

NATIONAL AFFORDABLE HOUSING TRUST FUND ACT OF
2007

OCTOBER 2, 2007.—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

together with

DISSENTING VIEWS

[To accompany H.R. 2895]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2895) to establish the National Affordable Housing Trust Fund in the Treasury of the United States to provide for the construction, rehabilitation, and preservation of decent, safe, and affordable housing for low-income families, 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.

This Act may be cited as the “National Affordable Housing Trust Fund Act of 2007”.

SEC. 2. NATIONAL AFFORDABLE HOUSING TRUST FUND.

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

“Subtitle G—National Affordable Housing Trust Fund

“SEC. 291. PURPOSES.

“The purposes of this subtitle are—

“(1) to address the national shortage of housing that is affordable to low-income families by creating a permanently appropriated fund, with dedicated sources of funding, to finance additional housing activities, without supplanting existing housing appropriations or existing State and local funding for affordable housing;

“(2) to enable rental housing to be built, for families with the greatest economic need, in mixed-income settings and in areas with the greatest economic opportunities;

“(3) to promote ownership of one-to-four family owner-occupied housing by low-income families; and

“(4) to construct, rehabilitate, and preserve at least 1,500,000 affordable dwelling units over the next decade.

“SEC. 292. TRUST FUND.

“(a) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to be known as the National Affordable Housing Trust Fund.

“(b) DEPOSITS TO TRUST FUND.—The Trust Fund shall consist of—

“(1) any amounts of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation transferred to the Trust Fund under title XIII of the Housing and Community Development Act of 1992;

“(2) any amounts appropriated to the Trust Fund pursuant to the authorization in the Expanding American Homeownership Act of 2007, relating to the use of FHA savings for an affordable housing grant fund; and

“(3) any amounts as are or may be appropriated, transferred, or credited to such Fund under any other provisions of law.

“(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Trust Fund shall be available to the Secretary of Housing and Urban Development, and are hereby appropriated, for providing assistance under this subtitle.

“(d) FEDERAL ASSISTANCE.—All assistance provided using amounts in the Trust Fund shall be considered to be Federal financial assistance.

“(e) CONDITIONS ON USE OF FHA SAVINGS.—

“(1) USE.—For each fiscal year, no funds may be made available under paragraph (2) of subsection (b) unless the amount equal to the net increase for such fiscal year in the negative credit subsidy for the mortgage insurance programs under title II of the National Housing Act resulting from the Expanding American Homeownership Act of 2007, and the amendments made by such Act, is first made available for the following purposes in the following amounts:

“(A) SINGLE FAMILY HOUSING MORTGAGE INSURANCE.—For each fiscal year, for costs (as such term is defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) of mortgage insurance provided pursuant to section 203(b) of the National Housing Act (12 U.S.C. 1709(b)), the

additional amount (not including any costs of such mortgage insurance resulting from this Act or the amendments made by this Act), if any, necessary to ensure that the credit subsidy cost of such mortgage insurance for such fiscal year is \$0.

“(B) HOUSING COUNSELING.—For each of fiscal years 2008 through 2012, the amount needed to increase funding, for the housing counseling program under section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), in connection with homebuyers and homeowners with mortgages insured under title II of the National Housing Act, from the amount appropriated for the preceding fiscal year to \$100,000,000.

“(C) MORTGAGE INSURANCE TECHNOLOGY, PROCEDURES, PROCESSES, PROGRAM PERFORMANCE, AND SALARIES.—For each of fiscal years 2008 through 2012, \$25,000,000 for increasing funding for the purpose of improving technology, procedures, processes, and program performance, and salaries in connection with the mortgage insurance programs under title II of the National Housing Act.

“(2) EXCLUSION OF EARNINGS FROM THE SINGLE FAMILY MORTGAGE INSURANCE PROGRAM.—No funds under paragraph (2) of subsection (b) for a fiscal year may be derived from the negative credit subsidy cost for such fiscal year, if any, for mortgage insurance provided pursuant to section 203(b) of the National Housing Act.

“(3) CERTIFICATION.—No funds may be made available under paragraph (2) of subsection (b) for any fiscal year unless the Secretary of Housing and Urban Development has, by rule making in accordance with section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section), made a determination that premiums being, or to be, charged during such fiscal year for mortgage insurance under title II of the National Housing Act are established at the minimum amount sufficient to comply with the requirements of section 205(f) of such Act (relating to required capital ratio for the Mutual Mortgage Insurance Fund) and ensure the safety and soundness of the other mortgage insurance funds under such Act, and any negative credit subsidy for such fiscal year resulting from such mortgage insurance programs adequately ensures the efficient delivery and availability of such programs.

“(4) LIMITATION ON MORTGAGE INSURANCE PREMIUM INCREASES.—Notwithstanding any other provision of law—

“(A) the premiums charged for mortgage insurance under any program under the National Housing Act may not be increased above the premium amounts in effect under such program on October 1, 2006, unless the Secretary of Housing and Urban Development determines that, absent such increase, insurance of additional mortgages under such program would, under the Federal Credit Reform Act of 1990, require the appropriation of new budget authority to cover the costs (as such term is defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a) of such insurance; and

“(B) a premium increase pursuant to paragraph (1) may be made only by rule making in accordance with the procedures under section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).

“SEC. 293. ALLOCATIONS FOR STATES, INDIAN TRIBES, INSULAR AREAS, AND PARTICIPATING LOCAL JURISDICTIONS.

“(a) DETERMINATION OF AMOUNT AVAILABLE FOR FISCAL YEAR.—For fiscal year 2008 and for each fiscal year thereafter, the Secretary shall determine the total amount available from the Trust Fund pursuant to section 292(c) for assistance under this subtitle and shall use such amount to provide such assistance for such fiscal year.

“(b) ALLOCATION.—For each such fiscal year, of such total amount available from the Trust Fund, the Secretary shall allocate for use under section 294—

- “(1) 40 percent for States, Indian tribes, and insular areas; and
- “(2) 60 percent for participating local jurisdictions.

“SEC. 294. ASSISTANCE FROM TRUST FUND.

“(a) AFFORDABLE HOUSING NEEDS FORMULA.—

“(1) ESTABLISHMENT AND FACTORS.—The Secretary shall establish a formula to allocate amounts made available for a fiscal year for assistance under this subtitle among States, all Indian tribes, insular areas, and participating local jurisdictions based on the relative needs of such entities, for funds to increase the supply of decent quality affordable housing. The formula shall be based upon a comparison of the following factors with respect to each State, Indian tribes, each insular area, and each participating local jurisdiction:

“(A) The ratio of the population of the State, Indian tribes, insular area, or participating jurisdiction, to the aggregate population of all States, Indian tribes, insular areas, and participating jurisdictions.

“(B) The percentage of families in the jurisdiction of the State, of Indian tribes, or of the insular area or participating jurisdiction that live in substandard housing.

“(C) The percentage of families in the jurisdiction of the State, of Indian tribes, or of the insular area or participating jurisdiction that pay more than 50 percent of their annual income for housing costs.

“(D) The percentage of persons in the jurisdiction of the State, of Indian tribes, or of the insular area or participating jurisdiction having an income at or below the poverty line.

“(E) The cost of constructing or carrying out rehabilitation of housing in the jurisdiction of the State, of Indian tribes, or of the insular area or participating jurisdiction.

“(F) The percentage of the population of the State, of Indian tribes, or of the insular area or participating jurisdiction that resides in counties having extremely low vacancy rates.

“(G) The percentage of housing stock in the jurisdiction of the State, of Indian tribes, or of the insular area or participating jurisdiction that is extremely old housing.

“(H) For the jurisdiction of a State, of Indian tribes, or of an insular area or participating jurisdiction that has an extremely low percentage of affordable rental housing, the extent to which the State, Indian tribes, or the insular area or participating jurisdiction has in the preceding fiscal year increased the percentage of rental housing within its jurisdiction that is affordable housing.

“(I) Any other factors that the Secretary determines to be appropriate.

“(2) FAILURE TO ESTABLISH.—If, in any fiscal year referred to in section 293(a), the regulations establishing the formula required under paragraph (1) of this subsection have not been issued by the date that the Secretary determines the total amount available from the Trust Fund for assistance under this subtitle for such fiscal year pursuant to section 292(c), or there has been enacted before such date a joint resolution expressly disapproving the use of the formula required under paragraph (1) and submitted to the Congress pursuant to paragraph (3), for purposes of such fiscal year—

“(A) section 293(b), paragraphs (2) and (3) of subsection (b) of this section, and subsection (c) of this section shall not apply;

“(B) the allocation for Indian tribes shall be such amount as the Secretary shall establish; and

“(C) the formula amount for each State, insular area, or participating local jurisdiction shall be determined by applying, for such State, insular area, or participating local jurisdiction, the percentage that is equal to the percentage of the total amounts made available for such fiscal year for allocation under subtitle A of this title (42 U.S.C. 12741 et seq.) that are allocated in such year, pursuant to such subtitle, to such State, insular area, or participating local jurisdiction, respectively, and the allocation for each State, insular area, or participating jurisdiction, for purposes of subsection (e) shall, except as provided in subsection (d), be the formula amount for the State, insular area, or participating jurisdiction, respectively.

“(3) SUBMISSION TO CONGRESS.—Notwithstanding any other provision of this subtitle, any formula established by the Secretary pursuant to this subsection shall be submitted to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not less than 120 days before application of the formula for purposes of determining formula amounts under subsection (b) for a fiscal year. Such submission shall be accompanied by a detailed explanation of the factors under the formula and anticipated effects of the formula.

“(b) FORMULA AMOUNT.—

“(1) IN GENERAL.—For each fiscal year referred to in section 293(a), the Secretary shall determine the formula amount under this subsection for each State, for Indian tribes, for each insular area, and for each participating local jurisdiction.

“(2) STATES, INDIAN TRIBES, AND INSULAR AREAS.—The formula amount for each State, for Indian tribes, and for each insular area shall be the amount determined for such State, for Indian tribes, or for such insular area by applying the formula under subsection (a) of this section to the total amount allocated under section 293(b)(1) for all States, Indian tribes, and insular areas for the fiscal year.

“(3) PARTICIPATING LOCAL JURISDICTIONS.—The formula amount for each participating local jurisdiction shall be the amount determined for such participating local jurisdiction by applying the formula under subsection (a) of this section to the total amount allocated under section 293(b)(2) for all participating local jurisdictions for the fiscal year.

“(4) NOTICE.—For each fiscal year referred to in section 293(a), not later than 60 days after the date that the Secretary determines the total amount available from the Trust Fund for such fiscal year pursuant to section 292(c) for assistance under this subtitle, the Secretary shall cause to be published in the Federal Register a notice that such amounts shall be so available.

“(c) ALLOCATION BASED ON AFFORDABLE HOUSING NEEDS FORMULA.—The allocation under this subsection for a State, for Indian tribes, for an insular area, or for a local participating jurisdiction for a fiscal year shall be determined as follows:

“(1) STATES.—Subject to subsection (d), the allocation for a State shall be the formula amount for the State.

“(2) INDIAN TRIBES AND INSULAR AREAS.—The allocation for Indian tribes and for each insular area shall be the formula amount for Indian tribes or for the insular area, respectively, determined under subsection (b), as applicable.

“(3) PARTICIPATING LOCAL JURISDICTIONS.—Subject to subsection (d), the allocation for each participating local jurisdiction shall be the formula amount for the jurisdiction determined under subsection (b).

“(d) ALLOCATION EXCEPTION FOR YEARS IN WHICH LESS THAN \$2 BILLION IS AVAILABLE.—If, for any fiscal year, the total amount available pursuant to section 293(a) for assistance under this subtitle is less than \$2,000,000,000—

“(1) for each participating local jurisdiction having a formula amount of less than \$750,000, the allocation shall be \$0, except that if the Secretary finds that the jurisdiction has demonstrated a capacity to carry out provisions of this subtitle and the State in which such jurisdiction is located has authorized the Secretary to transfer to the jurisdiction a portion of the State’s allocation that is equal to or greater than the difference between the jurisdiction’s formula amount and \$750,000, or the State or jurisdiction has made available such an amount from the State’s or jurisdiction’s own sources available for use by the jurisdiction in accordance with this subtitle, the jurisdiction’s allocation for a fiscal year shall be the formula amount for the jurisdiction; and

“(2) in the case of any jurisdiction whose allocation is \$0 by operation of paragraph (1), the allocation for the State in which such participating local jurisdiction is located shall be increased by the amount of the formula amount for the participating local jurisdiction.

Any adjustments pursuant to paragraphs (1) and (2) shall be made notwithstanding the allocation percentages under section 293(b).

“(e) GRANT AWARDS.—For each fiscal year referred to in section 293(a), using the amounts made available to the Secretary from the Trust Fund for such fiscal year under section 292(c), the Secretary shall, subject to subsection (f), make a grant to each State, insular area, and participating local jurisdiction in the amount of the allocation under subsection (a)(2), (c), or (d), as applicable, for the State, area, or jurisdiction, respectively.

“(f) MATCHING REQUIREMENT.—

“(1) IN GENERAL.—Each grantee for a fiscal year shall contribute to eligible activities funded with Trust Fund grant amounts, or require the contribution to such eligible activities by recipients of such Trust Fund grant amounts of, in addition to any such grant amounts, not less than the following amount:

“(A) STATE, LOCAL, OR PRIVATE RESOURCES.—To the extent that such contributed amounts are derived from State, local, or private resources, 12.5 percent of such grant amounts.

“(B) FEDERAL AMOUNTS.—To the extent that such contributed amounts are derived from State- or locally-controlled amounts from Federal assistance, or from amounts made available under the affordable housing program of a Federal Home Loan Bank pursuant to section 10(j) of the Federal Home Loan Bank Act (12 U.S.C. 1430(j)), 25 percent of such grant amounts.

Nothing in this paragraph may be construed to prevent a grantee or recipient from complying with this paragraph only by contributions in accordance with subparagraph (A), only by contributions in accordance with subparagraph (B), or by a combination of such contributions.

“(2) REDUCTION OR WAIVER FOR RECIPIENTS IN FISCAL DISTRESS.—The Secretary may reduce or waive the requirement under paragraph (1) with respect to any grantee that the Secretary determines, pursuant to such demonstration by the recipient as the Secretary shall require, is in fiscal distress. The Secretary shall make determinations regarding fiscal distress for purposes of this paragraph in the same manner, and according to the same criteria, as fiscal dis-

ness is determined with respect to jurisdictions under section 220(d) (42 U.S.C. 12750(d)).

“(3) QUALIFICATION OF SERVICES FUNDING FOR MATCH.—For purposes of meeting the requirements of paragraph (1), amounts that a grantee, recipient, or other governmental or private agency or entity commits to contribute to provide services to residents of affordable housing provided using grant amounts under this subtitle, by entering into a binding commitment for such contribution as the Secretary shall require, shall be considered contributions to eligible activities. Amounts to be considered eligible contributions under this paragraph shall not exceed 33 percent of the total cost of the eligible activity.

“(4) REDUCTION OR WAIVER FOR CERTAIN ACTIVITIES.—With respect to Trust Fund grant amounts made available for a fiscal year, the Secretary shall reduce or waive the amount of contributions otherwise required under paragraph (1) to be made with respect to eligible activities to be carried out with such grant amounts and for which any variance from zoning laws or other waiver of regulatory requirements was approved by the local jurisdiction. Such reduction may be implemented in the year following the year in which such activities are funded with Trust Fund grant amounts.

“(5) WAIVER FOR DISASTER AREAS.—In the case of any area that is subject to a declaration by the President of a major disaster or emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121), the Secretary shall, for the fiscal year following such declaration, waive the requirement under paragraph (1) with respect to any eligible activities to be carried out in such area.

“(g) COMPETITIVE GRANTS FOR INDIAN TRIBES.—For each fiscal year referred to in section 293(a), the Secretary shall, using amounts allocated for Indian tribes pursuant to subsection (a)(2)(B) or (c)(2), as applicable, and subject to subsection (f), make grants to Indian tribes on a competitive basis, based upon such criteria as the Secretary shall establish, which shall include the factors specified in section 295(c)(2)(B).

“(h) USE BY STATE OF UNUSED FUNDS OF LOCAL JURISDICTIONS.—If any participating local jurisdiction for which an allocation is made for a fiscal year pursuant to this section notifies the Secretary of an intent not to use all or part of such funds, any such funds that will not be used by the jurisdiction shall be added to the grant award under subsection (e) for the State in which such jurisdiction is located.

“(i) COMPETITIVE GRANTS FOR AREAS WITHOUT ALLOCATION PLANS AND RECIPIENTS WITH INSUFFICIENT MATCHING CONTRIBUTIONS.—

“(1) AVAILABLE AMOUNTS.—For a fiscal year, the following amounts shall be available for grants under this subsection:

“(A) ALLOCATION FOR AREAS NOT SUBMITTING ALLOCATION PLANS.—With respect to each State, insular area, or participating local jurisdiction that has not, before the expiration of the 12-month period beginning upon the date of the publication of the notice of funding availability for such fiscal year under subsection (b)(4), submitted to and had approved by the Secretary an allocation plan for such fiscal year meeting the requirements of section 295, the amount of the allocation for such State, insular area, or participating local jurisdiction for such fiscal year determined under this section.

“(B) UNMATCHED PORTION OF ALLOCATION.—With respect to any grantee for which the Trust Fund grant amount awarded for such fiscal year is reduced from the amount of the allocation determined under this section for the grantee by reason of failure to comply with the requirements under subsection (f), the amount by which such allocation for the grantee for the fiscal year exceeds the Trust Fund grant amount for the grantee for the fiscal year.

“(C) UNCOMMITTED AMOUNTS.—Any Trust Fund grant amounts for a fiscal year that are not committed for use for eligible activities before the expiration of the 24-month period beginning upon the date of the publication of the notice of availability of amounts under subsection (b)(4) for such fiscal year.

“(D) UNUSED AMOUNTS.—Any Trust Fund grant amounts for which the grantee notifies the Secretary that such funds will not be used under this subtitle.

“(2) NOTICE.—For each fiscal year, not later than 60 days after the date that the Secretary determines that the amounts described in paragraph (1) shall be available for grants under this subsection, the Secretary shall cause to be published in the Federal Register a notice that such amounts shall be so available.

“(3) APPLICATIONS.—The Secretary shall provide for nonprofit and public entities (and consortia thereof, which may include regional consortia of units of

local government) to submit applications, during the 9-month period beginning upon publication of a notice of funding availability under paragraph (2) for a fiscal year, for a grant of all or a portion of the amounts referred to in paragraph (1) for such fiscal year. Such an application shall include a certification that the applicant will comply with all requirements of this subtitle applicable to a grantee under this subsection.

“(4) SELECTION CRITERIA.—The Secretary shall, by regulation, establish criteria for selecting applicants that meet the requirements of paragraph (3) for funding under this subsection. Such criteria shall give priority to applications that provide that grant amounts under this subsection will be used for eligible activities relating to affordable housing that is located in the State or insular area, as applicable, for which such grant funds were originally allocated under this section.

“(5) AWARD AND USE OF GRANT ASSISTANCE.—

“(A) AWARD.—Subject only to the absence of applications meeting the requirements of paragraph (3), upon the expiration of the period referred to in such paragraph, the Secretary shall select an applicant or applicants under this subsection to receive the amounts available under paragraph (1) and shall make a grant or grants to such applicant or applicants. The selection shall be based upon the criteria established under paragraph (4).

“(B) USE.—Amounts from a grant under this subsection shall be Trust Fund grant amounts for purposes of this subtitle.

