

MARK-TO-MARKET EXTENSION ACT OF 2006

JULY 17, 2006.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. OXLEY, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 5527]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 5527) to extend the authority of the Secretary of Housing and Urban Development to restructure mortgages and rental assistance for certain assisted multifamily housing, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Amendment	1
Purpose and Summary	2
Background and Need for Legislation	3
Hearings	4
Committee Consideration	4
Committee Votes	4
Committee Oversight Findings	4
Performance Goals and Objectives	4
New Budget Authority, Entitlement Authority, and Tax Expenditures	4
Committee Cost Estimate	5
Congressional Budget Office Estimate	5
Federal Mandates Statement	10
Advisory Committee Statement	10
Constitutional Authority Statement	10
Applicability to Legislative Branch	10
Section-by-Section Analysis of the Legislation	10
Changes in Existing Law Made by the Bill, as Reported	10

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 “Mark-to-Market Extension Act of 2006”.

SEC. 2. REAUTHORIZATION.

Section 579 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended—

- (1) in subsection (a)(1), by striking “October 1, 2006” and inserting “October 1, 2011”; and
- (2) in subsection (b), by striking “October 1, 2006” and inserting “October 1, 2011”.

SEC. 3. EXCEPTION RENTS.

Section 514(g)(2)(A) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by striking “five percent” and inserting “nine percent”.

SEC. 4. PERIOD OF ELIGIBILITY FOR NONPROFIT DEBT RELIEF.

Section 517(a)(5) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by inserting before the period at the end the following: “: *Provided*, That if such purchaser acquires such project subsequent to the date of recordation of the affordability agreement described in section 514(e)(6), (A) such purchaser must acquire such project on or before the later of (i) five years after the date of recordation of the affordability agreement and (ii) two years after the date of enactment of this title; and (B) the Secretary must have received, and determined acceptable, such purchaser’s application for modification, assignment or forgiveness prior to such purchaser’s acquisition of the project”.

SEC. 5. DEFINITIONS.

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

“(20) **DISASTER-DAMAGED ELIGIBLE PROJECT.**—The term ‘disaster-damaged eligible project’ means an eligible multifamily housing project—

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

“(B) whose owner carried casualty and liability insurance covering such project in amounts required by the Secretary;

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

“(D) whose owner requests restructuring within two years following the date that such damages were incurred.

Disaster-damaged eligible projects shall be eligible without regard to the relationship between rent level for the assisted units and comparable market rents.”.

SEC. 6. DISASTER-DAMAGED ELIGIBLE PROJECTS.

(a) **MARKET RENT DETERMINATIONS.**—Subparagraph (B) of section 514(g)(1) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended to read as follows:

“(B) if those rents cannot be determined—

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

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

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

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

PURPOSE AND SUMMARY

H.R. 5527, the Mark-to-Market Extension Act of 2006, reauthorizes the Mark-to-Market program, which allows for mortgage and

rent restructuring for certain section 8 projects. This legislation would reauthorize the Mark-to-Market program, currently set to sunset at the end of FY 2006, through the end of FY 2011.

BACKGROUND AND NEED FOR LEGISLATION

Legislation creating the Mark-to-Market program was enacted in 1997 to reduce the cost to the Federal Government of renewing section 8 contracts. By restructuring mortgages and lowering rents, the program reduces the Federal costs of over-subsidized section 8 properties. The section 8 assisted housing program, administered by the Department of Housing and Urban Development (HUD), provided project-based rental subsidies to encourage developers to build affordable housing for low-income residents. Under the program, tenants paid a fixed percentage of their income towards rent, with the balance made up by the Federal Government in the form of subsidies to the project owner. The subsidy was attached to the unit, not to the tenant, and many of the projects' rents were set higher than market rents of comparable unassisted units in the area. When property costs increased, so did rent, resulting in an increase of the section 8 subsidy.

An examination of the Federal Housing Administration (FHA) portfolio found that nearly 10,000 of these properties were also receiving section 8 project-based rental assistance, and that a substantial number of these had rents higher than the rents of comparable, unassisted rental units in the same rental housing market. Also, many section 8 projects were discovered to be financially or physically distressed. In an effort to address the economic, physical, and management problems of these projects, while retaining the low-income affordability and availability of the housing stock, Congress authorized the Mark-to-Market restructuring program. Administered out of the Office of Multifamily Housing Assistance Restructuring (OMHAR), the program was designed to reduce Federal subsidies to owners of FHA-insured section 8 properties, lower the above-market rents payable to these owners, and restructure the mortgages of these properties so that owners can operate effectively on less income.

