsection (a), the provisions of subtitle A (as in effect immediately before such repeal) shall apply with respect to projects and programs for which binding commitments have been entered into under this Act before October 1, [2011] 2012.

* * * * *

SECTION 8 OF THE UNITED STATES HOUSING ACT OF 1937

LOWER INCOME HOUSING ASSISTANCE

SEC. 8. (a) * * *

* * * * *

(ff) LATE PAYMENTS.—

(1) GENERAL.—The Secretary shall make payments of project-based rental assistance provided under this section for each month on or before the due date under paragraph (2) for the payment.

(2) DUE DATE.—The due date under this paragraph for a monthly payment is the first business day of the month.

(3) NOTIFICATION OF LATE PAYMENT.—The Secretary shall notify a project owner at least 10 days before the due date for a housing assistance payment if such payment will be late and shall inform the project owner of the approximate date the payment will be made.

(4) USE OF RESERVES.—If a housing assistance payment for a project has not been received before the expiration of the 10-day period beginning upon the due date for such payment, the project owner shall, after the expiration of such period, be entitled to obtain funds from a project replacement reserve, residual

receipts reserve, or other project reserve in order to pay operating and debt service costs for the project. Upon receipt of the monthly housing assistance payment from the Secretary, the project owner shall promptly replace or replenish any such funds advanced pursuant to the preceding sentence.

(5) INTEREST PAYMENT.—If a monthly housing assistance payment is not made before the expiration of the 30-day period beginning upon the due date for such payment, the Secretary shall pay to the owner simple interest on the amount of such monthly payment, from the due date until the date of payment, at a rate determined by the Secretary of Treasury in accordance with section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611). Interest payments under this paragraph shall be made from amounts made available for management and administration of the Department of Housing and Urban Development.