“SEC. 295. ALLOCATION PLANS.

“(a) IN GENERAL.—Each grantee that is a State, insular area, participating local jurisdiction, or grantee under section 294(i) for a fiscal year, shall establish an allocation plan in accordance with this section for the distribution of Trust Fund grant amounts provided to the grantee for such fiscal year, which shall be a plan that—

“(1) provides for use of such amounts in accordance with section 296;

“(2) is based on priority housing needs, including priority housing needs in rural areas, as determined by the grantee; and

“(3) is consistent with the comprehensive housing affordability strategy under section 105 (42 U.S.C. 12705) or any applicable consolidated submission used for purposes of applying for other community planning and development and housing assistance programs administered by the Secretary, for the applicable State, insular area, jurisdiction, or grantee under section 294(i).

“(b) ESTABLISHMENT.—In establishing an allocation plan, a grantee described in subsection (a) shall notify the public of the establishment of the plan, provide an opportunity for public comments regarding the plan, consider any public comments received, and make the completed plan available to the public.

“(c) CONTENTS.—Each allocation plan of a grantee described in subsection (a) shall comply with the following requirements:

“(1) APPLICATION REQUIREMENTS FOR ELIGIBLE RECIPIENTS.—The allocation plan shall set forth the requirements for eligible recipients to apply to the grantee to receive assistance from Trust Fund grant amounts of the grantee for use for eligible activities, including a requirement that each such application include—

“(A) a description of the eligible activities to be conducted using such assistance; and

“(B) a certification by the eligible recipient applying for such assistance that any housing assisted with such grant amounts will comply with—

“(i) all of the requirements under this subtitle, including the targeting requirements under section 296(c) and the affordable housing requirements under section 297;

“(ii) section 808(d) of the Fair Housing Act (relating to the obligation to affirmatively further fair housing); and

“(iii) section 504 of the Rehabilitation Act of 1973 (relating to prohibition of discrimination on the basis of disability).

“(2) SELECTION PROCESS AND CRITERIA FOR ASSISTANCE.—

“(A) SELECTION PROCESS.—The allocation plan shall set forth a process for the grantee to select eligible activities meeting the grantee’s priority housing needs for funding with Trust Fund grant amounts of the grantee, which shall comply with requirements for such process as the Secretary shall, by regulation, establish.

“(B) SELECTION CRITERIA.—The allocation plan shall set forth the factors for consideration in selecting among applicants that meet the application requirements established pursuant to paragraph (1), which shall provide for geographic diversity among eligible activities to be assisted with Trust Fund grant amounts of the grantee and shall include—

“(i) the merits of the proposed eligible activity of the applicant, including the extent to which the activity addresses housing needs identified in the allocation plan of the grantee and the applicable comprehensive housing affordability strategy or consolidated submission referred to in subsection (a)(3);

“(ii) the experience of the applicant, including its principals, in carrying out projects similar to the proposed eligible activity;

“(iii) the ability of the applicant to obligate grant amounts for the proposed eligible activities and to undertake such activities in a timely manner;

“(iv) the extent of leveraging of funds by the applicant from private and other non-Federal sources for carrying out the eligible activities to be funded with Trust Fund grant amounts, including assistance made available under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) that is devoted to the project that contains the affordable housing to be assisted with such assistance;

“(v) the extent of local assistance that will be provided in carrying out the eligible activities, including financial assistance;

“(vi) the efficiency of total project fund use as measured by the cost per unit of the proposal, as adjusted by factors which shall include whether the funding with Trust Fund grant amounts is for new construction, rehabilitation, preservation, or homeownership assistance, whether the project involves supportive housing, differences in construction and rehabilitation costs in different areas of the grantee, and other appropriate adjustments;

“(vii) the degree to which the project in which the affordable housing will be located will have residents of various incomes;

“(viii) the extent of employment and other economic opportunities for low-income families in the area in which the housing will be located;

“(ix) the extent to which the applicant demonstrates the ability to maintain dwelling units as affordable housing through the use of assistance made available under this subtitle, assistance leveraged from non-Federal sources, assistance made available under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), State or local assistance, programs to increase tenant income, cross-subsidization, and any other resources;

“(x) the extent to which the applicant demonstrates that the county in which the housing is to be located is experiencing an extremely low vacancy rate;

“(xi) the extent to which the percentage of the housing located in such county that is extremely old housing exceeds 35 percent;

“(xii) the extent to which the housing assisted with the grant amounts will be accessible to persons with disabilities;

“(xiii) the extent to which the applicant demonstrates that the affordable housing assisted with the grant amounts will be located in proximity to public transportation, job opportunities, child care, and community revitalization projects;

“(xiv) the extent to which the applicant has provided that assistance from grant amounts will be used for eligible activities relating to housing located in census tracts in which the number of families having incomes less than the poverty line is less than 20 percent; and

“(xv) the extent to which the housing assisted with grant amounts will comply with energy efficiency standards and the national Green Communities criteria checklist for residential construction that provides criteria for the design, development, and operation of affordable housing, as the Secretary shall by regulation provide.

A grantee may allocate a portion of funds under this section for use by such grantee for eligible activities pursuant to the selection process under subparagraph (A).

“(3) PERFORMANCE GOALS, BENCHMARKS, AND TIMETABLES.—The allocation plan shall include performance goals, benchmarks, and timetables for the grantee for the conducting of eligible activities with Trust Fund grant amounts that comply with requirements and standards for such goals, benchmarks, and timetables as the Secretary shall, by regulation, establish.

“(d) REVIEW AND APPROVAL BY SECRETARY.—

“(1) SUBMISSION.—A grantee described in subsection (a) shall submit an allocation plan for the fiscal year for which the grant is made to the Secretary not later than the expiration of the 6-month period beginning upon the notice of funding availability under section 294(b)(4) for such fiscal year amounts.

“(2) REVIEW AND APPROVAL OR DISAPPROVAL.—The Secretary shall review and approve or disapprove an allocation plan not later than the expiration of the 3-month period beginning upon submission of the plan.

“(3) STANDARD FOR DISAPPROVAL.—The Secretary may disapprove an allocation plan only if the plan fails to comply with requirements of this section or section 296.

“(4) RESUBMISSION UPON DISAPPROVAL.—If the Secretary disapproves a plan, the grantee may submit to the Secretary a revised plan for review and approval or disapproval under this subsection.

“(5) TIMING FOR FISCAL YEAR 2008.—With respect only to fiscal year 2008, the Secretary may extend each of the periods referred to in paragraphs (1) and (2), and the period referred to in section 294(i)(1)(A), by not more than 6 months.

“SEC. 296. USE OF ASSISTANCE BY RECIPIENTS.

“(a) DISTRIBUTION TO RECIPIENTS; USE REQUIREMENTS.—Each grantee shall distribute Trust Fund grant amounts of the grantee to eligible recipients for use in accordance with this section. Trust Fund grant amounts of a grantee may be used, or committed for use, only for eligible activities that—

“(1) are conducted in the jurisdiction of the grantee;

“(2) in the case of a grantee that is a State, insular area, participating local jurisdiction, or grantee under section 294(i), comply with the allocation plan of the grantee under section 295;

“(3) are selected for funding by the grantee in accordance with the process and criteria for such selection established pursuant to section 295(c)(2); and

“(4) comply with the targeting requirements under subsection (c) of this section and the affordable housing requirements under section 297.

“(b) ELIGIBLE RECIPIENTS.—Trust Fund grant amounts of a grantee may be provided only to an organization, agency, or other entity (including a for-profit entity, a nonprofit entity, a faith-based organization, a community development financial institution, a community development corporation, and a State or local housing trust fund) that—

“(1) demonstrates the experience, ability, and capacity (including financial capacity) to undertake, comply, and manage the eligible activity;

“(2) demonstrates its familiarity with the requirements of any other Federal, State or local housing program that will be used in conjunction with such grant amounts to ensure compliance with all applicable requirements and regulations of such programs; and

“(3) makes such assurances to the grantee as the Secretary shall, by regulation, require to ensure that the recipient will comply with the requirements of this subtitle during the entire period that begins upon selection of the recipient to receive such grant amounts and ending upon the conclusion of all eligible activities that are engaged in by the recipient and funded with such grant amounts.

“(c) TARGETING REQUIREMENTS.—The targeting requirements under this subsection are as follows:

“(1) REQUIREMENT OF USE OF ALL AMOUNTS FOR AFFORDABLE HOUSING FOR LOW-INCOME FAMILIES.—All Trust Fund grant amounts of a grantee shall be distributed for use only for eligible activities relating to affordable housing that are for the benefit only of families whose incomes do not exceed 80 percent of the greater of—

“(A) the median family income for the area in which the housing is located, as determined by the Secretary with adjustments for smaller and larger families; and

“(B) the median family income for the State or insular area in which the housing is located, as determined by the Secretary with adjustments for smaller and larger families.

“(2) USE OF 75 PERCENT FOR AFFORDABLE HOUSING FOR EXTREMELY LOW-INCOME FAMILIES.—Not less than 75 percent of the Trust Fund grant amounts of a grantee for each fiscal year shall be used only for eligible activities relating to affordable housing that are for the benefit only of families whose incomes do not exceed the higher of—

“(A) 30 percent of the median family income for the area in which the housing is located, as determined by the Secretary with adjustments for smaller and larger families; and

“(B) the poverty line (as such term is defined in section 673 of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902), including any revision required by such section) applicable to a family of the size involved.

“(3) USE OF 30 PERCENT FOR AFFORDABLE HOUSING FOR VERY POOR FAMILIES.—Not less than 30 percent of the Trust Fund grant amounts of a grantee for each

fiscal year shall be used only for eligible activities relating to affordable housing that are for the benefit only of families whose incomes do not exceed the maximum amount of income that an individual or family could have, taking into consideration any income disregards, and remain eligible for benefits under the Supplemental Security Income program under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.).

“(4) USE OF 10 PERCENT FOR AFFORDABLE HOUSING FOR FAMILIES ABOVE 50 PERCENT OF AREA MEDIAN INCOME.—Not less than 10 percent of the Trust Fund grant amounts of a grantee for each fiscal year shall be used only for eligible activities relating to affordable housing that are for the benefit only of families whose incomes exceed 50 percent of the median family income for the area in which the housing is located, as determined by the Secretary with adjustments for smaller and larger families.

“(5) LIMITATION FOR YEARS IN WHICH LESS THAN \$2 BILLION IS AVAILABLE.—If, for any fiscal year, the total amount available pursuant to section 293(a) for assistance under this subtitle is less than \$2,000,000,000, in addition to the other requirements under this subsection, all such amounts shall be used only for eligible activities relating to affordable housing that are for the benefit only of families whose incomes do not exceed 60 percent of the median family income for the area in which the housing is located, as determined by the Secretary with adjustments for smaller and larger families.

“(6) REVIEW OF TARGETING REQUIREMENTS.—The Secretary shall assess the need for, and the appropriateness of, the requirements under paragraphs (1) through (4) and shall submit a report to the Congress on the results of the assessment not later than October 1, 2012, and not later than the expiration of the 5-year period beginning upon such date and each successive 5-year period thereafter. In each such report, the Secretary shall identify and make recommendations regarding the continuation or adjustment of the targeting requirements in paragraphs (1) through (4).

“(d) USE FOR RURAL AREAS.—Of the Trust Fund grant amounts for any fiscal year for any grantee that is a State or participating local jurisdiction that includes any rural areas, the State or participating local jurisdiction shall use a portion for eligible activities located in rural areas that is proportionate to the identified need for such activities in such rural areas.

“(e) COST LIMITS.—The Secretary shall establish limitations on the amount of Trust Fund grant amounts that may be used, on a per unit basis, for eligible activities. Such limitations shall be the same as the per unit cost limits established pursuant to section 212(e) (42 U.S.C. 12742(e)), as adjusted annually, and established by number of bedrooms, market area, and eligible activity.

“(f) FORMS OF ASSISTANCE.—

“(1) IN GENERAL.—Assistance may be distributed pursuant to this section in the form of—

“(A) capital grants, noninterest-bearing or low-interest loans or advances, deferred payment loans, guarantees, and loan loss reserves;

“(B) in the case of assistance for ownership of one- to four-family owner-occupied housing, downpayment assistance, closing cost assistance, and assistance for interest rate buy-downs; and

“(C) any other forms of assistance approved by the Secretary.

“(2) REPAYMENTS.—If a grantee awards assistance under this section in the form of a loan or other mechanism by which funds are later repaid to the grantee, any repayments and returns received by the grantee shall be distributed by the grantee in accordance with the allocation plan under section 295 for the grantee for the fiscal year in which such repayments are made or returns are received.

“(g) COORDINATION WITH OTHER ASSISTANCE.—In distributing assistance pursuant to this section, each grantee shall, to the maximum extent practicable, coordinate such distribution with the provision of other Federal, State, tribal, and local housing assistance, including—

“(1) in the case of any State, housing credit dollar amounts allocated by the State under section 42(h) of the Internal Revenue Code of 1986;

“(2) assistance made available under subtitles A through F (42 U.S.C. 12721 et seq.) or the community development block grant program under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.);

“(3) private activity bonds;

“(4) assistance made available under section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g);

“(5) assistance made available under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o));

“(6) assistance made available under title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.);

“(7) assistance made available under section 101 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4111);

“(8) assistance made available from any State or local housing trust fund established to provide or assist in making available affordable housing; and

“(9) any other housing assistance programs.

“(h) PROHIBITED USES.—The Secretary shall—

“(1) by regulation, set forth prohibited uses of grant amounts under this subtitle, which shall include use for—

“(A) political activities;

“(B) advocacy;

“(C) lobbying, whether directly or through other parties;

“(D) counseling services;

“(E) travel expenses; and

“(F) preparing or providing advice on tax returns;

“(2) by regulation, provide that, except as provided in paragraph (3), grant amounts under this subtitle may not be used for administrative, outreach, or other costs of—

“(A) a grantee; or

“(B) any recipient of such grant amounts; and

“(3) by regulation, limit the amount of any Trust Fund grant amounts for a fiscal year that may be used for administrative costs of the grantee of carrying out the program required under this subtitle to a percentage of such grant amounts of the grantee for such fiscal year, which may not exceed 10 percent.

“(i) LABOR STANDARDS.—Each grantee receiving Trust Fund grant amounts shall ensure that contracts for eligible activities assisted with such amounts comply with the same requirements under section 286 (42 U.S.C. 12836) that are applicable to contracts for construction of affordable housing assisted under subtitles A and D.

“(j) COMPLIANCE WITH OTHER FEDERAL LAWS.—All amounts from the Trust Fund shall be allocated in accordance with, and any eligible activities carried out in whole or in part with grant amounts under this subtitle (including housing provided with such grant amounts) shall comply with and be operated in compliance with, other applicable provisions of Federal law, including—

“(1) laws relating to tenant protections and tenant rights to participate in decision making regarding their residences;

“(2) laws requiring public participation, including laws relating to Consolidated Plans, Qualified Allocation Plans, and Public Housing Agency Plans; and

“(3) fair housing laws and laws regarding accessibility in federally assisted housing, including section 504 of the Rehabilitation Act of 1973.

“SEC. 297. AFFORDABLE HOUSING.

“(a) RENTAL HOUSING.—A rental dwelling unit (which may include a dwelling unit in limited equity cooperative housing, as such term is defined in section 143(k) of the Internal Revenue Code of 1986 (26 U.S.C. 143(k)) or in housing of a cooperative housing corporation, as such term is defined in section 216(b) of the Internal Revenue Code of 1986 (26 U.S.A. 216(b))), shall be considered affordable housing for purposes of this subtitle only if the dwelling unit is subject to legally binding commitments that ensure that the dwelling unit meets all of the following requirements:

“(1) RENTS.—The dwelling unit bears a rent not greater than the lesser of—

“(A) the existing fair market rental established by the Secretary under section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)) for a dwelling unit of the same size in the same market area, or the applicable payment standard for assistance under section 8(o) of such Act, if higher; and

“(B) a rent that does 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 number of bedrooms in the unit, except that the Secretary may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of the findings of the Secretary that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

“(2) TENANT RENT CONTRIBUTION.—The contribution toward rent by the family residing in the dwelling unit will not exceed 30 percent of the adjusted income of such family.

“(3) NON-DISCRIMINATION AGAINST VOUCHER HOLDERS.—The dwelling unit is located in a project in which all dwelling units are subject to enforceable restric-

tions that provide that a unit may not be refused for leasing to a holder of a voucher of eligibility under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) because of the status of the prospective tenant as a holder of such voucher.

“(4) MIXED INCOME.—

“(A) IN GENERAL.—The dwelling unit is located in a project in which not more than 50 percent of the rental units in the project that receive assistance under this subtitle and are not previously occupied may be rented initially to families with incomes described in section 296(c)(2), as determined at a reasonable time before occupancy.

“(B) REHABILITATION.—In the case of a dwelling unit in a project for which Trust Fund grant amounts are used for the rehabilitation of the project, the dwelling unit is located in a project in which the percentage of units being rented upon completion of the rehabilitation to families with incomes described in section 296(c)(2) may not exceed the higher of 50 percent or the percentage of such families occupying the project at the time funds are awarded for such project.

“(C) EXCEPTIONS.—Subparagraph (A) shall not apply in the case of a project having 25 or fewer dwelling units that is—

“(i) located in a census tract in which the number of families having incomes less than the poverty line is less than 20 percent;

“(ii) located in a rural area, as such term is defined in section 520 of the Housing Act of 1949 (42 U.S.C. 1490); or

“(iii) specifically made available only for households comprised of elderly families or disabled families.

“(5) VISITABILITY.—To the extent the dwelling unit is not required under Federal law to comply with standards relating to accessibility to persons with disabilities, the dwelling unit complies with such basic visitability standards as the Secretary shall by regulation provide.

“(6) DURATION OF USE.—The dwelling unit will continue to be subject to all requirements under this subsection for not less than 50 years.

“(b) OWNER-OCCUPIED HOUSING.—For purposes of any eligible activity involving one- to four-family owner-occupied housing (which may include housing of a cooperative housing corporation, as such term is defined in section 216(b) of the Internal Revenue Code of 1986 (26 U.S.A. 216(b))), such a residence shall be considered affordable housing for purposes of this subtitle only if—

“(1) in the case of housing to be made available for purchase—

“(A) the housing is available for purchase only for use as a principal residence by families that qualify as first-time homebuyers, as such term is defined in section 104 (42 U.S.C. 12704), except that any reference in such section to assistance under title II of this Act shall for purposes of this section be considered to refer to assistance from Trust Fund grant amounts;

“(B) the housing has an initial purchase price that meets the requirements of section 215(b)(1); and

“(C) the housing is subject to the same resale restrictions established under section 215(b)(3) and applicable to the participating jurisdiction that is the State in which such housing is located; and

“(2) the housing is made available for purchase only by, or in the case of assistance to a homebuyer pursuant to this subsection, the assistance is made available only to, homebuyers who have, before purchase, completed a program of counseling with respect to the responsibilities and financial management involved in homeownership that is approved by the Secretary; except that the Secretary may, at the request of a State, waive the requirements of this paragraph with respect to a geographic area or areas within the State if—

“(A) the travel time or distance involved in providing counseling with respect to such area or areas, as otherwise required under this paragraph, on an in-person basis is excessive or the cost of such travel is prohibitive; and

“(B) the State provides alternative forms of counseling for such area or areas, which may include interactive telephone counseling, on-line counseling, interactive video counseling, and interactive home study counseling and a program of financial literacy and education to promote an understanding of consumer, economic, and personal finance issues and concepts, including saving for retirement, managing credit, long-term care, and estate planning and education on predatory lending, identity theft, and financial abuse schemes relating to homeownership that is approved by the Secretary, except that entities providing such counseling shall not discriminate against any particular form of housing.