Under the Mark-to-Market program, interested section 8 owners are screened to see if their properties are economically viable and in good physical condition. If selected, the owners work with participating administrative entities to develop a rental assistance plan for the development. Originally, eligible owners were just those of section 8 project-based properties with FHA-insured mortgages and rents exceeding market levels. Now, also included, are owners of properties other than section 8 project-based projects. All eligible owners will have the opportunity to participate in the mortgage restructuring plan. In exchange for debt restructuring, owners must agree to maintain affordability and use restrictions in order to keep the property affordable as housing for low-income tenants for at least 30 years. This debt restructuring is designed to reduce the outstanding mortgages of section 8 property owners so that they can charge lower rents with reduced section 8 assistance.

Eligible owners may also engage in rent restructuring; unlike the mortgage restructuring described above, the Mark-to-Market rent restructuring programs contains no affordability or use restriction requirements. In a rent restructuring, participating administrative

entities work with project owners to bring rents to market or near market levels, so that rents will be sufficient to cover budget-based cost increases and owners will recover a reasonable rate of return after accounting for operating costs. HUD is then required to renew all budget-based contracts for 5 years, with adjustments after that period if necessary.

The Committee believes that this authorization will continue the efforts made by the Federal Housing Administration (FHA) to restructure developments that, when completed, save the Federal Government money while extending affordable housing units for future generations.

HEARINGS

No hearings were held on H.R. 5527 in the 109th Congress.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 14, 2006, and ordered reported H.R. 5527, the Mark-to-Market Extension Act of 2006, as amended, to the House by a voice vote.

COMMITTEE VOTES

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

An amendment by Mr. Ney, offered on behalf of Ms. Pryce, increasing the exemption rent authority, 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. 5527, the Mark-to-Market Extension Act of 2006, reauthorizes the Mark-to-Market program, which allows for mortgage and rent restructuring for certain section 8 projects. This will reduce the cost to the Federal Government of renewing section 8 contracts.

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 ex-

penditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional budget Act of 1974.

COMMITTEE COST ESTIMATE

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

CONGRESSIONAL BUDGET OFFICE ESTIMATE

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 22, 2006.

Hon. MICHAEL G. OXLEY,
*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. 5527, the Mark-to-Market Extension Act of 2006.

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

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

H.R. 5527—Mark-to-Market Extension Act of 2006

Summary: H.R. 5527 would extend the Multifamily Assisted Housing Restructuring and Affordability Act of 1997 (MAHRA) for five years beyond its current expiration date of September 30, 2006. That law authorizes the so-called mark-to-market approach for renewing Section 8 Housing Assistance Payment (HAP) contracts and for the restructuring of certain mortgages insured by the Federal Housing Administration (FHA). Under the mark-to-market approach, HAP contracts are renewed at market rents for FHA-insured projects that currently receive above-market results and, if necessary, the mortgages for those projects are written down to levels that could be supported by the lower rents. In addition, the bill would extend debt restructuring eligibility to properties damaged by disasters and expand the program's authority to set rents above 120 percent of the fair market rent.

CBO estimates that enacting H.R. 5527 would prevent some projects from defaulting on FHA-insured mortgages and thus reduce direct spending by \$188 million over the 2006–2011 period. We also estimate that implementing H.R. 5527 would allow for savings of \$25 million in discretionary spending over the 2007–2011 period, assuming that future appropriations are reduced to reflect the lower costs of Section 8 contracts.

H.R. 5527 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA); any costs to state, local, or tribal governments would be incurred voluntarily.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5527 is shown in the following table. The costs of this legislation would fall within budget functions 370 (mortgage and housing credit) and 600 (income security).

Basis of estimate: CBO estimates that enacting H.R. 5527 would reduce direct spending by a total of \$188 million over the 2006–2011 period. Most of the estimated savings would be recorded in the year of the bill’s enactment. For this estimate, CBO assumes that H.R. 5527 will be enacted by the end of fiscal year 2006.