“(c) PRIORITY FOR FAMILIES ON SECTION 8 OR PUBLIC HOUSING WAITING LIST FOR 12 MONTHS OR LONGER.—A dwelling unit in rental housing or owner-occupied hous-

ing shall be considered affordable housing for purposes of this subtitle only if the dwelling unit is subject to such requirements, as the Secretary shall provide, to ensure that priority for occupancy in or, in the case of owner-occupied housing, purchase of, the dwelling unit is provided to families who are eligible for rental assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) or occupancy in public housing assisted under such Act, and have applied to a public housing agency for such assistance or occupancy, as applicable, and been on a waiting list of a public housing agency for such assistance or occupancy, as applicable, for at least 12 consecutive months.

“SEC. 298. OTHER PROVISIONS.

“(a) **EFFECT OF ASSISTANCE UNDER PROGRAM.**—Notwithstanding any other provision of law, the provision of assistance under this subtitle for a project shall not reduce the amount of assistance for which such project is otherwise eligible under subtitles A through F of this title, if the project does not exceed the cost limits established pursuant to section 296(e).

“(b) **ACCOUNTABILITY OF GRANTEES AND RECIPIENTS.**—

“(1) **RECIPIENTS.**—

“(A) **TRACKING OF FUNDS.**—The Secretary shall—

“(i) require each grantee to develop and maintain a system to ensure that each recipient of assistance from Trust Fund grant amounts of the grantee uses such amounts in accordance with this subtitle, the regulations issued under this subtitle, and any requirements or conditions under which such amounts were provided; and

“(ii) establish minimum requirements for agreements, between the grantee and recipients, regarding assistance from the Trust Fund grant amounts of the grantee, which shall include—

“(I) appropriate continuing financial and project reporting, record retention, and audit requirements for the duration of the grant to the recipient to ensure compliance with the limitations and requirements of this subtitle and the regulations under this subtitle; and

“(II) any other requirements that the Secretary determines are necessary to ensure appropriate grant administration and compliance.

“(B) **MISUSE OF FUNDS.**—

“(i) **REIMBURSEMENT REQUIREMENT.**—If any recipient of assistance from Trust Fund grant amounts of a grantee is determined, in accordance with clause (ii), to have used any such amounts in a manner that is materially in violation of this subtitle, the regulations issued under this subtitle, or any requirements or conditions under which such amounts were provided—

“(I) such recipient shall be ineligible for any further assistance from any Trust Fund grant amounts of any grantee during the period that begins upon such determination and ends upon reinstatement by the Secretary of the eligibility of recipient for such assistance, except that the Secretary may reinstate such an ineligible recipient only pursuant to application by the recipient for such reinstatement and the recipient may not apply to the Secretary for such reinstatement during the 12-month period, or the 10-year period in the case of a second or subsequent such determination, beginning upon such determination; and

“(II) the grantee shall require that, within 12 months after the determination of such misuse, the recipient shall reimburse the grantee for such misused amounts and return to the grantee any amounts from the Trust Fund grant amounts of the grantee that remain unused or uncommitted for use.

The remedies under this clause are in addition to any other remedies that may be available under law.

“(ii) **DETERMINATION.**—A determination is made in accordance with this clause if the determination is—

“(I) made by the Secretary; or

“(II)(aa) made by the grantee;

“(bb) the grantee provides notification of the determination to the Secretary for review, in the discretion of the Secretary, of the determination; and

“(cc) the Secretary does not subsequently reverse the determination.

“(2) **GRANTEES.**—

“(A) REPORT.—

“(i) IN GENERAL.—The Secretary shall require each grantee receiving Trust Fund grant amounts for a fiscal year to submit a report, for such fiscal year, to the Secretary that—

“(I) describes the activities funded under this subtitle during such year with the Trust Fund grant amounts of the grantee; and

“(II) the manner in which the grantee complied during such fiscal year with the allocation plan established pursuant to section 295 for the grantee.

“(ii) PUBLIC AVAILABILITY.—The Secretary shall make such reports pursuant to this subparagraph publicly available.

“(B) MISUSE OF FUNDS.—If the Secretary determines, after reasonable notice and opportunity for hearing, that a grantee has failed to comply substantially with any provision of this subtitle and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary shall—

“(i) reduce the amount of assistance under this section to the grantee by an amount equal to the amount of Trust Fund grant amounts which were not used in accordance with this subtitle;

“(ii) require the grantee to repay the Secretary an amount equal to the amount of the Trust Fund grant amounts which were not used in accordance with this subtitle;

“(iii) limit the availability of assistance under this subtitle to the grantee to activities or recipients not affected by such failure to comply; or

“(iv) terminate any assistance under this subtitle to the grantee.

“SEC. 299. DEFINITIONS.

“For purposes of this subtitle, the following definitions shall apply:

“(1) ELIGIBLE ACTIVITIES.—The term ‘eligible activities’ means activities relating to the construction, preservation, or rehabilitation of affordable rental housing or affordable one- to four-family owner-occupied housing, including—

“(A) the construction of new housing;

“(B) the acquisition of real property;

“(C) site preparation and improvement, including demolition;

“(D) rehabilitation of existing housing;

“(E) use of funds to facilitate affordability for homeless and other extremely low-income households of dwelling units assisted with Trust Fund grant amounts, in a combined amount not to exceed 20 percent of the project grant amount, for—

“(i) project-based rental assistance for not more than 12 months for a project assisted with Trust Fund grant amounts;

“(ii) project operating reserves for use to cover the loss of rental assistance or in conjunction with a project loan; or

“(iii) project operating accounts used to cover net operating income shortfalls for dwelling units assisted with Trust Fund grant amounts;

“(F) providing incentives to maintain existing housing (including manufactured housing) as affordable housing and to establish or extend any low-income affordability restrictions for such housing, including covering capital expenditures and costs of establishing community land trusts to provide sites for manufactured housing provided such incentives; and

“(G) in the case of affordable one- to four-family owner-occupied housing, downpayment assistance, closing cost assistance, and assistance for interest rate buy-downs.

“(2) ELIGIBLE RECIPIENT.—The term ‘eligible recipient’ means an entity that meets the requirements under section 296(b) for receipt of Trust Fund grant amounts of a grantee.

“(3) EXTREMELY LOW VACANCY RATE.—The term ‘extremely low vacancy rate’ means a housing or rental vacancy rate of 2 percent or less.

“(4) EXTREMELY OLD HOUSING.—The term ‘extremely old housing’ means housing that is 45 years old or older.

“(5) FAMILIES.—The term ‘families’ has the meaning given such term in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)).

“(6) FISCAL DISTRESS; SEVERE FISCAL DISTRESS.—The terms ‘fiscal distress’ and ‘severe fiscal distress’ have the meanings given such terms in section 220(d).

“(7) GRANTEE.—The term ‘grantee’ means—

“(A) a State, insular area, or participating local jurisdiction for which a grant is made under section 294(e);

“(B) an Indian tribe for which a grant is made under section 294(g); or

“(C) a nonprofit or public entity for which a grant is made under section 294(i).

“(8) INDIAN TRIBE.—The term ‘Indian tribe’ means a federally recognized Indian tribe.

“(9) INSULAR AREA.—The term ‘insular area’ has the meaning given such term in section 104.

“(10) PARTICIPATING LOCAL JURISDICTION.—The term ‘participating local jurisdiction’ means, with respect to a fiscal year—

“(A) any unit of general local government (as such term is defined in section 104 (42 U.S.C. 12704) that qualifies as a participating jurisdiction under section 216 (42 U.S.C. 12746) for such fiscal year; and

“(B) at the option of such a consortium, any consortium of units of general local governments that is designated pursuant to section 216 (42 U.S.C. 12746) as a participating jurisdiction for purposes of title II.

“(11) POVERTY LINE.—The term ‘poverty line’ has the meaning given such term in section 673(2) of the Omnibus Budget Reconciliation Act of 1981, including any revision required by such section.

“(12) RECIPIENT.—The term ‘recipient’ means an entity that receives assistance from a grantee, pursuant to section 296(a), from Trust Fund grant amounts of the grantee.

“(13) RURAL AREA.—The term ‘rural area’ has the meaning given such term in section 520 of the Housing Act of 1949 (42 U.S.C. 1490).

“(14) SECRETARY.—The term ‘Secretary’ means the Secretary of Housing and Urban Development.

“(15) STATE.—The term ‘State’ has the meaning given such term in section 104.

“(16) TRUST FUND.—The term ‘Trust Fund’ means the National Affordable Housing Trust Fund established under section 292.

“(17) TRUST FUND GRANT AMOUNTS.—The term ‘Trust Fund grant amounts’ means amounts from the Trust Fund that are provided to a grantee pursuant to subsection (e), (g), or (i) of section 294.

“SEC. 299A. INAPPLICABILITY OF HOME PROVISIONS.

“Except as specifically provided otherwise in this subtitle, no requirement under, or provision of, title I or subtitles A through F of this title shall apply to assistance provided under this subtitle.

“SEC. 299B. REGULATIONS.

“Not later than 6 months after the date of enactment of the National Affordable Housing Trust Fund Act of 2007, the Secretary of Housing and Urban Development shall promulgate regulations to carry out this subtitle, which shall include regulations establishing the affordable housing needs formula in accordance with section 294(a).”.

(b) CONFORMING AMENDMENT.—Section 201 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 note) is amended by striking “This title” and inserting “Subtitles A through F of this title”.

PURPOSE AND SUMMARY

H.R. 2895, the “National Affordable Housing Trust Fund Act of 2007” establishes a National Affordable Housing Trust Fund (“Trust Fund”) for the construction, rehabilitation, and preservation of affordable housing, including both rental housing and homeownership. The Trust Fund shall consist of dedicated sources of funding to carry out the Trust Fund’s eligible housing activities. The purpose of the Trust Fund is to enable rental housing to be built for families with the greatest economic need in mixed income settings and in areas with the greatest economic opportunities, and to promote homeownership for low-income families.

The goal of the bill is to produce 1,500,000 units of affordable housing over the next decade. The bill establishes a funding formula for distribution of funds to states, localities, insular areas, and federally recognized Indian Tribes. States, localities and insular areas in turn make funds available under a competitive selection process to qualified recipients, for their use for affordable

housing activities. HUD will distribute funds to Indian Tribes under a competitive selection process.

BACKGROUND AND NEED FOR LEGISLATION

This nation's affordable housing crisis is well documented. It takes many forms, including excessive housing cost burdens for both owner occupied homes and for rental units, the lack of an adequate supply of affordable housing in many communities, deterioration of the housing stock, particularly in older communities, overcrowding, and homelessness. These affordable housing problems are widespread, occurring in different regions of the country, including in both urban and rural communities. It affects both the working class and the unemployed, and presents particular challenges for families with children, senior citizens, disabled persons, and veterans.

The Joint Center for Housing Studies of Harvard University State of the Nation's Housing 2007 report states that in just one year, the number of households with housing cost burdens in excess of 30 percent of income climbed by 2.3 million, hitting a record 37.3 million in 2005. The number of American households paying more than half of their incomes on housing increased to 17 million in 2005, with one in seven U.S. households being "severely housing cost burdened" in that year. Nearly one-half of low-income households, a total of 8.2 million renters and 5 million homeowners, have severe cost burdens. The study indicates that about 750,000 persons are homeless on any given night. And housing assistance as a share of total non defense discretionary spending dropped from 10.2 percent in 1998 to 7.7 percent in 2006.

One effective tool in addressing the affordable housing crisis is state and local housing trust funds. These trust funds typically utilize a dedicated source of revenue. According to the Housing Trust Fund Progress Report 2007 produced by the Center for Community Change, the number of state and local housing trust funds has grown from 432 to more than 600 in just five years. Public revenue collected by these funds now reaches \$1.6 billion each year. These monies support, among other things, new construction, preservation of existing housing, home ownership assistance, emergency housing repairs, homeless shelters, and housing-related services.

H.R. 2895 seeks to build on the successes of state and local trust funds. It establishes in the Treasury a national affordable housing trust fund, with dedicated sources of revenue for the production and preservation of affordable housing for people with the most serious housing problems. The Trust Fund is designed to support additional housing activities—not to supplant existing federal, state or local appropriations or other existing funding sources for affordable housing activities. The sources of funding for the Trust Fund include monies from H.R. 1427 [the GSE Affordable Housing Fund], funds from net available credit subsidy increases resulting from H.R. 1852 [the "Expanding American Homeownership Act", a bill to modernize the Federal Housing Administration (FHA)], and any other sources of funds that are subsequently identified. A description of these two bills and their trust fund provisions follows.

GSE Affordable Housing Fund. H.R. 1427 passed the House on May 22, 2007 by a recorded vote of 313 to 106. The bill provides for contributions by Fannie Mae and Freddie Mac [Government

Sponsored Enterprises (GSEs)] for each of the years from 2007 to 2011 in amounts equal to 1.2 basis points of each of these two GSE's average total mortgage portfolio in the preceding year. CBO estimates that combined contributions over the next five years would average \$600 million a year, with a portion of these contributions used to help pay the federal government's obligations under REFCORP bonds, and all remaining funds being used for affordable housing fund purposes authorized under the bill. Funds in 2007 are reserved for use exclusively in Louisiana and Mississippi. The bill provides that if there is a subsequently enacted bill establishing an affordable housing trust fund, the GSE contributions (net, after required REFCORP contributions) made in 2008 through 2011 shall be transferred to such subsequently adopted housing trust fund.

FHA Funds from H.R. 1852. H.R. 1852 passed the House on September 18, 2007 by a recorded vote of 348 to 72. Section 30 of the bill, as amended, authorizes appropriations for a number of different purposes from the amount equal each year to the increase in negative credit subsidy created by the bill's provisions. First priority for uses of such funds under the bill are (a) the amount, if any, needed to avoid a credit subsidy appropriation for FHA's single family loan program, (b) \$58 million a year for funding increases for housing counseling [to raise the current level of \$42 million a year to \$100 million a year], and (c) \$25 million a year to increase funding for FHA technologies and procedures. The bill provides that any amounts related to net credit subsidy increases after funding these priority areas are authorized for use for affordable housing fund activities. In the absence of this authorization, FHA negative credit subsidies would otherwise be used for general fund purposes as an offset against discretionary spending.

Additionally, no funds from the FHA 203(b) single family loan program may be used for affordable housing fund activities. And, no funds may be used for this purpose unless HUD, by rule, makes a determination that FHA premiums being charged that year are sufficient to comply with the FHA capital ratio requirement and are also sufficient to ensure the safety and soundness of other FHA mortgage insurance funds. Finally, Section 31 of the bill, as amended, prohibits HUD from increasing FHA premiums for any FHA loan program unless HUD determines that such program would require a credit subsidy appropriation absent such a premium increase. Thus, the bill provides more protections than under current law against unnecessary increases in FHA premiums and against diversion of FHA funds for non-housing purposes.

H.R. 2895 was amended in Committee to incorporate all of these limitations from H.R. 1852 regarding use of FHA funds for Trust Fund purposes.

The Congressional Budget Office estimates that \$300 million a year would be authorized under H.R. 1852 for affordable housing fund purposes. This reflects net credit subsidies available after all other priority uses are first funded. It is these funds that H.R. 2895 would transfer for use under the bill for affordable housing trust fund purposes.

Previous Congressional Action. The Committee notes that in past Congresses, there has been Committee action on affordable housing trust fund legislation. On July 12, 2002, the Financial Services

Committee reported out by voice vote H.R. 3995, the “Housing Affordability for America Act of 2002.” H.R. 3995 included Section 101, “Matching Grants for State and Local Affordable Housing Trust Funds,” which was an amendment adopted during Committee consideration. Section 101 authorized such sums as may be necessary for FY 2003 and beyond for matching grants to states and local governments that have established affordable housing trust funds. Seventy five percent of such federal funds were targeted exclusively for rental housing for extremely low income families (below 30 percent of local area median income), with a requirement that the remaining funds be used for low income families (below 80 percent of area median income). These targeting requirements closely track the targeting requirements in H.R. 2895. Section 101 also included provisions similar to H.R. 2895 with respect to eligible activities, affordability requirements, and requirements of grantees to establish allocation plans for fund use. The House of Representatives took no further action on H.R. 3995 in that Congress.

Section 101 of H.R. 3995 was similar to H.R. 2349, the National Affordable Trust Fund Act introduced in the 107th Congress by Rep. Bernie Sanders (199 co-sponsors). The major difference between the two versions was that H.R. 2349 used as its funding source all new FHA revenues each year from the FHA Mutual Mortgage Insurance Fund (MMIF) which are not necessary to maintain the statutory MMIF capital ratio (compared to the “such sums” language in Section 101 of H.R. 3995). The next Congress, Rep. Sanders re-introduced a similar housing trust fund bill, H.R. 1102 (214 cosponsors).

Provisions in H.R. 2895. H.R. 2895 allocates 60 percent of Trust Fund monies to participating local jurisdictions (PLJs) and 40 percent to States, Indian Tribes and insular areas. HUD is required to develop a formula to allocate these funds based on a number of factors, including population, housing affordability, percentage of very and extremely low income families, cost of construction and rehabilitation, and the extent of substandard and aging housing. The bill requires that HUD submit the Trust Fund formula to Congress not less than 120 before the application of the formula. The bill also provides that in the event HUD has not developed this formula in time in any year for distribution of the funds to grantees, HUD shall use the existing HOME formula as a fallback, default formula. Funds available under the formula for federally recognized Indian tribes shall be distributed by HUD under a competitive selection process. It is expected that HUD will utilize a process similar to the process for competitive grants for CDBG funds which are annually set aside for Indian Tribes.

The Committee also believes that there should be a minimum threshold grant amount for localities receiving funds. Therefore, the bill provides that in any year in which the total Trust Fund amount available nationwide is less than \$2 billion, the minimum amount to be distributed to participating local jurisdictions is \$750,000. The funds that would otherwise go to participating local jurisdictions that don’t meet this minimum threshold would revert to the state in which such jurisdiction is located, to be distributed statewide, including being available for use in that jurisdiction.

The Committee believes that it is important that PLJs, States, Indian Tribes and insular areas (grantees) leverage their Trust Fund monies. Therefore the bill requires that Trust Fund grantees provide matching funds from federal, state, local or private sources. H.R. 2895 as amended in Committee requires the same amount of matching funds that is required by the HOME program (25 percent)—except it also permits a lower match level of 12.5 percent if state, local, or private resources are used to meet the match, in order to incentivize the use of state and local trust funds and private resources. The Committee recognizes that the provision of certain housing related services to residents are an important source of funding for affordable housing projects, and therefore these services may under certain circumstances, qualify as matching funds. The bill also provides for a waiver of the matching funds requirement in Presidentially declared disaster areas and permits the reduction or waiver of the match in areas experiencing fiscal distress. Trust Fund monies that are not matched, or are uncommitted or unused by certain time deadlines are to be reallocated in a timely manner.