Savings would result principally from avoiding defaults on FHA-insured mortgages that are anticipated under current law. Those estimated FHA savings would be reflected in the budget on a present value basis as “loan modifications” under the provisions of the Federal Credit Reform Act.

Subject to the availability of appropriations, CBO estimates that implementing H.R. 5527 would result in savings of \$33 million over the next five years from the reduction of HAP contract rents, assuming that appropriations are reduced accordingly. CBO also estimates that expanding exception rent authority from 5 percent of the portfolio to 9 percent would cost \$8 million, assuming appropriation of the necessary amounts. Thus, CBO estimates that implementing this bill would yield net discretionary savings of \$25 million over the 2007–2011 period.

Background

In 1997, MAHRA was enacted to address financial problems in the Section 8 program for affordable housing assistance. At that time, over 4,000 multifamily projects with FHA-insured mortgages were receiving project-based rent subsidies under Section 8 of the United States Housing Act of 1937. The original HAP contracts attached to these projects were written for periods typically ranging from 15 to 40 years. The majority of these projects had units with rents that exceeded those for comparable unassisted units; however, the Department of Housing and Urban Development (HUD) did not have the authority to renew the contracts at above-market rents. Consequently, few of these projects would have remained financially viable when their rental income was reduced to market rates as owners would have been able to cover their costs. With reduced rents, such projects would have been expected to default on their mortgages, generating large losses to the FHA insurance fund and possibly displacing many tenants in these projects.

ESTIMATED BUDGETARY EFFECTS OF H.R. 5527

	By fiscal year, in millions of dollars—					
	2006	2007	2008	2009	2010	2011
CHANGES IN DIRECT SPENDING						
Extend Restructuring authority Through 2011:						
Estimated Budget Authority	–173	0	0	0	0	0
Estimated Outlays	–173	0	0	0	0	0
Expand Eligibility to properties damaged in Disasters:						
Estimated Budget Authority	–11	–1	–1	–1	–1	–1

ESTIMATED BUDGETARY EFFECTS OF H.R. 5527—Continued

	By fiscal year, in millions of dollars—					
	2006	2007	2008	2009	2010	2011
Estimated Outlays	-11	-1	-1	-1	-1	-1
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law for Project-based Rental Assistance:						
Estimated Authorization Level ^a	5,037	5,404	5,605	5,935	6,321	6,657
Estimated Outlays	5,883	5,738	5,523	5,801	6,164	6,520
Proposed Changes:						
Section 8 Rental Assistance:						
Estimated Authorization Level	0	-3	-4	-8	-11	-12
Estimated Outlays	0	-2	-4	-6	-10	-12
Exception Rents:						
Estimated Authorization Level	0	1	1	2	3	3
Estimated Outlays	0	*	1	2	2	3
Proposed Spending Under H.R. 5527 for Project-based Rental Assistance:						
Estimated Authorization Level	5,037	5,402	5,602	5,929	6,313	6,648
Estimated Outlays	5,883	5,737	5,520	5,796	6,157	6,511

^a The amount shown for 2006 is the amount appropriated for project-based rental assistance in that year. The 2007–2011 levels are CBO baseline projections, assuming adjustments for anticipated inflation and the renewal of all units.

Notes: Components may not sum to totals because of rounding. * = Less than \$500,000.

The mark-to-market process usually involves reducing a project's rents to market levels and then either modifying or refinancing the existing mortgage at an amount that could be supported by the new market rents (this process is often referred to as a "full" restructuring). Specifically, FHA prepays all or a portion of the owner's existing mortgage debt through a partial payment of claims (PPC) and then takes back a second mortgage, and in some cases a third mortgage, to recover some of the PPC. In some instances, though, only a property's rent is reduced to market levels; this type of restructuring (referred to as a "lite" restructuring) usually occurs when the project is physically and financially sound enough to operate at market-level rents with its existing mortgage.

Under current law, when MAHRA expires, HUD will still be required to renew HAP contracts at market levels, but the authority to restructure mortgage debt will no longer be available for projects that have yet to enter the mark-to-market program. Without that authority, many projects would not generate sufficient cash flow to support their mortgage after rents are reduced to market levels.

Direct spending

CBO estimates that enacting H.R. 5527 will result in savings principally by avoiding defaults on FHA-insured multifamily mortgages that otherwise would occur under current law.