Activities funded by Trust Fund monies should be well planned and part of an overall and established affordable housing development plan. Therefore, H.R. 2895 requires that all grantees other than Indian Tribes submit an allocation plan for each fiscal year, which is subject to approval by HUD, and must be consistent with the grantee's Consolidated Plan. The allocation plan should be based on priority housing needs in both urban and rural areas and have geographic diversity. In selecting eligible recipients of Trust Fund monies for eligible housing activities, the grantee should consider a variety of factors, including the ability to leverage funds from other sources, the cost per unit for the proposal, and the extent to which rental housing projects are affordable, especially for extremely low income families. Both grantees and recipients are held accountable for the appropriate use of Trust Fund monies and as such the allocation plan must set out the process for the grantee to select eligible activities and include performance goals, benchmarks, and timetables and be submitted to HUD for review and approval. The bill does not require allocation plans to be developed by those Indian tribes which receive funds, since unlike states, PLJs, and insular areas which receive funds by formula and subsequently make them available through competitive grants to recipients, the funds going to the tribes are already awarded by competitive grant, under a process to be established by HUD.

The Committee recognizes that many different types of organizations play an important role in developing and preserving affordable housing. Therefore, grantees can make funds available to a wide range of eligible recipients, which can include any organization, agency, or other entity, including for-profits, nonprofits, and faith-based organizations, that have demonstrated the experience and the capacity to carry out the proposed activity in the fund application. Community development financial institutions, community development corporations, and state and local trust funds are also eligible fund recipients. Moreover, a grantee can make funds available to itself for eligible uses, provided this is done pursuant to its fund selection process.

Although the Committee understands that the affordable housing crisis affects persons at many different income areas, the lack of affordable housing is an extreme problem for low income families (those below 80 percent of local area median income) and particularly for extremely low income families (those below 30 percent of local area median income). HUD's most recent biannual report to Congress on the nation's affordable housing documents the unmet housing needs among the nation's very low income renters. The number of households with "worst case housing needs" jumped from 5.18 million in 2003, the year covered in the last report, to nearly 6 million in 2005, a 16 percent increase. HUD defines households with "worst case needs" as unassisted renters with incomes below 50 percent of area median income who live in substandard housing and/or pay more than half of their income for housing. Unassisted renters are renters who do not receive any housing aid.

Given these housing needs, all Trust Fund monies must be used for the benefit of low income families (except that this income ceiling is reduced to 60 percent of local median income if annual funding in any year is less than \$2 billion). In addition, at least 75 percent of funds must go to extremely low-income families, defined as families below the higher of 30 percent of the local area median income or the national poverty level for a family of comparable size. In addition, at least 30 percent of funds must go to families whose incomes qualify them for Social Security Income (SSI) benefits. Finally, at least 10 percent of funds must go to families with incomes over 50 percent of the local area median income. In recognition of the affordable housing needs in rural areas, States and PLJ must use a portion of Trust Fund monies for eligible activities located in rural areas that is proportionate to the identified need for such activities in such rural areas.

Trust Fund assistance may be distributed in the form of capital grants, noninterest-bearing or low-interest loans or advances, deferred payment loans, guarantees, and loan loss reserves. In the case of homeownership assistance, funds may take the form of down payment assistance, closing cost assistance, and assistance for interest rate buy-downs. Funds can be used for several purposes, including the construction of new housing, the rehabilitation of existing housing, and the acquisition of real property. Trust Fund monies may be used for preservation incentives, such as the costs of providing sites for manufactured housing and establishing community land trusts. The Committee understands that one of the difficulties in preserving affordable housing is the high level of operating costs in relation to income. Therefore Trust Fund monies may be used in limited amounts for project based rental assistance, project operating reserves and accounts, in order to facilitate affordability for extremely low income families.

H.R. 2895 requires all housing assistance provided under the bill be "affordable." The bill further defines affordable rental housing as a unit that bears a rent not greater than the lesser of the existing fair market rental rate and 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area. The tenant rent contribution cannot exceed 30 percent of that family's adjusted family income. The Committee supports mixed income developments for the variety of benefits that it pro-

vides to both residents and the community. To help avoid the concentration of lower income families in housing projects, the bill provides, with certain specified exceptions, that no more than 50 percent of the rental units in a project that receives Trust Fund assistance and are not previously occupied may be rented initially to extremely low income families, and provides similar requirements for use of rehabilitation funds.

In addition to increased rental housing opportunity, the Trust Fund seeks to promote, where appropriate, homeownership opportunities for low income families. The bill allows for Trust Fund assistance for owner-occupied housing that is the principal residence of first-time homebuyers, has a limited initial purchase price, and is subject to resale restrictions. Assisted homebuyers must also have, before purchase, completed a HUD approved program of counseling with respect to homeownership responsibilities and financial management.

The bill includes a number of provisions to ensure that Trust Fund monies are used for housing and are not misused or used for other purposes. There is a strict prohibition against any funds being used for a recipient's administrative costs or expenses, political activities, advocacy, lobbying, counseling, travel expense, or preparation or advice on tax returns. The bill requires HUD to set a limit on the percentage of funds grantees can spend on administrative costs, which limit may not be set in excess of 10 percent. HUD is required to establish program regulations, given authority to audit each grantee's compliance. Grantees are required to develop systems to ensure program compliance and require annual state fund use reports. In addition, HUD has the authority to impose penalties on grantees that do not comply with requirements, including prohibiting the receipt of Trust Fund monies in the future.

HEARINGS

The Committee on Financial Services held a hearing on July 19, 2007 entitled "The Affordable Housing Trust Fund Act of 2007, H.R. 2895". The following witnesses testified:

PANEL ONE

- The Honorable Brian Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner, U.S. Department of Housing and Urban Development

PANEL TWO

- The Honorable Henry Cisneros, Executive Chairman, CityView
- Ms. Sheila Crowley, President, National Low Income Housing Coalition
- The Honorable William D. Euille, Mayor, Alexandria, Virginia, on behalf of the U.S. Conference of Mayors
- Ms. Lisa Alberghini, Director, Planning Office for Urban Affairs, Archdiocese of Boston
- Ms. JoAnne Poole, Broker/Owner, Poole Realty, on behalf of the National Association of Realtors

PANEL THREE

- Mr. Dave Roberts, CEO and President of Lutheran Homes Society
- Ms. Barbara Thompson, Executive Director, National Council of State Housing Agencies
- Mr. Hilary O. Shelton, Director, Washington Bureau, National Association for the Advancement of Colored People
- Dr. Megan Sandel, Assistant Professor of Pediatrics, Boston University School of Medicine
- Mr. Joe L. Myer, Executive Director, NCALL, Research, Inc., on behalf of National Rural Housing Coalition

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 26, 2007, and on July 31, 2007, ordered reported H.R. 2895, the National Affordable Housing Trust Fund Act of 2007, as amended, to the House with a favorable recommendation by a record vote of 45 yeas and 23 nays.

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. A motion by Mr. Frank to report the bill, as amended, to the House with a favorable recommendation was agreed to by a record vote of 45 yeas and 23 nays. The names of Members voting for and against follow (Record vote no. FC-62):

RECORD VOTE NO. FC-62

| Representative | Aye | Nay | Present | Representative | Aye | Nay | Present |
|-----------------|-----|-----|---------|------------------|-----|-----|---------|
| Mr. Frank | X | | | Mr. Bachus | | X | |
| Mr. Kanjorski | X | | | Mr. Baker | | X | |
| Ms. Waters | X | | | Ms. Pryce (OH) | | X | |
| Mrs. Maloney | X | | | Mr. Castle | X | | |
| Mr. Gutierrez | X | | | Mr. King (NY) | X | | |
| Ms. Velázquez | X | | | Mr. Royce | | X | |
| Mr. Watt | X | | | Mr. Lucas | | X | |
| Mr. Ackerman | X | | | Mr. Paul | | X | |
| Ms. Carson | X | | | Mr. Gillmor | | X | |
| Mr. Sherman | X | | | Mr. LaTourette | X | | |
| Mr. Meeks | X | | | Mr. Manzullo | | X | |
| Mr. Moore (KS) | X | | | Mr. Jones | X | | |
| Mr. Capuano | X | | | Mrs. Biggert | | X | |
| Mr. Hinojosa | X | | | Mr. Shays | X | | |
| Mr. Clay | X | | | Mr. Miller (CA) | X | | |
| Mrs. McCarthy | X | | | Mrs. Capito | X | | |
| Mr. Baca | X | | | Mr. Feeney | | | |
| Mr. Lynch | X | | | Mr. Hensarling | | X | |
| Mr. Miller (NC) | X | | | Mr. Garrett (NJ) | | X | |
| Mr. Scott | X | | | Ms. Brown-Waite | | X | |
| Mr. Green | X | | | Mr. Barrett (SC) | | X | |
| Mr. Cleaver | X | | | Mr. Gerlach | X | | |
| Ms. Bean | X | | | Mr. Pearce | | X | |
| Ms. Moore (WI) | X | | | Mr. Neugebauer | | X | |
| Mr. Davis (TN) | X | | | Mr. Price (GA) | | X | |
| Mr. Sires | X | | | Mr. Davis (KY) | | X | |
| Mr. Hodes | X | | | Mr. McHenry | | X | |
| Mr. Ellison | X | | | Mr. Campbell | | X | |
| Mr. Klein | X | | | Mr. Putnam | | | |

RECORD VOTE NO. FC-62—Continued

| Representative | Aye | Nay | Present | Representative | Aye | Nay | Present |
|------------------|-----|-----|---------|----------------|-----|-----|---------|
| Mr. Mahoney (FL) | X | | | Mrs. Bachmann | | X | |
| Mr. Wilson | X | | | Mr. Roskam | | X | |
| Mr. Perlmutter | X | | | Mr. Marchant | | X | |
| Mr. Murphy | X | | | Mr. McCotter | | X | |
| Mr. Donnelly | X | | | | | | |
| Mr. Wexler | X | | | | | | |
| Mr. Marshall | X | | | | | | |
| Mr. Boren | X | | | | | | |

The following amendments were disposed of by record votes. The names of Members voting for and against follow:

An amendment in the nature of a substitute by Mr. Neugebauer, No. 4, establishing a national affordable housing grant program, was not agreed to by a record vote of 24 yeas and 43 nays (Record vote no. FC-57):

RECORD VOTE NO. FC-57

| Representative | Aye | Nay | Present | Representative | Aye | Nay | Present |
|------------------|-----|-----|---------|------------------|-----|-----|---------|
| Mr. Frank | | X | | Mr. Bachus | X | | |
| Mr. Kanjorski | | X | | Mr. Baker | X | | |
| Ms. Waters | | X | | Ms. Pryce (OH) | X | | |
| Mrs. Maloney | | X | | Mr. Castle | | X | |
| Mr. Gutierrez | | X | | Mr. King (NY) | X | | |
| Ms. Velázquez | | X | | Mr. Royce | X | | |
| Mr. Watt | | X | | Mr. Lucas | X | | |
| Mr. Ackerman | | X | | Mr. Paul | X | | |
| Ms. Carson | | X | | Mr. Gillmor | X | | |
| Mr. Sherman | | X | | Mr. LaTourette | | X | |
| Mr. Meeks | | X | | Mr. Manzullo | X | | |
| Mr. Moore (KS) | | X | | Mr. Jones | | | |
| Mr. Capuano | | X | | Mrs. Biggert | X | | |
| Mr. Hinojosa | | X | | Mr. Shays | | X | |
| Mr. Clay | | X | | Mr. Miller (CA) | | X | |
| Mrs. McCarthy | | X | | Mrs. Capito | | X | |
| Mr. Baca | | X | | Mr. Feeney | | | |
| Mr. Lynch | | X | | Mr. Hensarling | X | | |
| Mr. Miller (NC) | | X | | Mr. Garrett (NJ) | X | | |
| Mr. Scott | | X | | Ms. Brown-Waite | X | | |
| Mr. Green | | X | | Mr. Barrett (SC) | X | | |
| Mr. Cleaver | | X | | Mr. Gerlach | | X | |
| Ms. Bean | | X | | Mr. Pearce | X | | |
| Ms. Moore (WI) | | X | | Mr. Neugebauer | X | | |
| Mr. Davis (TN) | | X | | Mr. Price (GA) | X | | |
| Mr. Sires | | X | | Mr. Davis (KY) | X | | |
| Mr. Hodes | | X | | Mr. McHenry | X | | |
| Mr. Ellison | | X | | Mr. Campbell | X | | |
| Mr. Klein | | X | | Mr. Putnam | | | |
| Mr. Mahoney (FL) | | X | | Mrs. Bachmann | X | | |
| Mr. Wilson | | X | | Mr. Roskam | X | | |
| Mr. Perlmutter | | X | | Mr. Marchant | X | | |
| Mr. Murphy | | X | | Mr. McCotter | X | | |
| Mr. Donnelly | | X | | | | | |
| Mr. Wexler | | X | | | | | |
| Mr. Marshall | | X | | | | | |
| Mr. Boren | | X | | | | | |

An amendment by Mr. Price of Georgia, No. 6, requiring acceptable identification for occupancy or assistance, was not agreed to by a record vote of 33 yeas and 34 nays (Record vote no. FC-58):

RECORD VOTE NO. FC-58

| Representative | Aye | Nay | Present | Representative | Aye | Nay | Present |
|------------------|-----|-----|---------|------------------|-----|-----|---------|
| Mr. Frank | | X | | Mr. Bachus | X | | |
| Mr. Kanjorski | | X | | Mr. Baker | X | | |
| Ms. Waters | | X | | Ms. Pryce (OH) | X | | |
| Mrs. Maloney | | X | | Mr. Castle | X | | |
| Mr. Gutierrez | | X | | Mr. King (NY) | X | | |
| Ms. Velázquez | | X | | Mr. Royce | X | | |
| Mr. Watt | | X | | Mr. Lucas | X | | |
| Mr. Ackerman | | X | | Mr. Paul | X | | |
| Ms. Carson | | X | | Mr. Gillmor | X | | |
| Mr. Sherman | | X | | Mr. LaTourette | X | | |
| Mr. Meeks | | X | | Mr. Manzullo | X | | |
| Mr. Moore (KS) | | X | | Mr. Jones | | | |
| Mr. Capuano | | X | | Mrs. Biggert | | X | |
| Mr. Hinojosa | | X | | Mr. Shays | X | | |
| Mr. Clay | | X | | Mr. Miller (CA) | X | | |
| Mrs. McCarthy | | X | | Mrs. Capito | X | | |
| Mr. Baca | | X | | Mr. Feeney | | | |
| Mr. Lynch | | X | | Mr. Hensarling | X | | |
| Mr. Miller (NC) | | X | | Mr. Garrett (NJ) | X | | |
| Mr. Scott | | X | | Ms. Brown-Waite | X | | |
| Mr. Green | | X | | Mr. Barrett (SC) | X | | |
| Mr. Cleaver | | X | | Mr. Gerlach | X | | |
| Ms. Bean | | X | | Mr. Pearce | X | | |
| Ms. Moore (WI) | | X | | Mr. Neugebauer | X | | |
| Mr. Davis (TN) | | X | | Mr. Price (GA) | X | | |
| Mr. Sires | | X | | Mr. Davis (KY) | X | | |
| Mr. Hodes | | X | | Mr. McHenry | X | | |
| Mr. Ellison | | X | | Mr. Campbell | X | | |
| Mr. Klein | | X | | Mr. Putnam | | | |
| Mr. Mahoney (FL) | | X | | Mrs. Bachmann | X | | |
| Mr. Wilson | | X | | Mr. Roskam | X | | |
| Mr. Perlmutter | | X | | Mr. Marchant | X | | |
| Mr. Murphy | | X | | Mr. McCotter | X | | |
| Mr. Donnelly | X | | | | | | |
| Mr. Wexler | | X | | | | | |
| Mr. Marshall | X | | | | | | |
| Mr. Boren | X | | | | | | |

An amendment by Mr. Feeney, No. 9, striking the applicability of Davis-Bacon, was not agreed to by a record vote of 20 yeas and 47 nays (Record vote no. FC-59):

RECORD VOTE NO. FC-59

| Representative | Aye | Nay | Present | Representative | Aye | Nay | Present |
|----------------|-----|-----|---------|-----------------|-----|-----|---------|
| Mr. Frank | | X | | Mr. Bachus | X | | |
| Mr. Kanjorski | | X | | Mr. Baker | X | | |
| Ms. Waters | | X | | Ms. Pryce (OH) | X | | |
| Mrs. Maloney | | X | | Mr. Castle | | X | |
| Mr. Gutierrez | | X | | Mr. King (NY) | | X | |
| Ms. Velázquez | | X | | Mr. Royce | X | | |
| Mr. Watt | | X | | Mr. Lucas | X | | |
| Mr. Ackerman | | X | | Mr. Paul | X | | |
| Ms. Carson | | X | | Mr. Gillmor | X | | |
| Mr. Sherman | | X | | Mr. LaTourette | | X | |
| Mr. Meeks | | X | | Mr. Manzullo | X | | |
| Mr. Moore (KS) | | X | | Mr. Jones | | | |
| Mr. Capuano | | X | | Mrs. Biggert | X | | |
| Mr. Hinojosa | | X | | Mr. Shays | | X | |
| Mr. Clay | | X | | Mr. Miller (CA) | X | | |
| Mrs. McCarthy | | X | | Mrs. Capito | | X | |
| Mr. Baca | | X | | Mr. Feeney | | | |
| Mr. Lynch | | X | | Mr. Hensarling | X | | |

RECORD VOTE NO. FC-59—Continued

| Representative | Aye | Nay | Present | Representative | Aye | Nay | Present |
|------------------|-----|-----|---------|------------------|-----|-----|---------|
| Mr. Miller (NC) | | X | | Mr. Garrett (NJ) | X | | |
| Mr. Scott | | X | | Ms. Brown-Waite | | X | |
| Mr. Green | | X | | Mr. Barrett (SC) | X | | |
| Mr. Cleaver | | X | | Mr. Gerlach | | X | |
| Ms. Bean | | X | | Mr. Pearce | X | | |
| Ms. Moore (WI) | | X | | Mr. Neugebauer | X | | |
| Mr. Davis (TN) | | X | | Mr. Price (GA) | X | | |
| Mr. Sires | | X | | Mr. Davis (KY) | X | | |
| Mr. Hodes | | X | | Mr. McHenry | X | | |
| Mr. Ellison | | X | | Mr. Campbell | X | | |
| Mr. Klein | | X | | Mr. Putnam | | | |
| Mr. Mahoney (FL) | | X | | Mrs. Bachmann | X | | |
| Mr. Wilson | | X | | Mr. Roskam | | X | |
| Mr. Perlmutter | | X | | Mr. Marchant | X | | |
| Mr. Murphy | | X | | Mr. McCotter | | X | |
| Mr. Donnelly | | X | | | | | |
| Mr. Wexler | | X | | | | | |
| Mr. Marshall | | X | | | | | |
| Mr. Boren | | X | | | | | |

An amendment by Mr. Price of Georgia, No. 12, adding a paygo provision, was not agreed to by a record vote of 30 yeas and 37 nays (Record vote no. FC-60):

RECORD VOTE NO. FC-60

| Representative | Aye | Nay | Present | Representative | Aye | Nay | Present |
|------------------|-----|-----|---------|------------------|-----|-----|---------|
| Mr. Frank | | X | | Mr. Bachus | X | | |
| Mr. Kanjorski | | X | | Mr. Baker | X | | |
| Ms. Waters | | X | | Ms. Pryce (OH) | X | | |
| Mrs. Maloney | | X | | Mr. Castle | X | | |
| Mr. Gutierrez | | X | | Mr. King (NY) | X | | |
| Ms. Velázquez | | X | | Mr. Royce | X | | |
| Mr. Watt | | X | | Mr. Lucas | X | | |
| Mr. Ackerman | | X | | Mr. Paul | X | | |
| Ms. Carson | | X | | Mr. Gillmor | X | | |
| Mr. Sherman | | X | | Mr. LaTourette | X | | |
| Mr. Meeks | | X | | Mr. Manzullo | X | | |
| Mr. Moore (KS) | | X | | Mr. Jones | | | |
| Mr. Capuano | | X | | Mrs. Biggert | X | | |
| Mr. Hinojosa | | X | | Mr. Shays | X | | |
| Mr. Clay | | X | | Mr. Miller (CA) | X | | |
| Mrs. McCarthy | | X | | Mrs. Capito | X | | |
| Mr. Baca | | X | | Mr. Feeney | | | |
| Mr. Lynch | | X | | Mr. Hensarling | X | | |
| Mr. Miller (NC) | | X | | Mr. Garrett (NJ) | X | | |
| Mr. Scott | | X | | Ms. Brown-Waite | X | | |
| Mr. Green | | X | | Mr. Barrett (SC) | X | | |
| Mr. Cleaver | | X | | Mr. Gerlach | X | | |
| Ms. Bean | | X | | Mr. Pearce | X | | |
| Ms. Moore (WI) | | X | | Mr. Neugebauer | X | | |
| Mr. Davis (TN) | | X | | Mr. Price (GA) | X | | |
| Mr. Sires | | X | | Mr. Davis (KY) | X | | |
| Mr. Hodes | | X | | Mr. McHenry | X | | |
| Mr. Ellison | | X | | Mr. Campbell | X | | |
| Mr. Klein | | X | | Mr. Putnam | | | |
| Mr. Mahoney (FL) | | X | | Mrs. Bachmann | X | | |
| Mr. Wilson | | X | | Mr. Roskam | X | | |
| Mr. Perlmutter | | X | | Mr. Marchant | X | | |
| Mr. Murphy | | X | | Mr. McCotter | X | | |
| Mr. Donnelly | | X | | | | | |
| Mr. Wexler | | X | | | | | |
| Mr. Marshall | | X | | | | | |

RECORD VOTE NO. FC-60—Continued

| Representative | Aye | Nay | Present | Representative | Aye | Nay | Present |
|-----------------|-----|-----|---------|----------------|-----|-----|---------|
| Mr. Boren | | X | ..... |  |  |  |  |

An amendment by Mr. Hensarling, No. 13, eliminating certain funding streams, was not agreed to by a record vote of 29 yeas and 38 nays (Record vote no. FC-61):

RECORD VOTE NO. FC-61

| Representative | Aye | Nay | Present | Representative | Aye | Nay | Present |
|------------------------|-----|-----|---------|------------------------|-----|-----|---------|
| Mr. Frank | | X | ..... | Mr. Bachus | X |  | ..... |
| Mr. Kanjorski | | X | ..... | Mr. Baker | X |  | ..... |
| Ms. Waters | | X | ..... | Ms. Pryce (OH) | X |  | ..... |
| Mrs. Maloney | | X | ..... | Mr. Castle | X |  | ..... |
| Mr. Gutierrez | | X | ..... | Mr. King (NY) | X |  | ..... |
| Ms. Velázquez | | X | ..... | Mr. Royce | X |  | ..... |
| Mr. Watt | | X | ..... | Mr. Lucas | X |  | ..... |
| Mr. Ackerman | | X | ..... | Mr. Paul | X |  | ..... |
| Ms. Carson | | X | ..... | Mr. Gillmor | X |  | ..... |
| Mr. Sherman | | X | ..... | Mr. LaTourette | X |  | ..... |
| Mr. Meeks | | X | ..... | Mr. Manzullo | X |  | ..... |
| Mr. Moore (KS) | | X | ..... | Mr. Jones ..... |  |  | ..... |
| Mr. Capuano | | X | ..... | Mrs. Biggert | X |  | ..... |
| Mr. Hinojosa | | X | ..... | Mr. Shays | | X | ..... |
| Mr. Clay | | X | ..... | Mr. Miller (CA) | X |  | ..... |
| Mrs. McCarthy | | X | ..... | Mrs. Capito | X |  | ..... |
| Mr. Baca | | X | ..... | Mr. Feeney ..... |  |  | ..... |
| Mr. Lynch | | X | ..... | Mr. Hensarling | X |  | ..... |
| Mr. Miller (NC) | | X | ..... | Mr. Garrett (NJ) | X |  | ..... |
| Mr. Scott | | X | ..... | Ms. Brown-Waite | X |  | ..... |
| Mr. Green | | X | ..... | Mr. Barrett (SC) | X |  | ..... |
| Mr. Cleaver | | X | ..... | Mr. Gerlach | X |  | ..... |
| Ms. Bean | | X | ..... | Mr. Pearce | X |  | ..... |
| Ms. Moore (WI) | | X | ..... | Mr. Neugebauer | X |  | ..... |
| Mr. Davis (TN) | | X | ..... | Mr. Price (GA) | X |  | ..... |
| Mr. Sires | | X | ..... | Mr. Davis (KY) | X |  | ..... |
| Mr. Hodes | | X | ..... | Mr. McHenry | X |  | ..... |
| Mr. Ellison | | X | ..... | Mr. Campbell | X |  | ..... |
| Mr. Klein | | X | ..... | Mr. Putnam ..... |  |  | ..... |
| Mr. Mahoney (FL) | | X | ..... | Mrs. Bachmann | X |  | ..... |
| Mr. Wilson | | X | ..... | Mr. Roskam | X |  | ..... |
| Mr. Perlmutter | | X | ..... | Mr. Marchant | X |  | ..... |
| Mr. Murphy | | X | ..... | Mr. McCotter | X |  | ..... |
| Mr. Donnelly | | X | ..... |  |  |  |  |
| Mr. Wexler | | X | ..... |  |  |  |  |
| Mr. Marshall | | X | ..... |  |  |  |  |
| Mr. Boren | | X | ..... |  |  |  |  |

The following other amendments were also considered by the Committee:

An amendment by Mr. Frank (and Ms. Waters), No. 1, a manager’s amendment making various substantive and technical changes, was agreed to by a voice vote.

An amendment by Mr. Davis of Kentucky, No. 2, including priority housing needs in rural areas, was agreed to by a voice vote.

An amendment by Ms. Velázquez, No. 3, including existing state and local funding for affordable housing from being supplanted by the AHTF, was agreed to by a voice vote.

An amendment by Mr. Capuano, No. 5, striking the minimum amount for states, was agreed to by a voice vote.

An amendment by Mr. Castle, No. 7, making a change in requirements for years in which less than \$2 billion is available, was agreed to by a voice vote.

An en bloc amendment by Mr. Miller (CA), Mrs. McCarthy, and Mr. Capuano, No. 8, providing for a change in selection criteria, determining increase in affordable rental housing in an area with an extremely low percentage of affordable housing, and requiring a Congressional review of the formula, was agreed to by voice vote.

An amendment by Mr. Royce, No. 10, on grantee ineligibility, was agreed to by a voice vote.

An amendment by Mr. Hensarling, No. 11, providing priority for families on the Section 8 waiting list, 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. 2895 establishes a National Affordable Housing Trust Fund for the construction, rehabilitation, and preservation of affordable housing, including both rental housing and homeownership. The Trust Fund shall consist of dedicated sources of funding to carry out the Trust Fund's eligible housing activities. The purpose of the Trust Fund is to enable rental housing to be built for families with the greatest economic need in mixed income settings and in areas with the greatest economic opportunities, and to promote homeownership for low-income families. The goal of the bill is to produce 1,500,000 units of affordable housing over the next decade.

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.

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:

SEPTEMBER 12, 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. 2895, the National Affordable Housing Trust Fund Act of 2007.

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

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 2895—National Affordable Housing Trust Fund Act of 2007

Summary: H.R. 2895 would establish a National Affordable Housing Trust Fund for the Department of Housing and Urban Development (HUD) to provide assistance to state and local governments and Indian tribes. Such assistance would include grants, loans, and interest rate buy-downs that would be used to construct, rehabilitate, and preserve affordable housing for low-income families. Budgetary resources for the new trust fund would be provided by other legislation. (Potential spending from the new trust fund could be triggered by either H.R. 2895 or other pending legislation, depending on the order in which such multiple bills are enacted.) This bill also would prohibit the Federal Housing Administration (FHA) from increasing fees for certain loan guarantees.

CBO estimates that implementing H.R. 2895 would result in a loss of \$192 million in discretionary offsetting collections over the next five years stemming from the prohibition of fee increases for certain FHA guarantees. Because enacting H.R. 2895 by itself would result in no transfers, deposits, or appropriations to the proposed trust fund, CBO estimates that enacting the bill would not affect direct spending or revenues (unless other legislation providing resources for that fund is enacted first).

H.R. 2895 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2895 is shown in the following table. The cost of this legislation falls within budget function 370 (mortgage and housing credit).

TABLE 1.—ESTIMATED EFFECTS OF H.R. 2895 ON SPENDING SUBJECT TO APPROPRIATION

| | By fiscal year, in millions of dollars— | | | | | |
|--|---|------|------|------|------|------|
| | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
| SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| FHA Spending Under Current Law: ^a | | | | | | |
| Estimated Authorization Level | –165 | –250 | –273 | –273 | –273 | –273 |
| Estimated Outlays | –165 | –250 | –273 | –273 | –273 | –273 |
| Proposed Changes: | | | | | | |
| Limit on Premium Increases for Mortgage Insurance: | | | | | | |
| Estimated Authorization Level | 0 | 20 | 43 | 43 | 43 | 43 |
| Estimated Outlays | 0 | 20 | 43 | 43 | 43 | 43 |
| Net Spending Under H.R. 2895: | | | | | | |
| Estimated Authorization Level | –165 | –230 | –230 | –230 | –230 | –230 |

TABLE 1.—ESTIMATED EFFECTS OF H.R. 2895 ON SPENDING SUBJECT TO APPROPRIATION—
Continued

| | By fiscal year, in millions of dollars— | | | | | |
|-------------------------|---|------|------|------|------|------|
| | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
| Estimated Outlays | -165 | -230 | -230 | -230 | -230 | -230 |

^aThe figures for 2007 are CBO's current estimates of budget authority and outlays for FHA's multifamily program. The 2008–2012 levels are CBO's baseline estimates of the offsetting collections that would be generated by the multifamily program, assuming that appropriation laws necessary to implement the current FHA multifamily program are enacted.

Basis of estimate: For this estimate, CBO assumes that H.R. 2895 will be enacted near the start of fiscal year 2008, and that the appropriation laws consistent with this bill and necessary to implement FHA's multifamily program will be enacted each year.

CBO estimates that implementing H.R. 2895 would result in a decrease in offsetting collections of \$20 million in 2008 and \$192 million over the 2008–2012 period, assuming appropriation action consistent with the bill. Currently, FHA has the authority to adjust fees for its mortgage insurance programs through administrative action. Under section 292 of H.R. 2895, FHA would be prohibited from increasing fees unless the increase is required to maintain the estimated credit subsidy for the program at zero, but not less than zero.

According to the Administration, annual fees for new loan guarantees for the apartment development and refinance programs will increase—under current law—by about 16 basis points beginning in 2008. The weighted average subsidy rate for these programs is currently about -2 percent. CBO estimates that those fee increases would affect about \$2.6 billion in loan guarantees in 2008 and over \$3 billion in loan guarantees annually in subsequent years.

Furthermore, we estimate that those fee increases would increase offsetting collections for this program by \$192 million over the 2008–2012 period. Thus, prohibiting those fee increases would result in a loss—relative to the current-law baseline—of \$192 million in discretionary offsetting collections over the next five years.

Funding for the trust fund proposed by H.R. 2895 would consist of:

- Any amounts transferred from the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) under Title XIII of the Housing and Community Development Act (as that title may be amended by H.R. 1427, the Federal Housing Finance Reform Act of 2007);
- Any amounts appropriated to an affordable trust fund under the Expanding American Homeownership Act of 2007 (H.R. 1852); and
- Any amounts that may be appropriated, transferred, or credited to the trust fund under other provisions of law.

This legislation would provide spending authority for amounts in the trust fund to meet affordable housing needs. At the present time, however, no authority exists in current law to transfer or appropriate funds to the proposed trust fund. Legislation authorizing any sources of funding for the trust fund has not been enacted into law. Any effect on direct spending resulting from this legislation would be contingent on the enactment of subsequent legislation

providing funding for the trust fund. (Any such potential change in spending would be charged to the legislation that triggers it.)

Intergovernmental and private-sector impact: H.R. 2895 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would authorize grants to support affordable housing programs, which would benefit state, local, and tribal governments.

Previous CBO estimates: On April 23, 2007, CBO transmitted a cost estimate for H.R. 1427, the Federal Housing Finance Reform Act of 2007, as ordered reported by the House Financial Services Committee on Financial Services on March 29, 2007, and on June 11, 2007, CBO transmitted a cost estimate for H.R. 1852, the Expanding American Homeownership Act of 2007, as ordered reported by the House Committee on Financial Services on May 3, 2007. H.R. 1427 would require Fannie Mae and Freddie Mac to contribute funding to an affordable housing fund based on the value of their mortgage portfolios, and H.R. 1852 would authorize appropriations for an affordable housing fund. Both of those bills also would authorize spending on affordable housing. Under H.R. 2895, deposits for the National Affordable Housing Trust Fund would consist of amounts made available for affordable housing under H.R. 1427 and H.R. 1852, and any other amounts that may be made available to the trust fund under other provisions of law.

In addition, both H.R. 1852 and H.R. 2895 include an identical provision that would prohibit FHA from increasing fees for certain loan guarantees. Thus, the estimates for this provision are identical.

Estimate prepared by: Federal Costs: Susanne S. Mehlman; Impact on State, Local, and Tribal Governments: Elizabeth Cove; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

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. 2895 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

Titles the bill as the “National Affordable Housing Trust Fund Act of 2007.”

Section 2—National Affordable Housing Trust Fund

The bill amends title II of the Cranston-Gonzalez National Affordable Housing Act to add a new Subtitle G—National Affordable Housing Trust Fund, adding the following:

Section 291. Purposes

The major purposes of the bill are to: (1) address the national shortage of housing that is affordable to low-income families by creating a permanently appropriated fund, with dedicated sources of funding, to finance additional housing activities, without supplanting existing housing appropriations; (2) enable rental housing to be built for families with the greatest economic need in mixed income settings and in areas with the greatest economic opportunities; (3) promote homeownership for low-income families; and (4) construct, rehabilitate, and preserve at least 1,500,000 affordable dwelling units over the next decade.

Section 292. Trust fund

Establishes a “National Affordable Housing Trust Fund” in the U.S. Treasury. Deposits to the Trust Fund include: (1) amounts from Fannie Mae and Freddie Mac transferred into the Trust Fund under Title XIII of the Housing and Community Development Act of 1992 (see H.R. 1427); (2) amounts appropriated to the Trust Fund pursuant to the authorization in the Expanding American Homeownership Act of 2007 (see H.R. 1852), relating to the use of FHA savings for an affordable housing grant fund; and (3) any amounts that are or may be appropriated, transferred, or credited to such Fund under any other provisions of law. Authorizes expenditures from the Trust Fund by HUD and specifies that all assistance provided be considered to be federal financial assistance.

The bill includes a number of conditions on the use of any FHA funds for bill purposes, which include: (1) a prohibition against fund use unless FHA funds are first made available for (a) the amount, if any, needed to avoid a credit subsidy appropriation for the FHA 203(b) single family loan program in that year, (b) the amount needed to increase nationwide funding for housing counseling grants from the current level of \$42 million to \$100 million a year for each of the next five years, and (c) \$25 million each of the next five years to increase funding for improving FHA technology, procedures, processes, and program performance, and salaries; (2) a prohibition against using any credit subsidies from the

FHA 203(b) single family loan program; (3) a prohibition against FHA fund use unless HUD certifies each year that it has made a determination that FHA premiums being charged that year are sufficient to comply with the Section 205(f) MMIF capital ratio requirement and are also sufficient to ensure the safety and soundness of the other FHA mortgage insurance funds; and (4) a prohibition against FHA raising fees on any FHA loan program unless such program would require a credit subsidy appropriation that year absent such a fee increase.

Section 293. Allocations for States, Indian tribes, insular areas, and participating local jurisdictions

Requires that for 2008 and each fiscal year thereafter, HUD shall determine the total amount available for Trust Fund assistance. Of this total amount, HUD will allocate 40 percent to States, Indian tribes, and insular areas, and 60 percent to participating local jurisdictions (PLJs).

Section 294. Assistance from trust fund

Requires HUD to establish an affordable housing needs formula to allocate Trust Fund amounts among States, Participating Local Jurisdictions, Indian tribes, and insular areas based on the relative needs of such entities. The formula is to be based on a number of factors, which include population, the percentage of families living in substandard housing, the percentage of families that pay more than 50 percent of their annual income for housing costs, the percentage of persons having an income at or below the poverty line, the cost of constructing or carrying out the rehabilitation of housing; the percentage of the population that resides in counties having extremely low vacancy rates, the percentage of housing stock that is extremely old housing, the extent to which any jurisdiction with an extremely low percentage of affordable rental housing units increases their percentage of affordable rental housing units, and any other factors that HUD determines to be appropriate. For any year in which HUD fails to establish the formula by the time funds are available for allocation, allocations are to be made to States, PLJs, and insular areas pursuant to the HOME program formula, with the Indian tribe allocation to be determined by HUD.

If for any fiscal year the total Trust Fund amount available nationwide is less than \$2 billion, any PLJ that would otherwise be entitled to an amount less than \$750,000 shall not receive any funds directly, and instead their share will be allocated to the state in which they are located.

Each grantee shall contribute as a match: (a) at least 25 percent of funds from federal sources, (b) at least 12.5 percent of funds from state, local, or private resources, or (c) a combination of the two. HUD may reduce or waive the matching requirement for grantees in fiscal distress. Contributions by a jurisdiction to a Trust Fund-assisted project to provide services for residents may qualify as matching funds, provided that there is a binding commitment for such services. HUD may reduce or waive the match where a zoning variance or other waiver of regulatory barriers was required to site Trust Fund-assisted housing. The bill waives the match requirement in any area declared by the President as a major disaster or emergency.

HUD is required to make grants to Indian tribes on a competitive basis, based on criteria that HUD is required to establish.

Any funds awarded to a PLJ which notifies HUD that it does not intend to use the funds will be transferred to the state in which the PLJ is located. HUD is required to select an alternative administrator [nonprofit or public entity] to allocate funds given to states, PLJs, or insular areas that go unused because (a) the grantee does not submit an allocation plan within 12 months of fund availability, (b) the grantee does not comply with the required match, or (c) funds are not used within 24 months of fund availability.

Section 295. Allocation plans

All grantees other than Indian Tribes are required to submit an allocation plan for each fiscal year, which is subject to approval by HUD. The allocation plan describes the use of Trust Fund monies, must be based on priority housing needs (including in rural areas), and must be consistent with the grantee's comprehensive housing affordability strategy (CHAS). The plan is to be made available to the public for comment and should contain a description of the eligible activities to be conducted and a certification that any housing assisted with Trust Fund amounts will comply with the provisions of the bill, the Fair Housing Act, and the Rehabilitation Act of 1973. The allocation plan must set out the process for the grantee to select eligible activities and include performance goals, benchmarks, and timetables. Allocation plans must be submitted to HUD within 6 months of notice of fund availability, and HUD must subsequently approve or disapprove of such proposed plan within 3 months of such submission. for review and approval. Detailed selection criteria are established which grantees must use in selecting among applicants for funds. Selection criteria include the merits of the project, the experience of the applicant, the ability to undertake the project in a timely manner, the extent of leveraging, and a number of factors dealing with housing affordability, age of the local housing stock, and local vacancy rates.