Avoiding FHA Multifamily Defaults through Mark-to-Market. Information provided by HUD demonstrate that at the end of fiscal year 2005, about 1,400 projects have undergone full restructuring since MAHRA was enacted in 1997. By extending the mark-to-market authority through 2011, CBO estimates that an additional 600 properties with FHA-insured mortgages would have their mortgage debt restructured.

Based on a review of financial information on nearly 1,100 projects that were restructured since the program was reauthorized in 2001, CBO estimates that the cost of restructuring mortgages debt is less expensive than the cost of default by about \$500,000

per project, on average. Our analysis indicates that, on a present value basis, defaulted projects would have cost the FHA insurance fund an average of \$2.2 million per project, while restructured projects have cost the FHA insurance fund an average of \$1.6 million each since the program was reauthorized in 2001. The costs of defaults represent payments covering the remaining balance on the mortgage. Based on information provided by HUD, CBO does not expect any significant net recoveries on defaulted assisted properties. HUD expects to sell assisted properties that default to buyers interested in maintaining the property as affordable housing for a nominal value.

The cost of restructuring mortgage debt includes the payment covering the remaining balance on the mortgage plus amounts used for rehabilitation (an estimated 81 percent of the loan's unpaid balance or about \$1.7 million per project, on average), the fees paid to the public or private organization that assists the Office of Affordable Housing Preservation with mark-to-market activities (about \$55,000 per project), and the FHA subsidy cost associated with guaranteeing the new first mortgage (\$32,000 per project), less the present value of expected receipts from repayments on the second mortgage (\$129,000 per project). HUD expects to sell the second mortgages after holding them for about five years.

The additional restructurings that could occur under H.R. 5527 would reduce the cost to the FHA insurance fund over the remaining life of the affected loan guarantees. If the mark-to-market program ends, CBO assumes, based on data provided by HUD and discussions with industry experts, that about 90 percent of the 600 projects whose mortgages have not yet been restructured would default. The remaining 10 percent of projects are assumed to either be sustainable at market rents or would not have their rents reduced to levels that would result in a default absent the debt restructuring tools authorized by the mark-to-market program. For these projects that are not expected to default, enacting this bill would result in restructuring costs only.

Because enacting H.R. 5527 would change the expected cash flows associated with the FHA multifamily loan guarantee program, that loan restructuring is considered to be a modification of existing federal loan guarantees. Under credit reform procedures, the costs of a loan modification are estimated on a net-present-value basis in the year in which the legislation is enacted. Assuming that the bill is enacted late in fiscal year 2006, CBO estimates savings of \$173 million this year. (Such estimated savings would be recorded in 2007 if the bill is enacted after September 30, 2006.)

Expand Eligibility to Properties Damaged by Disasters. Section 4 of the bill would extend restructuring authorities to projects that suffered substantial damage in a county that was declared a Major Disaster Area on or after January 1, 2005. To be eligible, properties must have sustained damage that is likely to exceed \$5,000 per unit beyond what is covered by casualty and liability insurance. Based on information provided by HUD, CBO estimates that approximately 130 properties were moderately to severely damaged by storms in 2005. The mortgages on these properties have an estimated unpaid balance of about \$1.4 million per project. CBO assumes that full claims will be paid on these properties as part of the restructuring process to cover the cost of repair. Because the

restructurings would change the expected cash flows for these properties, such restructurings would constitute modifications of existing federal loan guarantees. CBO estimates that allowing these properties to have their debts restructured would generate savings that on a net-present-value basis would amount to \$11 million this year.

In addition to the projects damaged last year, any projects damaged by future disasters would also be eligible for restructuring assistance. Based on an analysis of past disasters, CBO estimates that an average of 10 projects will be damaged each year. Assuming that restructuring the debt on these properties saves about \$70,000 compared to the cost of default, CBO estimates that this provision would save an additional \$500,000 to \$1 million a year over the 2007–2011 period. (The authority provided in section 4 would end in 2011.)