Section 296. Use of assistance by recipients

The bill requires grantees to distribute Trust Fund monies only to eligible recipients and only for eligible activities. Eligible recipients include an organization, agency, or other entity (including a for-profit entity, a nonprofit entity, a faith-based organization, a community development financial institution, a community development corporation, and a state or local housing trust fund) that demonstrates the experience, ability, and capacity to undertake the eligible activity, demonstrates a familiarity with the relevant housing program requirements, and make assurances to comply with the provisions of the Act. All Trust Fund monies must be used for the benefit of low income families (below 80 percent of median income)—except that in any year in which nationwide funding is less than \$2 billion, all funds must be used for the benefit of families below 60 percent of local area median income. Additionally, at least 75 percent of funds must be used for the benefit of extremely low-income families (incomes that do not exceed 30 percent of median income or the national poverty line). Further, at least 30 percent of funds must be used for the benefit of families with incomes

below the SSI income limit. Finally, at least 10 percent of funds must be used for the benefit of families making more than 50 percent of the local area median income. HUD is required to submit a report within 5 years regarding the need for and appropriateness of these targeting requirements.

States and PLJ are required to use a portion of Trust Fund monies for eligible activities located in rural areas that is proportionate to the identified need for such activities in such rural areas.

HUD is required to establish limits on the amount of Trust Fund grant amounts that may be used, on a per unit basis, for eligible activities. Trust Fund assistance may be distributed in the form of capital grants, noninterest-bearing or low-interest loans or advances, deferred payment loans, guarantees, loan loss reserves, and closing cost and interest rate buydown assistance for owner occupied housing. Assistance that has been repaid to a grantee shall be distributed in accordance with the grantee's allocation plan. Trust Fund assistance is to be coordinated with other housing program assistance programs, a number of which are enumerated. The bill includes prohibitions against any funds being used for political activities, advocacy, lobbying, counseling services, travel expenses, preparation of or advice on tax returns, and administrative and outreach costs (except that a grantee may use funds for such grantee's program administrative costs, subject to a percentage limitation as established by HUD, not to exceed 10 percent of allocated funds). Grantees are required to comply with labor standards and other federal laws, which include laws relating to tenant rights, Consolidated Plans and Fair Housing.

Section 297. Affordable housing

Affordable rental housing is defined as a unit that bears a rent not greater than the lesser of the existing fair market rental rate or 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area. The tenant rent contribution cannot exceed 30 percent the adjusted family income of the family being assisted. The bill prohibits discrimination against prospective tenants who are Section 8 voucher holders. The bill requires mixed income development by providing that no more than 50 percent of the rental units in a project that receives Trust Fund assistance may be rented initially to extremely low income families (or such higher percentage as may exist at time of rehab with regard to rehab use of funds). This mixed income requirement does not apply to projects having 25 or fewer units that are (1) located in a census tract in which the number of families having incomes less than the poverty line is less than 20 percent; or (2) located in a rural area; or (3) specifically made available only for elderly families or disabled families.

Units must comply with basic visitability standards and will continue to be subject to all requirements under this Act for 50 years. The bill defines the type of owner-occupied housing that is available for Trust Fund assistance. Such housing must be the principal residence of first-time homebuyers, have an initial purchase price that meets HOME requirements, and be subject to HOME program resale restrictions. Assisted homebuyers must also have, before purchase, completed a HUD approved program of counseling with respect to homeownership responsibilities and financial manage-

ment. HUD may waive this counseling requirement under specific circumstances. Priority shall be given to families who have been on voucher or public housing waiting lists for more than 12 months.

Section. 298. Other provisions

The bill requires HUD to require each grantee to develop and maintain systems to track the use of Trust Fund monies, including financial and project reporting, record retention and audit requirements. Trust Fund recipients are required to reimburse grantees for misused funds, and return any unused or committed funds. Grantees are required to report to HUD on Trust Fund activities and grantee compliance on an annual basis and have these reports available to the public. The bill gives HUD the authority to impose penalties on states that do not comply with the Act's requirements, including reducing the amount of Trust Fund assistance, requiring grantees to reimburse misused funds and limiting or terminating Trust Fund assistance.

Section 299. Definitions

The bill defines the term eligible activities to include activities relating to the construction, preservation, or rehabilitation of affordable housing, including: construction; acquisition of real property; site preparation and improvement, including demolition; rehabilitation of existing housing; and up to 20 percent of funds to facilitate affordability for extremely low income families in the form of rental assistance, operating reserves or operating accounts.

Trust Fund monies may also be used to provide incentives to maintain existing housing (including manufactured housing) as affordable housing and to establish or extend any low-income affordability restrictions for such housing, including covering capital expenditures and costs of establishing community land trusts to provide sites for manufactured housing provided such incentives. The bill also defines the terms eligible recipient, extremely low vacancy rate, extremely old housing, families, fiscal distress, grantee, Indian tribe, insular area, participating local jurisdiction, poverty line, recipient, rural area, State, Trust Fund and Trust Fund grant amounts.

Section 300. Inapplicability of HOME provisions

Except as specifically provided otherwise in the bill, no HOME program requirements shall apply to Trust Fund assistance.

Section 301. Regulations

HUD is required to promulgate regulations to implement the provisions of this bill with 6 months of the date of enactment of the bill.

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):

**CRANSTON-GONZALEZ NATIONAL AFFORDABLE
HOUSING ACT**

* * * * *

**TITLE II—INVESTMENT IN AFFORDABLE
HOUSING**

SEC. 201. SHORT TITLE.

[This title] *Subtitles A through F of this title* may be cited as the “HOME Investment Partnerships Act”.

* * * * *

***Subtitle G—National Affordable Housing
Trust Fund***

SEC. 291. PURPOSES.

The purposes of this subtitle are—

- (1) to address the national shortage of housing that is affordable to low-income families by creating a permanently appropriated fund, with dedicated sources of funding, to finance additional housing activities, without supplanting existing housing appropriations or existing State and local funding for affordable housing;*
- (2) to enable rental housing to be built, for families with the greatest economic need, in mixed-income settings and in areas with the greatest economic opportunities;*
- (3) to promote ownership of one-to-four family owner-occupied housing by low-income families; and*
- (4) to construct, rehabilitate, and preserve at least 1,500,000 affordable dwelling units over the next decade.*

SEC. 292. TRUST FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to be known as the National Affordable Housing Trust Fund.

(b) DEPOSITS TO TRUST FUND.—The Trust Fund shall consist of—

- (1) any amounts of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation transferred to the Trust Fund under title XIII of the Housing and Community Development Act of 1992;*
- (2) any amounts appropriated to the Trust Fund pursuant to the authorization in the Expanding American Homeownership Act of 2007, relating to the use of FHA savings for an affordable housing grant fund; and*
- (3) any amounts as are or may be appropriated, transferred, or credited to such Fund under any other provisions of law.*

(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Trust Fund shall be available to the Secretary of Housing and Urban Development, and are hereby appropriated, for providing assistance under this subtitle.

(d) *FEDERAL ASSISTANCE.*—All assistance provided using amounts in the Trust Fund shall be considered to be Federal financial assistance.

(e) *CONDITIONS ON USE OF FHA SAVINGS.*—

(1) *USE.*—For each fiscal year, no funds may be made available under paragraph (2) of subsection (b) unless the amount equal to the net increase for such fiscal year in the negative credit subsidy for the mortgage insurance programs under title II of the National Housing Act resulting from the Expanding American Homeownership Act of 2007, and the amendments made by such Act, is first made available for the following purposes in the following amounts:

(A) *SINGLE FAMILY HOUSING MORTGAGE INSURANCE.*—For each fiscal year, for costs (as such term is defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) of mortgage insurance provided pursuant to section 203(b) of the National Housing Act (12 U.S.C. 1709(b)), the additional amount (not including any costs of such mortgage insurance resulting from this Act or the amendments made by this Act), if any, necessary to ensure that the credit subsidy cost of such mortgage insurance for such fiscal year is \$0.

(B) *HOUSING COUNSELING.*—For each of fiscal years 2008 through 2012, the amount needed to increase funding, for the housing counseling program under section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), in connection with homebuyers and homeowners with mortgages insured under title II of the National Housing Act, from the amount appropriated for the preceding fiscal year to \$100,000,000.

(C) *MORTGAGE INSURANCE TECHNOLOGY, PROCEDURES, PROCESSES, PROGRAM PERFORMANCE, AND SALARIES.*—For each of fiscal years 2008 through 2012, \$25,000,000 for increasing funding for the purpose of improving technology, procedures, processes, and program performance, and salaries in connection with the mortgage insurance programs under title II of the National Housing Act.

(2) *EXCLUSION OF EARNINGS FROM THE SINGLE FAMILY MORTGAGE INSURANCE PROGRAM.*—No funds under paragraph (2) of subsection (b) for a fiscal year may be derived from the negative credit subsidy cost for such fiscal year, if any, for mortgage insurance provided pursuant to section 203(b) of the National Housing Act.

(3) *CERTIFICATION.*—No funds may be made available under paragraph (2) of subsection (b) for any fiscal year unless the Secretary of Housing and Urban Development has, by rule making in accordance with section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section), made a determination that premiums being, or to be, charged during such fiscal year for mortgage insurance under title II of the National Housing Act are established at the minimum amount sufficient to comply with the requirements of section 205(f) of such Act (relating to required capital ratio for the Mutual Mortgage Insurance Fund) and ensure the safety and soundness of the other mortgage insurance funds under

such Act, and any negative credit subsidy for such fiscal year resulting from such mortgage insurance programs adequately ensures the efficient delivery and availability of such programs.

(4) **LIMITATION ON MORTGAGE INSURANCE PREMIUM INCREASES.**—Notwithstanding any other provision of law—

(A) the premiums charged for mortgage insurance under any program under the National Housing Act may not be increased above the premium amounts in effect under such program on October 1, 2006, unless the Secretary of Housing and Urban Development determines that, absent such increase, insurance of additional mortgages under such program would, under the Federal Credit Reform Act of 1990, require the appropriation of new budget authority to cover the costs (as such term is defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a) of such insurance; and

(B) a premium increase pursuant to paragraph (1) may be made only by rule making in accordance with the procedures under section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).

SEC. 293. ALLOCATIONS FOR STATES, INDIAN TRIBES, INSULAR AREAS, AND PARTICIPATING LOCAL JURISDICTIONS.

(a) **DETERMINATION OF AMOUNT AVAILABLE FOR FISCAL YEAR.**—For fiscal year 2008 and for each fiscal year thereafter, the Secretary shall determine the total amount available from the Trust Fund pursuant to section 292(c) for assistance under this subtitle and shall use such amount to provide such assistance for such fiscal year.

(b) **ALLOCATION.**—For each such fiscal year, of such total amount available from the Trust Fund, the Secretary shall allocate for use under section 294—

(1) 40 percent for States, Indian tribes, and insular areas; and

(2) 60 percent for participating local jurisdictions.

SEC. 294. ASSISTANCE FROM TRUST FUND.

(a) **AFFORDABLE HOUSING NEEDS FORMULA.**—

(1) **ESTABLISHMENT AND FACTORS.**—The Secretary shall establish a formula to allocate amounts made available for a fiscal year for assistance under this subtitle among States, all Indian tribes, insular areas, and participating local jurisdictions based on the relative needs of such entities, for funds to increase the supply of decent quality affordable housing. The formula shall be based upon a comparison of the following factors with respect to each State, Indian tribes, each insular area, and each participating local jurisdiction:

(A) The ratio of the population of the State, Indian tribes, insular area, or participating jurisdiction, to the aggregate population of all States, Indian tribes, insular areas, and participating jurisdictions.

(B) The percentage of families in the jurisdiction of the State, of Indian tribes, or of the insular area or participating jurisdiction that live in substandard housing.

(C) *The percentage of families in the jurisdiction of the State, of Indian tribes, or of the insular area or participating jurisdiction that pay more than 50 percent of their annual income for housing costs.*

(D) *The percentage of persons in the jurisdiction of the State, of Indian tribes, or of the insular area or participating jurisdiction having an income at or below the poverty line.*

(E) *The cost of constructing or carrying out rehabilitation of housing in the jurisdiction of the State, of Indian tribes, or of the insular area or participating jurisdiction.*

(F) *The percentage of the population of the State, of Indian tribes, or of the insular area or participating jurisdiction that resides in counties having extremely low vacancy rates.*

(G) *The percentage of housing stock in the jurisdiction of the State, of Indian tribes, or of the insular area or participating jurisdiction that is extremely old housing.*

(H) *For the jurisdiction of a State, of Indian tribes, or of an insular area or participating jurisdiction that has an extremely low percentage of affordable rental housing, the extent to which the State, Indian tribes, or the insular area or participating jurisdiction has in the preceding fiscal year increased the percentage of rental housing within its jurisdiction that is affordable housing.*

(I) *Any other factors that the Secretary determines to be appropriate.*

(2) *FAILURE TO ESTABLISH.—If, in any fiscal year referred to in section 293(a), the regulations establishing the formula required under paragraph (1) of this subsection have not been issued by the date that the Secretary determines the total amount available from the Trust Fund for assistance under this subtitle for such fiscal year pursuant to section 292(c), or there has been enacted before such date a joint resolution expressly disapproving the use of the formula required under paragraph (1) and submitted to the Congress pursuant to paragraph (3), for purposes of such fiscal year—*

(A) *section 293(b), paragraphs (2) and (3) of subsection (b) of this section, and subsection (c) of this section shall not apply;*

(B) *the allocation for Indian tribes shall be such amount as the Secretary shall establish; and*

(C) *the formula amount for each State, insular area, or participating local jurisdiction shall be determined by applying, for such State, insular area, or participating local jurisdiction, the percentage that is equal to the percentage of the total amounts made available for such fiscal year for allocation under subtitle A of this title (42 U.S.C. 12741 et seq.) that are allocated in such year, pursuant to such subtitle, to such State, insular area, or participating local jurisdiction, respectively, and the allocation for each State, insular area, or participating jurisdiction, for purposes of subsection (e) shall, except as provided in subsection (d), be the formula amount for the State, insular area, or participating jurisdiction, respectively.*

(3) *SUBMISSION TO CONGRESS.*—Notwithstanding any other provision of this subtitle, any formula established by the Secretary pursuant to this subsection shall be submitted to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not less than 120 days before application of the formula for purposes of determining formula amounts under subsection (b) for a fiscal year. Such submission shall be accompanied by a detailed explanation of the factors under the formula and anticipated effects of the formula.

(b) *FORMULA AMOUNT.*—

(1) *IN GENERAL.*—For each fiscal year referred to in section 293(a), the Secretary shall determine the formula amount under this subsection for each State, for Indian tribes, for each insular area, and for each participating local jurisdiction.

(2) *STATES, INDIAN TRIBES, AND INSULAR AREAS.*—The formula amount for each State, for Indian tribes, and for each insular area shall be the amount determined for such State, for Indian tribes, or for such insular area by applying the formula under subsection (a) of this section to the total amount allocated under section 293(b)(1) for all States, Indian tribes, and insular areas for the fiscal year.

(3) *PARTICIPATING LOCAL JURISDICTIONS.*—The formula amount for each participating local jurisdiction shall be the amount determined for such participating local jurisdiction by applying the formula under subsection (a) of this section to the total amount allocated under section 293(b)(2) for all participating local jurisdictions for the fiscal year.

(4) *NOTICE.*—For each fiscal year referred to in section 293(a), not later than 60 days after the date that the Secretary determines the total amount available from the Trust Fund for such fiscal year pursuant to section 292(c) for assistance under this subtitle, the Secretary shall cause to be published in the Federal Register a notice that such amounts shall be so available.

(c) *ALLOCATION BASED ON AFFORDABLE HOUSING NEEDS FORMULA.*—The allocation under this subsection for a State, for Indian tribes, for an insular area, or for a local participating jurisdiction for a fiscal year shall be determined as follows:

(1) *STATES.*—Subject to subsection (d), the allocation for a State shall be the formula amount for the State.

(2) *INDIAN TRIBES AND INSULAR AREAS.*—The allocation for Indian tribes and for each insular area shall be the formula amount for Indian tribes or for the insular area, respectively, determined under subsection (b), as applicable.

(3) *PARTICIPATING LOCAL JURISDICTIONS.*—Subject to subsection (d), the allocation for each participating local jurisdiction shall be the formula amount for the jurisdiction determined under subsection (b).

(d) *ALLOCATION EXCEPTION FOR YEARS IN WHICH LESS THAN \$2 BILLION IS AVAILABLE.*—If, for any fiscal year, the total amount available pursuant to section 293(a) for assistance under this subtitle is less than \$2,000,000,000—

(1) for each participating local jurisdiction having a formula amount of less than \$750,000, the allocation shall be \$0, except that if the Secretary finds that the jurisdiction has dem-

onstrated a capacity to carry out provisions of this subtitle and the State in which such jurisdiction is located has authorized the Secretary to transfer to the jurisdiction a portion of the State's allocation that is equal to or greater than the difference between the jurisdiction's formula amount and \$750,000, or the State or jurisdiction has made available such an amount from the State's or jurisdiction's own sources available for use by the jurisdiction in accordance with this subtitle, the jurisdiction's allocation for a fiscal year shall be the formula amount for the jurisdiction; and

(2) in the case of any jurisdiction whose allocation is \$0 by operation of paragraph (1), the allocation for the State in which such participating local jurisdiction is located shall be increased by the amount of the formula amount for the participating local jurisdiction.

Any adjustments pursuant to paragraphs (1) and (2) shall be made notwithstanding the allocation percentages under section 293(b).

(e) GRANT AWARDS.—For each fiscal year referred to in section 293(a), using the amounts made available to the Secretary from the Trust Fund for such fiscal year under section 292(c), the Secretary shall, subject to subsection (f), make a grant to each State, insular area, and participating local jurisdiction in the amount of the allocation under subsection (a)(2), (c), or (d), as applicable, for the State, area, or jurisdiction, respectively.

(f) MATCHING REQUIREMENT.—

(1) IN GENERAL.—Each grantee for a fiscal year shall contribute to eligible activities funded with Trust Fund grant amounts, or require the contribution to such eligible activities by recipients of such Trust Fund grant amounts of, in addition to any such grant amounts, not less than the following amount:

(A) STATE, LOCAL, OR PRIVATE RESOURCES.—To the extent that such contributed amounts are derived from State, local, or private resources, 12.5 percent of such grant amounts.

(B) FEDERAL AMOUNTS.—To the extent that such contributed amounts are derived from State- or locally-controlled amounts from Federal assistance, or from amounts made available under the affordable housing program of a Federal Home Loan Bank pursuant to section 10(j) of the Federal Home Loan Bank Act (12 U.S.C. 1430(j)), 25 percent of such grant amounts.

Nothing in this paragraph may be construed to prevent a grantee or recipient from complying with this paragraph only by contributions in accordance with subparagraph (A), only by contributions in accordance with subparagraph (B), or by a combination of such contributions.

(2) REDUCTION OR WAIVER FOR RECIPIENTS IN FISCAL DISTRESS.—The Secretary may reduce or waive the requirement under paragraph (1) with respect to any grantee that the Secretary determines, pursuant to such demonstration by the recipient as the Secretary shall require, is in fiscal distress. The Secretary shall make determinations regarding fiscal distress for purposes of this paragraph in the same manner, and according to the same criteria, as fiscal distress is determined with respect to jurisdictions under section 220(d) (42 U.S.C. 12750(d)).