Spending subject to appropriation

Section 8 Rental Assistance. CBO estimates that by extending MAHRA through 2011, the rents for properties that have their debt restructuring would be reduced more than is expected under current law. Based on discussions with industry experts, CBO anticipates that the debt restructuring tools authorized by MAHRA allow HUD to move more quickly in reducing rents than would otherwise be the case, particularly in areas where comparable rents are difficult to find. Since the program was reauthorized in 2001, rents for projects that have had their debt restructured have been reduced by 21 percent, on average. Assuming that rent reduction for the 64,000 units in the 600 restructured properties would be about 10 percent less (or about 19 percent) absent the debt-restructuring tools, CBO estimates that implementing the bill would result in discretionary savings of \$2 million in 2007 and \$33 million over the 2007–2011 period, assuming the appropriations are reduced to reflect the lower cost of the HAP contracts.

Exception Rents. Section 3 of the bill would increase HUD's authority to set exception rents above 120 percent of the fair market rent (FMR) from 5 percent to 9 percent of all units subject to restructuring. Based on data provided by HUD, CBO estimates that such exception rents are, on average, about 14 percent higher (or \$850 per year) than they would be if limited to 120 percent of the FMR. The expansion of the exception authority would allow an additional 3,200 units to establish exception rents, CBO estimates. Expanding the exception rent authority would require the appropriation of \$9 million over the 2007–2011 period, which would result in estimated outlays of \$8 million over that period.

Intergovernmental and private-sector impact: H.R. 5527 contains no intergovernmental or private-sector mandates as defined in UMRA. Reauthorization of the mark-to-market program would extend cooperative agreements between HUD and participating state and local agencies. Any costs incurred by those agencies as part of the agreements would be incurred voluntarily.

Estimate prepared by: Federal Costs, Chad Chirico and Susanne S. Mehlman. Impact on State, Local, and Tribal Governments: Sarah Puro. Impact on the Private Sector: Peter Richmond.

Estimate approved by: Peter H. Fontaine, Deputy 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.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section establishes the short title of the bill, the “Mark-to-Market Extension Act of 2006.”

Section 2. Reauthorization

This section will reauthorize the Mark-to-Market program through FY 2011. Without this reauthorization, termination would be at the conclusion of FY 2006.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

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

TITLE V—HUD MULTIFAMILY HOUSING REFORM

* * * * *

SEC. 510. SHORT TITLE.

This title may be cited as the “Multifamily Assisted Housing Reform and Affordability Act of 1997”.

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

* * * * *

SEC. 512. DEFINITIONS.

In this subtitle:

(1) * * *

* * * * *

(20) *DISASTER-DAMAGED ELIGIBLE PROJECT.*—The term “disaster-damaged eligible project” means an eligible multifamily housing project—

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

(B) whose owner carried casualty and liability insurance covering such project in amounts required by the Secretary;

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

(D) whose owner requests restructuring within two years following the date that such damages were incurred.

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

* * * * *

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

(a) * * *

* * * * *

(g) RENT LEVELS.—

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

(A) * * *

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

(B) if those rents cannot be determined—

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

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

(2) EXCEPTIONS.—

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

(i) * * *

* * * * *

SEC. 517. RESTRUCTURING TOOLS.

(a) MORTGAGE RESTRUCTURING.—

(1) * * *

* * * * *

(5) The Secretary may modify the terms of the second mortgage, assign the second mortgage to the acquiring organization or agency, or forgive all or part of the second mortgage if the Secretary holds the second mortgage and if the project is acquired by a tenant organization or tenant-endorsed community-based nonprofit or public agency, pursuant to guidelines established by the Secretary: *Provided, That if such purchaser acquires such project subsequent to the date of recordation of the affordability agreement described in section 514(e)(6), (A) such purchaser must acquire such project on or before the later of (i) five years after the date of recordation of the affordability agreement and (ii) two years after the date of enactment of this title; and (B) the Secretary must have received, and determined acceptable, such purchaser’s application for modification, assignment or forgiveness prior to such purchaser’s acquisition of the project.*

* * * * *

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

(1) * * *

* * * * *

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

* * * * *

SEC. 579. TERMINATION.

(a) REPEALS.—

(1) MARK-TO-MARKET PROGRAM.—Subtitle A (except for section 524) is repealed effective October 1, [2006] 2011.

* * * * *

(b) EXCEPTION.—Notwithstanding the repeal under subsection (a), the provisions of subtitle A (as in effect immediately before such repeal) shall apply with respect to projects and programs for

which binding commitments have been entered into under this Act
before October 1, **[2006]** 2011.

* * * * *

○