(3) **QUALIFICATION OF SERVICES FUNDING FOR MATCH.**—For purposes of meeting the requirements of paragraph (1), amounts that a grantee, recipient, or other governmental or private agency or entity commits to contribute to provide services to residents of affordable housing provided using grant amounts under this subtitle, by entering into a binding commitment for such contribution as the Secretary shall require, shall be considered contributions to eligible activities. Amounts to be considered eligible contributions under this paragraph shall not exceed 33 percent of the total cost of the eligible activity.

(4) **REDUCTION OR WAIVER FOR CERTAIN ACTIVITIES.**—With respect to Trust Fund grant amounts made available for a fiscal year, the Secretary shall reduce or waive the amount of contributions otherwise required under paragraph (1) to be made with respect to eligible activities to be carried out with such grant amounts and for which any variance from zoning laws or other waiver of regulatory requirements was approved by the local jurisdiction. Such reduction may be implemented in the year following the year in which such activities are funded with Trust Fund grant amounts.

(5) **WAIVER FOR DISASTER AREAS.**—In the case of any area that is subject to a declaration by the President of a major disaster or emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121), the Secretary shall, for the fiscal year following such declaration, waive the requirement under paragraph (1) with respect to any eligible activities to be carried out in such area.

(g) **COMPETITIVE GRANTS FOR INDIAN TRIBES.**—For each fiscal year referred to in section 293(a), the Secretary shall, using amounts allocated for Indian tribes pursuant to subsection (a)(2)(B) or (c)(2), as applicable, and subject to subsection (f), make grants to Indian tribes on a competitive basis, based upon such criteria as the Secretary shall establish, which shall include the factors specified in section 295(c)(2)(B).

(h) **USE BY STATE OF UNUSED FUNDS OF LOCAL JURISDICTIONS.**—If any participating local jurisdiction for which an allocation is made for a fiscal year pursuant to this section notifies the Secretary of an intent not to use all or part of such funds, any such funds that will not be used by the jurisdiction shall be added to the grant award under subsection (e) for the State in which such jurisdiction is located.

(i) **COMPETITIVE GRANTS FOR AREAS WITHOUT ALLOCATION PLANS AND RECIPIENTS WITH INSUFFICIENT MATCHING CONTRIBUTIONS.**—

(1) **AVAILABLE AMOUNTS.**—For a fiscal year, the following amounts shall be available for grants under this subsection:

(A) **ALLOCATION FOR AREAS NOT SUBMITTING ALLOCATION PLANS.**—With respect to each State, insular area, or participating local jurisdiction that has not, before the expiration of the 12-month period beginning upon the date of the publication of the notice of funding availability for such fiscal year under subsection (b)(4), submitted to and had approved by the Secretary an allocation plan for such fiscal year meeting the requirements of section 295, the amount of the allocation for such State, insular area, or participating

local jurisdiction for such fiscal year determined under this section.

(B) *UNMATCHED PORTION OF ALLOCATION.*—With respect to any grantee for which the Trust Fund grant amount awarded for such fiscal year is reduced from the amount of the allocation determined under this section for the grantee by reason of failure to comply with the requirements under subsection (f), the amount by which such allocation for the grantee for the fiscal year exceeds the Trust Fund grant amount for the grantee for the fiscal year.

(C) *UNCOMMITTED AMOUNTS.*—Any Trust Fund grant amounts for a fiscal year that are not committed for use for eligible activities before the expiration of the 24-month period beginning upon the date of the publication of the notice of availability of amounts under subsection (b)(4) for such fiscal year.

(D) *UNUSED AMOUNTS.*—Any Trust Fund grant amounts for which the grantee notifies the Secretary that such funds will not be used under this subtitle.

(2) *NOTICE.*—For each fiscal year, not later than 60 days after the date that the Secretary determines that the amounts described in paragraph (1) shall be available for grants under this subsection, the Secretary shall cause to be published in the Federal Register a notice that such amounts shall be so available.

(3) *APPLICATIONS.*—The Secretary shall provide for nonprofit and public entities (and consortia thereof, which may include regional consortia of units of local government) to submit applications, during the 9-month period beginning upon publication of a notice of funding availability under paragraph (2) for a fiscal year, for a grant of all or a portion of the amounts referred to in paragraph (1) for such fiscal year. Such an application shall include a certification that the applicant will comply with all requirements of this subtitle applicable to a grantee under this subsection.

(4) *SELECTION CRITERIA.*—The Secretary shall, by regulation, establish criteria for selecting applicants that meet the requirements of paragraph (3) for funding under this subsection. Such criteria shall give priority to applications that provide that grant amounts under this subsection will be used for eligible activities relating to affordable housing that is located in the State or insular area, as applicable, for which such grant funds were originally allocated under this section.

(5) *AWARD AND USE OF GRANT ASSISTANCE.*—

(A) *AWARD.*—Subject only to the absence of applications meeting the requirements of paragraph (3), upon the expiration of the period referred to in such paragraph, the Secretary shall select an applicant or applicants under this subsection to receive the amounts available under paragraph (1) and shall make a grant or grants to such applicant or applicants. The selection shall be based upon the criteria established under paragraph (4).

(B) *USE.*—Amounts from a grant under this subsection shall be Trust Fund grant amounts for purposes of this subtitle.

SEC. 295. ALLOCATION PLANS.

(a) *IN GENERAL.*—Each grantee that is a State, insular area, participating local jurisdiction, or grantee under section 294(i) for a fiscal year, shall establish an allocation plan in accordance with this section for the distribution of Trust Fund grant amounts provided to the grantee for such fiscal year, which shall be a plan that—

(1) provides for use of such amounts in accordance with section 296;

(2) is based on priority housing needs, including priority housing needs in rural areas, as determined by the grantee; and

(3) is consistent with the comprehensive housing affordability strategy under section 105 (42 U.S.C. 12705) or any applicable consolidated submission used for purposes of applying for other community planning and development and housing assistance programs administered by the Secretary, for the applicable State, insular area, jurisdiction, or grantee under section 294(i).

(b) *ESTABLISHMENT.*—In establishing an allocation plan, a grantee described in subsection (a) shall notify the public of the establishment of the plan, provide an opportunity for public comments regarding the plan, consider any public comments received, and make the completed plan available to the public.

(c) *CONTENTS.*—Each allocation plan of a grantee described in subsection (a) shall comply with the following requirements:

(1) *APPLICATION REQUIREMENTS FOR ELIGIBLE RECIPIENTS.*—The allocation plan shall set forth the requirements for eligible recipients to apply to the grantee to receive assistance from Trust Fund grant amounts of the grantee for use for eligible activities, including a requirement that each such application include—

(A) a description of the eligible activities to be conducted using such assistance; and

(B) a certification by the eligible recipient applying for such assistance that any housing assisted with such grant amounts will comply with—

(i) all of the requirements under this subtitle, including the targeting requirements under section 296(c) and the affordable housing requirements under section 297;

(ii) section 808(d) of the Fair Housing Act (relating to the obligation to affirmatively further fair housing); and

(iii) section 504 of the Rehabilitation Act of 1973 (relating to prohibition of discrimination on the basis of disability).

(2) *SELECTION PROCESS AND CRITERIA FOR ASSISTANCE.*—

(A) *SELECTION PROCESS.*—The allocation plan shall set forth a process for the grantee to select eligible activities meeting the grantee's priority housing needs for funding with Trust Fund grant amounts of the grantee, which shall comply with requirements for such process as the Secretary shall, by regulation, establish.

(B) *SELECTION CRITERIA.*—The allocation plan shall set forth the factors for consideration in selecting among applicants that meet the application requirements established pursuant to paragraph (1), which shall provide for geo-

graphic diversity among eligible activities to be assisted with Trust Fund grant amounts of the grantee and shall include—

(i) the merits of the proposed eligible activity of the applicant, including the extent to which the activity addresses housing needs identified in the allocation plan of the grantee and the applicable comprehensive housing affordability strategy or consolidated submission referred to in subsection (a)(3);

(ii) the experience of the applicant, including its principals, in carrying out projects similar to the proposed eligible activity;

(iii) the ability of the applicant to obligate grant amounts for the proposed eligible activities and to undertake such activities in a timely manner;

(iv) the extent of leveraging of funds by the applicant from private and other non-Federal sources for carrying out the eligible activities to be funded with Trust Fund grant amounts, including assistance made available under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) that is devoted to the project that contains the affordable housing to be assisted with such assistance;

(v) the extent of local assistance that will be provided in carrying out the eligible activities, including financial assistance;

(vi) the efficiency of total project fund use as measured by the cost per unit of the proposal, as adjusted by factors which shall include whether the funding with Trust Fund grant amounts is for new construction, rehabilitation, preservation, or homeownership assistance, whether the project involves supportive housing, differences in construction and rehabilitation costs in different areas of the grantee, and other appropriate adjustments;

(vii) the degree to which the project in which the affordable housing will be located will have residents of various incomes;

(viii) the extent of employment and other economic opportunities for low-income families in the area in which the housing will be located;

(ix) the extent to which the applicant demonstrates the ability to maintain dwelling units as affordable housing through the use of assistance made available under this subtitle, assistance leveraged from non-Federal sources, assistance made available under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), State or local assistance, programs to increase tenant income, cross-subsidization, and any other resources;

(x) the extent to which the applicant demonstrates that the county in which the housing is to be located is experiencing an extremely low vacancy rate;

(xi) the extent to which the percentage of the housing located in such county that is extremely old housing exceeds 35 percent;

(xii) the extent to which the housing assisted with the grant amounts will be accessible to persons with disabilities;

(xiii) the extent to which the applicant demonstrates that the affordable housing assisted with the grant amounts will be located in proximity to public transportation, job opportunities, child care, and community revitalization projects;

(xiv) the extent to which the applicant has provided that assistance from grant amounts will be used for eligible activities relating to housing located in census tracts in which the number of families having incomes less than the poverty line is less than 20 percent; and

(xv) the extent to which the housing assisted with grant amounts will comply with energy efficiency standards and the national Green Communities criteria checklist for residential construction that provides criteria for the design, development, and operation of affordable housing, as the Secretary shall by regulation provide.

A grantee may allocate a portion of funds under this section for use by such grantee for eligible activities pursuant to the selection process under subparagraph (A).

(3) **PERFORMANCE GOALS, BENCHMARKS, AND TIMETABLES.**—The allocation plan shall include performance goals, benchmarks, and timetables for the grantee for the conducting of eligible activities with Trust Fund grant amounts that comply with requirements and standards for such goals, benchmarks, and timetables as the Secretary shall, by regulation, establish.

(d) **REVIEW AND APPROVAL BY SECRETARY.**—

(1) **SUBMISSION.**—A grantee described in subsection (a) shall submit an allocation plan for the fiscal year for which the grant is made to the Secretary not later than the expiration of the 6-month period beginning upon the notice of funding availability under section 294(b)(4) for such fiscal year amounts.

(2) **REVIEW AND APPROVAL OR DISAPPROVAL.**—The Secretary shall review and approve or disapprove an allocation plan not later than the expiration of the 3-month period beginning upon submission of the plan.

(3) **STANDARD FOR DISAPPROVAL.**—The Secretary may disapprove an allocation plan only if the plan fails to comply with requirements of this section or section 296.

(4) **RESUBMISSION UPON DISAPPROVAL.**—If the Secretary disapproves a plan, the grantee may submit to the Secretary a revised plan for review and approval or disapproval under this subsection.

(5) **TIMING FOR FISCAL YEAR 2008.**—With respect only to fiscal year 2008, the Secretary may extend each of the periods referred to in paragraphs (1) and (2), and the period referred to in section 294(i)(1)(A), by not more than 6 months.

SEC. 296. USE OF ASSISTANCE BY RECIPIENTS.

(a) **DISTRIBUTION TO RECIPIENTS; USE REQUIREMENTS.**—Each grantee shall distribute Trust Fund grant amounts of the grantee to eligible recipients for use in accordance with this section. Trust Fund grant amounts of a grantee may be used, or committed for use, only for eligible activities that—

(1) are conducted in the jurisdiction of the grantee;

(2) in the case of a grantee that is a State, insular area, participating local jurisdiction, or grantee under section 294(i), comply with the allocation plan of the grantee under section 295;

(3) are selected for funding by the grantee in accordance with the process and criteria for such selection established pursuant to section 295(c)(2); and

(4) comply with the targeting requirements under subsection (c) of this section and the affordable housing requirements under section 297.

(b) **ELIGIBLE RECIPIENTS.**—Trust Fund grant amounts of a grantee may be provided only to an organization, agency, or other entity (including a for-profit entity, a nonprofit entity, a faith-based organization, a community development financial institution, a community development corporation, and a State or local housing trust fund) that—

(1) demonstrates the experience, ability, and capacity (including financial capacity) to undertake, comply, and manage the eligible activity;

(2) demonstrates its familiarity with the requirements of any other Federal, State or local housing program that will be used in conjunction with such grant amounts to ensure compliance with all applicable requirements and regulations of such programs; and

(3) makes such assurances to the grantee as the Secretary shall, by regulation, require to ensure that the recipient will comply with the requirements of this subtitle during the entire period that begins upon selection of the recipient to receive such grant amounts and ending upon the conclusion of all eligible activities that are engaged in by the recipient and funded with such grant amounts.

(c) **TARGETING REQUIREMENTS.**—The targeting requirements under this subsection are as follows:

(1) **REQUIREMENT OF USE OF ALL AMOUNTS FOR AFFORDABLE HOUSING FOR LOW-INCOME FAMILIES.**—All Trust Fund grant amounts of a grantee shall be distributed for use only for eligible activities relating to affordable housing that are for the benefit only of families whose incomes do not exceed 80 percent of the greater of—

(A) the median family income for the area in which the housing is located, as determined by the Secretary with adjustments for smaller and larger families; and

(B) the median family income for the State or insular area in which the housing is located, as determined by the Secretary with adjustments for smaller and larger families.

(2) **USE OF 75 PERCENT FOR AFFORDABLE HOUSING FOR EXTREMELY LOW-INCOME FAMILIES.**—Not less than 75 percent of the Trust Fund grant amounts of a grantee for each fiscal year

shall be used only for eligible activities relating to affordable housing that are for the benefit only of families whose incomes do not exceed the higher of—

(A) 30 percent of the median family income for the area in which the housing is located, as determined by the Secretary with adjustments for smaller and larger families; and

(B) the poverty line (as such term is defined in section 673 of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902), including any revision required by such section) applicable to a family of the size involved.

(3) *USE OF 30 PERCENT FOR AFFORDABLE HOUSING FOR VERY POOR FAMILIES.*—Not less than 30 percent of the Trust Fund grant amounts of a grantee for each fiscal year shall be used only for eligible activities relating to affordable housing that are for the benefit only of families whose incomes do not exceed the maximum amount of income that an individual or family could have, taking into consideration any income disregards, and remain eligible for benefits under the Supplemental Security Income program under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.).

(4) *USE OF 10 PERCENT FOR AFFORDABLE HOUSING FOR FAMILIES ABOVE 50 PERCENT OF AREA MEDIAN INCOME.*—Not less than 10 percent of the Trust Fund grant amounts of a grantee for each fiscal year shall be used only for eligible activities relating to affordable housing that are for the benefit only of families whose incomes exceed 50 percent of the median family income for the area in which the housing is located, as determined by the Secretary with adjustments for smaller and larger families.

(5) *LIMITATION FOR YEARS IN WHICH LESS THAN \$2 BILLION IS AVAILABLE.*—If, for any fiscal year, the total amount available pursuant to section 293(a) for assistance under this subtitle is less than \$2,000,000,000, in addition to the other requirements under this subsection, all such amounts shall be used only for eligible activities relating to affordable housing that are for the benefit only of families whose incomes do not exceed 60 percent of the median family income for the area in which the housing is located, as determined by the Secretary with adjustments for smaller and larger families.

(6) *REVIEW OF TARGETING REQUIREMENTS.*—The Secretary shall assess the need for, and the appropriateness of, the requirements under paragraphs (1) through (4) and shall submit a report to the Congress on the results of the assessment not later than October 1, 2012, and not later than the expiration of the 5-year period beginning upon such date and each successive 5-year period thereafter. In each such report, the Secretary shall identify and make recommendations regarding the continuation or adjustment of the targeting requirements in paragraphs (1) through (4).

(d) *USE FOR RURAL AREAS.*—Of the Trust Fund grant amounts for any fiscal year for any grantee that is a State or participating local jurisdiction that includes any rural areas, the State or participating local jurisdiction shall use a portion for eligible activities lo-

cated in rural areas that is proportionate to the identified need for such activities in such rural areas.

(e) *COST LIMITS.*—The Secretary shall establish limitations on the amount of Trust Fund grant amounts that may be used, on a per unit basis, for eligible activities. Such limitations shall be the same as the per unit cost limits established pursuant to section 212(e) (42 U.S.C. 12742(e)), as adjusted annually, and established by number of bedrooms, market area, and eligible activity.

(f) *FORMS OF ASSISTANCE.*—

(1) *IN GENERAL.*—Assistance may be distributed pursuant to this section in the form of—

(A) capital grants, noninterest-bearing or low-interest loans or advances, deferred payment loans, guarantees, and loan loss reserves;

(B) in the case of assistance for ownership of one- to four-family owner-occupied housing, downpayment assistance, closing cost assistance, and assistance for interest rate buy-downs; and

(C) any other forms of assistance approved by the Secretary.

(2) *REPAYMENTS.*—If a grantee awards assistance under this section in the form of a loan or other mechanism by which funds are later repaid to the grantee, any repayments and returns received by the grantee shall be distributed by the grantee in accordance with the allocation plan under section 295 for the grantee for the fiscal year in which such repayments are made or returns are received.

(g) *COORDINATION WITH OTHER ASSISTANCE.*—In distributing assistance pursuant to this section, each grantee shall, to the maximum extent practicable, coordinate such distribution with the provision of other Federal, State, tribal, and local housing assistance, including—

(1) in the case of any State, housing credit dollar amounts allocated by the State under section 42(h) of the Internal Revenue Code of 1986;

(2) assistance made available under subtitles A through F (42 U.S.C. 12721 et seq.) or the community development block grant program under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.);

(3) private activity bonds;

(4) assistance made available under section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g);

(5) assistance made available under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o));

(6) assistance made available under title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.);

(7) assistance made available under section 101 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4111);

(8) assistance made available from any State or local housing trust fund established to provide or assist in making available affordable housing; and

(9) any other housing assistance programs.

(h) *PROHIBITED USES.*—The Secretary shall—

(1) by regulation, set forth prohibited uses of grant amounts under this subtitle, which shall include use for—

- (A) political activities;
- (B) advocacy;
- (C) lobbying, whether directly or through other parties;
- (D) counseling services;
- (E) travel expenses; and
- (F) preparing or providing advice on tax returns;

(2) by regulation, provide that, except as provided in paragraph (3), grant amounts under this subtitle may not be used for administrative, outreach, or other costs of—

- (A) a grantee; or
- (B) any recipient of such grant amounts; and

(3) by regulation, limit the amount of any Trust Fund grant amounts for a fiscal year that may be used for administrative costs of the grantee of carrying out the program required under this subtitle to a percentage of such grant amounts of the grantee for such fiscal year, which may not exceed 10 percent.

(i) **LABOR STANDARDS.**—Each grantee receiving Trust Fund grant amounts shall ensure that contracts for eligible activities assisted with such amounts comply with the same requirements under section 286 (42 U.S.C. 12836) that are applicable to contracts for construction of affordable housing assisted under subtitles A and D.

(j) **COMPLIANCE WITH OTHER FEDERAL LAWS.**—All amounts from the Trust Fund shall be allocated in accordance with, and any eligible activities carried out in whole or in part with grant amounts under this subtitle (including housing provided with such grant amounts) shall comply with and be operated in compliance with, other applicable provisions of Federal law, including—

- (1) laws relating to tenant protections and tenant rights to participate in decision making regarding their residences;
- (2) laws requiring public participation, including laws relating to Consolidated Plans, Qualified Allocation Plans, and Public Housing Agency Plans; and
- (3) fair housing laws and laws regarding accessibility in federally assisted housing, including section 504 of the Rehabilitation Act of 1973.

SEC. 297. AFFORDABLE HOUSING.

(a) **RENTAL HOUSING.**—A rental dwelling unit (which may include a dwelling unit in limited equity cooperative housing, as such term is defined in section 143(k) of the Internal Revenue Code of 1986 (26 U.S.C. 143(k)) or in housing of a cooperative housing corporation, as such term is defined in section 216(b) of the Internal Revenue Code of 1986 (26 U.S.A. 216(b))), shall be considered affordable housing for purposes of this subtitle only if the dwelling unit is subject to legally binding commitments that ensure that the dwelling unit meets all of the following requirements:

(1) **RENTS.**—The dwelling unit bears a rent not greater than the lesser of—

- (A) the existing fair market rental established by the Secretary under section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)) for a dwelling unit of the same size in the same market area, or the applicable payment standard for assistance under section 8(o) of such Act, if higher; and

(B) a rent that does 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 number of bedrooms in the unit, except that the Secretary may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of the findings of the Secretary that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

(2) *TENANT RENT CONTRIBUTION.*—The contribution toward rent by the family residing in the dwelling unit will not exceed 30 percent of the adjusted income of such family.

(3) *NON-DISCRIMINATION AGAINST VOUCHER HOLDERS.*—The dwelling unit is located in a project in which all dwelling units are subject to enforceable restrictions that provide that a unit may not be refused for leasing to a holder of a voucher of eligibility under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) because of the status of the prospective tenant as a holder of such voucher.

(4) *MIXED INCOME.*—

(A) *IN GENERAL.*—The dwelling unit is located in a project in which not more than 50 percent of the rental units in the project that receive assistance under this subtitle and are not previously occupied may be rented initially to families with incomes described in section 296(c)(2), as determined at a reasonable time before occupancy.

(B) *REHABILITATION.*—In the case of a dwelling unit in a project for which Trust Fund grant amounts are used for the rehabilitation of the project, the dwelling unit is located in a project in which the percentage of units being rented upon completion of the rehabilitation to families with incomes described in section 296(c)(2) may not exceed the higher of 50 percent or the percentage of such families occupying the project at the time funds are awarded for such project.

(C) *EXCEPTIONS.*—Subparagraph (A) shall not apply in the case of a project having 25 or fewer dwelling units that is—

(i) located in a census tract in which the number of families having incomes less than the poverty line is less than 20 percent;

(ii) located in a rural area, as such term is defined in section 520 of the Housing Act of 1949 (42 U.S.C. 1490); or

(iii) specifically made available only for households comprised of elderly families or disabled families.

(5) *VISITABILITY.*—To the extent the dwelling unit is not required under Federal law to comply with standards relating to accessibility to persons with disabilities, the dwelling unit complies with such basic visitability standards as the Secretary shall by regulation provide.

(6) *DURATION OF USE.*—The dwelling unit will continue to be subject to all requirements under this subsection for not less than 50 years.

(b) *OWNER-OCCUPIED HOUSING.*—For purposes of any eligible activity involving one- to four-family owner-occupied housing (which may include housing of a cooperative housing corporation, as such term is defined in section 216(b) of the Internal Revenue Code of 1986 (26 U.S.A. 216(b))), such a residence shall be considered affordable housing for purposes of this subtitle only if—

(1) in the case of housing to be made available for purchase—

(A) the housing is available for purchase only for use as a principal residence by families that qualify as first-time homebuyers, as such term is defined in section 104 (42 U.S.C. 12704), except that any reference in such section to assistance under title II of this Act shall for purposes of this section be considered to refer to assistance from Trust Fund grant amounts;

(B) the housing has an initial purchase price that meets the requirements of section 215(b)(1); and

(C) the housing is subject to the same resale restrictions established under section 215(b)(3) and applicable to the participating jurisdiction that is the State in which such housing is located; and

(2) the housing is made available for purchase only by, or in the case of assistance to a homebuyer pursuant to this subsection, the assistance is made available only to, homebuyers who have, before purchase, completed a program of counseling with respect to the responsibilities and financial management involved in homeownership that is approved by the Secretary; except that the Secretary may, at the request of a State, waive the requirements of this paragraph with respect to a geographic area or areas within the State if—

(A) the travel time or distance involved in providing counseling with respect to such area or areas, as otherwise required under this paragraph, on an in-person basis is excessive or the cost of such travel is prohibitive; and

(B) the State provides alternative forms of counseling for such area or areas, which may include interactive telephone counseling, on-line counseling, interactive video counseling, and interactive home study counseling and a program of financial literacy and education to promote an understanding of consumer, economic, and personal finance issues and concepts, including saving for retirement, managing credit, long-term care, and estate planning and education on predatory lending, identity theft, and financial abuse schemes relating to homeownership that is approved by the Secretary, except that entities providing such counseling shall not discriminate against any particular form of housing.

(c) *PRIORITY FOR FAMILIES ON SECTION 8 OR PUBLIC HOUSING WAITING LIST FOR 12 MONTHS OR LONGER.*—A dwelling unit in rental housing or owner-occupied housing shall be considered affordable housing for purposes of this subtitle only if the dwelling unit is subject to such requirements, as the Secretary shall provide, to ensure that priority for occupancy in or, in the case of owner-occupied housing, purchase of, the dwelling unit is provided to families who are eligible for rental assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) or occupancy

in public housing assisted under such Act, and have applied to a public housing agency for such assistance or occupancy, as applicable, and been on a waiting list of a public housing agency for such assistance or occupancy, as applicable, for at least 12 consecutive months.

SEC. 298. OTHER PROVISIONS.

(a) EFFECT OF ASSISTANCE UNDER PROGRAM.—Notwithstanding any other provision of law, the provision of assistance under this subtitle for a project shall not reduce the amount of assistance for which such project is otherwise eligible under subtitles A through F of this title, if the project does not exceed the cost limits established pursuant to section 296(e).

(b) ACCOUNTABILITY OF GRANTEES AND RECIPIENTS.—

(1) RECIPIENTS.—

(A) TRACKING OF FUNDS.—The Secretary shall—

(i) require each grantee to develop and maintain a system to ensure that each recipient of assistance from Trust Fund grant amounts of the grantee uses such amounts in accordance with this subtitle, the regulations issued under this subtitle, and any requirements or conditions under which such amounts were provided; and

(ii) establish minimum requirements for agreements, between the grantee and recipients, regarding assistance from the Trust Fund grant amounts of the grantee, which shall include—

(I) appropriate continuing financial and project reporting, record retention, and audit requirements for the duration of the grant to the recipient to ensure compliance with the limitations and requirements of this subtitle and the regulations under this subtitle; and

(II) any other requirements that the Secretary determines are necessary to ensure appropriate grant administration and compliance.

(B) MISUSE OF FUNDS.—

(i) REIMBURSEMENT REQUIREMENT.—If any recipient of assistance from Trust Fund grant amounts of a grantee is determined, in accordance with clause (ii), to have used any such amounts in a manner that is materially in violation of this subtitle, the regulations issued under this subtitle, or any requirements or conditions under which such amounts were provided—

(I) such recipient shall be ineligible for any further assistance from any Trust Fund grant amounts of any grantee during the period that begins upon such determination and ends upon reinstatement by the Secretary of the eligibility of recipient for such assistance, except that the Secretary may reinstate such an ineligible recipient only pursuant to application by the recipient for such reinstatement and the recipient may not apply to the Secretary for such reinstatement during the 12-month period, or the 10-year period in

the case of a second or subsequent such determination, beginning upon such determination; and

(II) the grantee shall require that, within 12 months after the determination of such misuse, the recipient shall reimburse the grantee for such misused amounts and return to the grantee any amounts from the Trust Fund grant amounts of the grantee that remain unused or uncommitted for use.

The remedies under this clause are in addition to any other remedies that may be available under law.

(ii) DETERMINATION.—A determination is made in accordance with this clause if the determination is—

(I) made by the Secretary; or

(II)(aa) made by the grantee;

(bb) the grantee provides notification of the determination to the Secretary for review, in the discretion of the Secretary, of the determination; and

(cc) the Secretary does not subsequently reverse the determination.

(2) GRANTEES.—

(A) REPORT.—

(i) IN GENERAL.—The Secretary shall require each grantee receiving Trust Fund grant amounts for a fiscal year to submit a report, for such fiscal year, to the Secretary that—

(I) describes the activities funded under this subtitle during such year with the Trust Fund grant amounts of the grantee; and

(II) the manner in which the grantee complied during such fiscal year with the allocation plan established pursuant to section 295 for the grantee.

(ii) PUBLIC AVAILABILITY.—The Secretary shall make such reports pursuant to this subparagraph publicly available.

(B) MISUSE OF FUNDS.—*If the Secretary determines, after reasonable notice and opportunity for hearing, that a grantee has failed to comply substantially with any provision of this subtitle and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary shall—*

(i) reduce the amount of assistance under this section to the grantee by an amount equal to the amount of Trust Fund grant amounts which were not used in accordance with this subtitle;

(ii) require the grantee to repay the Secretary an amount equal to the amount of the Trust Fund grant amounts which were not used in accordance with this subtitle;

(iii) limit the availability of assistance under this subtitle to the grantee to activities or recipients not affected by such failure to comply; or

(iv) terminate any assistance under this subtitle to the grantee.

SEC. 299. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) **ELIGIBLE ACTIVITIES.**—The term “eligible activities” means activities relating to the construction, preservation, or rehabilitation of affordable rental housing or affordable one- to four-family owner-occupied housing, including—

(A) the construction of new housing;

(B) the acquisition of real property;

(C) site preparation and improvement, including demolition;

(D) rehabilitation of existing housing;

(E) use of funds to facilitate affordability for homeless and other extremely low-income households of dwelling units assisted with Trust Fund grant amounts, in a combined amount not to exceed 20 percent of the project grant amount, for—

(i) project-based rental assistance for not more than 12 months for a project assisted with Trust Fund grant amounts;

(ii) project operating reserves for use to cover the loss of rental assistance or in conjunction with a project loan; or

(iii) project operating accounts used to cover net operating income shortfalls for dwelling units assisted with Trust Fund grant amounts;

(F) providing incentives to maintain existing housing (including manufactured housing) as affordable housing and to establish or extend any low-income affordability restrictions for such housing, including covering capital expenditures and costs of establishing community land trusts to provide sites for manufactured housing provided such incentives; and

(G) in the case of affordable one- to four-family owner-occupied housing, downpayment assistance, closing cost assistance, and assistance for interest rate buy-downs.

(2) **ELIGIBLE RECIPIENT.**—The term “eligible recipient” means an entity that meets the requirements under section 296(b) for receipt of Trust Fund grant amounts of a grantee.

(3) **EXTREMELY LOW VACANCY RATE.**—The term “extremely low vacancy rate” means a housing or rental vacancy rate of 2 percent or less.

(4) **EXTREMELY OLD HOUSING.**—The term “extremely old housing” means housing that is 45 years old or older.

(5) **FAMILIES.**—The term “families” has the meaning given such term in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)).

(6) **FISCAL DISTRESS; SEVERE FISCAL DISTRESS.**—The terms “fiscal distress” and “severe fiscal distress” have the meanings given such terms in section 220(d).

(7) **GRANTEE.**—The term “grantee” means—

(A) a State, insular area, or participating local jurisdiction for which a grant is made under section 294(e);

(B) an Indian tribe for which a grant is made under section 294(g); or

- (C) a nonprofit or public entity for which a grant is made under section 294(i).
- (8) INDIAN TRIBE.—The term “Indian tribe” means a federally recognized Indian tribe.
- (9) INSULAR AREA.—The term “insular area” has the meaning given such term in section 104.
- (10) PARTICIPATING LOCAL JURISDICTION.—The term “participating local jurisdiction” means, with respect to a fiscal year—
- (A) any unit of general local government (as such term is defined in section 104 (42 U.S.C. 12704) that qualifies as a participating jurisdiction under section 216 (42 U.S.C. 12746) for such fiscal year; and
- (B) at the option of such a consortium, any consortium of units of general local governments that is designated pursuant to section 216 (42 U.S.C. 12746) as a participating jurisdiction for purposes of title II.
- (11) POVERTY LINE.—The term “poverty line” has the meaning given such term in section 673(2) of the Omnibus Budget Reconciliation Act of 1981, including any revision required by such section.
- (12) RECIPIENT.—The term “recipient” means an entity that receives assistance from a grantee, pursuant to section 296(a), from Trust Fund grant amounts of the grantee.
- (13) RURAL AREA.—The term “rural area” has the meaning given such term in section 520 of the Housing Act of 1949 (42 U.S.C. 1490).
- (14) SECRETARY.—The term “Secretary” means the Secretary of Housing and Urban Development.
- (15) STATE.—The term “State” has the meaning given such term in section 104.
- (16) TRUST FUND.—The term “Trust Fund” means the National Affordable Housing Trust Fund established under section 292.
- (17) TRUST FUND GRANT AMOUNTS.—The term “Trust Fund grant amounts” means amounts from the Trust Fund that are provided to a grantee pursuant to subsection (e), (g), or (i) of section 294.

SEC. 299A. INAPPLICABILITY OF HOME PROVISIONS.

Except as specifically provided otherwise in this subtitle, no requirement under, or provision of, title I or subtitles A through F of this title shall apply to assistance provided under this subtitle.

SEC. 299B. REGULATIONS.

Not later than 6 months after the date of enactment of the National Affordable Housing Trust Fund Act of 2007, the Secretary of Housing and Urban Development shall promulgate regulations to carry out this subtitle, which shall include regulations establishing the affordable housing needs formula in accordance with section 294(a).

DISSENTING VIEWS

Increasing the availability of affordable single and multifamily housing is essential to the goal of expanding rental and homeownership opportunities for low-income families, but the creation of a new bureaucracy, as envisioned in H.R. 2895, to address this problem is not the most efficient and effective use of government resources. While we share the Majority's commitment to meeting the affordable housing needs of lower-income Americans, we differ on how best to achieve that goal.

Siphoning money from Fannie Mae and Freddie Mac and the programs administered by the Federal Housing Administration (FHA) to pay for a National Affordable Housing Trust Fund would translate into a tax on middle-income homeowners seeking to purchase a home or refinance an existing mortgage through FHA. Also, we believe that decisions regarding the creation and preservation of affordable housing are best managed through state and local housing trust funds rather than through a new federal bureaucracy. A new trust fund would require HUD to devise and administer a new set of rules and regulations, diverting resources and time away from its other established affordable housing programs.

Indeed, it is worth remembering that HUD already administers over 30 separate federal programs designed to promote affordable housing opportunities for low-income Americans—including Section 8 vouchers and the Community Development Block Grant (CDBG) program—and that these programs consumed the bulk of HUD's \$35 billion budget during the last fiscal year. The trust fund outlined in H.R. 2895 is modeled in large part on one of those HUD initiatives—the HOME Investment Partnership Program (HOME).

In fact, the trust fund in H.R. 2895 is so similar in its core requirements (i.e., rent structure, income targeting, affordability periods, etc.) to the HOME Program that it prompts the question why it is necessary to create a new federal bureaucracy to administer essentially the same program. A better idea would be to run this program as a "set-aside" within the existing HOME Program. This set-aside would operate through the HOME administrative structure, but would have additional requirements imposing deeper targeting, longer use restrictions, etc. Because 50 states, 585 local governments, and four insular areas currently administer HOME, the administrative structure to manage the trust fund as part of HOME already exists. Making the trust fund part of HOME would simplify administration of the program, as well as substantially reduce "start-up" time for the new program.

Establishing a new Housing Trust Fund and promulgating new regulations and rules at HUD, on the other hand, could take months or even years to properly implement. Like all new programs, the stand-alone Trust Fund program would have very low expenditure rates until local staff come to understand the new pro-

gram—which was the case when the HOME program began in 1992. Rather than reinventing the wheel, a better approach would be to take this opportunity to make an already successful federal program work better by using HOME to increase production and preservation of mixed-income housing units, which would make rental housing affordable to very low and extremely low income families. HOME has been operating effectively for over 15 years, and because participating jurisdictions already understand the HOME program, there would be no learning curve for implementation.

In addition to opposing the creation of a huge new federal program, we seriously question the wisdom of establishing a National Housing Trust Fund paid for primarily by assessments on the GSEs and the surplus generated by the FHA program. Most Republicans believe that when it comes to meeting the affordable housing needs of our very low-income citizens, there simply has to be a better way than imposing what amounts to a middle-class mortgage tax on the millions of Americans whose mortgages are financed by the GSEs or diverting funds from an FHA program that seeks to create homeownership opportunities for low- and middle-income Americans.

In essence, using funds generated by the FHA surplus would result in a redistribution of funds from one segment of the population to another, by using fees paid by low- and moderate-income homeowners to subsidize other housing activities. Many Members on this side of the aisle question whether this represents an appropriate use of the surplus generated by a government insurance program. A far better approach, in our view, would be to return that surplus to the intended beneficiaries of the program, many of whom are senior citizens with FHA-insured reverse mortgages, in the form of lower insurance premiums. In addition, diverting premiums from the insurance fund could also threaten the fiscal soundness and solvency of FHA, which was only recently removed from GAO's list of government programs at "high risk" for waste, fraud and abuse. Moreover, current initiatives by the Bush administration and recently passed legislation in the House (H.R. 1852) contemplate a significant role for FHA in helping to transition subprime borrowers out of high-cost nontraditional loan products into more affordable FHA-insured mortgages. Diverting FHA funds to unrelated affordable housing programs arguably detracts from FHA's ability to serve this important function in a fiscally responsible manner.

Finally, we continue to be concerned about the distribution of the national affordable housing trust fund monies. H.R. 2895 includes a number of provisions intended to ensure that the funds are used for housing and are not misused or spent for other purposes, including: (a) a prohibition against any funds being used for a recipient's administrative costs or expenses, political activities, advocacy, lobbying, counseling, travel expense, or preparation or advice on tax returns; (b) limits to be set by HUD on how much grantees can spend on administrative costs; (c) a requirement that HUD establish program regulations, authority for HUD to audit each grantee's compliance, and a requirement that each grantee develop systems to ensure program compliance; and (d) authority for HUD to

impose penalties on grantees that do not comply with requirements, including requiring grantees to reimburse misused funds. However, even with these safeguards, political considerations will inevitably enter into the grant process administered by state and local government agencies, creating the potential for the program to be used to benefit elected officials and reward their political supporters, whether those supporters be non-profit advocacy groups or for-profit industries.

In sum, no one questions the very real affordable housing challenges that lower-income Americans face, or the good intentions of the authors of H.R. 2895 in seeking to meet those challenges. However, creating a new federal bureaucracy is not, in our view, the best course for achieving that shared objective.

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