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104TH CONGRESS, 1st Session | SENATE | REPORT 104–195

THE PUBLIC HOUSING REFORM AND EMPOWERMENT ACT OF 1995

R E P O R T

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 1260

TOGETHER WITH

ADDITIONAL VIEWS

DECEMBER 20, 1995.—Ordered to be printed

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CONTENTS

	Page
Introduction	1
Purpose and Summary	2
Legislative History of the Committee Bill	2
Need for Legislation	3
Explanation of the Legislation	4
Title I—Public and Indian Housing	6
Title II—Section 8 Rental Assistance	28
Section-by-Section	37
Section 1. Short Title; Table of Contents	37
Section 2. Findings and Purpose	37
Section 3. Definitions	37
Section 4. Effective Date	37
Section 5. Proposed Regulations; Technical Recommendations	37
Section 6. Elimination of Obsolete Documents	38
Section 7. Annual Reports	38
Title I—Public and Indian Housing	38
Section 101. Declaration of Policy	38
Section 102. Membership on Board of Directors	38
Section 103. Authority of Public Housing Agencies	38
Section 104. Definitions	39
Section 105. Contributions for Lower Income Housing Projects	39
Section 106. Public Housing Agency Plan	39
Section 107. Contract Provisions and Requirements	41
Section 108. Expansion of Powers	42
Section 109. Public Housing Designated for the Elderly and Disabled	42
Section 110. Public Housing Capital and Operating Funds	43
Section 111. Labor Standards	44
Section 112. Repeal of Energy Conservation; Consortia and Joint Ventures	44
Section 113. Repeal of Modernization Fund	44
Section 114. Income Eligibility for Assisted Housing	44
Section 115. Demolition and Disposition	45
Section 116. Repeal of Family Investment Centers; Voucher System for Public Housing	45
Section 117. Repeal of Family Self-Sufficiency; Homeownership Opportunities	45
Section 118. Revitalizing Severely Distressed Public Housing	46
Section 119. Mixed-Income and Mixed-Ownership Projects	46
Section 120. Conversion of Distressed Public Housing to Tenant-Based Assistance	46
Section 121. Public Housing Mortgages and Security Interests	47
Section 122. Linking Services to Public Housing Residents	47
Section 123. Applicability to Indian Housing	47
Title II—Section 8 Rental Assistance	47
Section 201. Merger of the Certificate and Voucher Programs	47
Section 202. Repeal of Federal Preferences	48
Section 203. Portability	48
Section 204. Leasing to Voucher Holders	49
Section 205. Homeownership Option	49
Section 206. Technical and Conforming Amendments	49
Section 207. Implementation	49
Section 208. Effective Date	49
Title III—Miscellaneous Provisions	49
Section 301. Public Housing Flexibility in the CHAS	49

Page

Title III—Miscellaneous Provisions—Continued
Section 302. Repeal of Certain Provisions 50
Section 303. Determination of Income Limits 50
Section 304. Demolition of Public Housing 50
Changes in Existing Law 50
Regulatory Impact Statement 50
Cost Estimate 51
Additional Views of Senator Faircloth 53

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104TH CONGRESS, *1st Session* | SENATE | REPORT 104–195

THE PUBLIC HOUSING REFORM AND EMPOWERMENT ACT OF 1995

DECEMBER 20, 1995.—Ordered to be printed

Mr. D'AMATO, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1260]

INTRODUCTION

The Committee on Banking, Housing and Urban Affairs, having considered the same, reports favorably a Committee bill to reform and consolidate the public and assisted housing programs of the United States, and to redirect primary responsibility for those programs from the Federal Government to the States and localities, and for other purposes.

The Senate Committee on Banking, Housing, and Urban Affairs marked up S. 1260, the "Public Housing Reform and Empowerment Act of 1995" on October 26, 1995. The Committee considered, as original text for the purposes of amendment, the Committee Print which incorporated the principles of S. 1260 as originally introduced by Senator Mack, and cosponsored by Senators Bond and D'Amato.

During the markup, the Committee approved two amendments by voice vote. One amendment was a managers' amendment making technical revisions to the Committee Print as well as incorporating 14 amendments previously filed by members of the Committee. The other was an amendment by Senator Faircloth to limit construction of new public housing. The Committee also defeated

one amendment by voice vote. S. 1260 as amended was ordered reported by voice vote.

PURPOSE AND SUMMARY

S. 1260, the Public Housing Reform and Empowerment Act, represents a major revision of the United States Housing Act of 1937 to make the nation's public and assisted housing programs operate more effectively and efficiently. This bill represents an important first step toward a complete overhaul of Federal housing programs and a greater sharing of responsibilities among all of the participants in the Federal system.

S. 1260 consolidates public housing funding and transfers greater responsibility over the operation and management of public housing from the Department of Housing and Urban Development (HUD) to housing authorities. In addition, it merges two similar programs that provide tenant-based rental assistance to low-income families and repeals program requirements in the current tenant-based assistance programs that discourage participation by private landlords.

LEGISLATIVE HISTORY OF THE COMMITTEE BILL

In developing its public housing reform proposal, the Committee has made a tremendous effort to obtain and incorporate the views of those who are directly involved in public and assisted housing programs, including the Administration and those agencies that directly administer public housing programs, private-sector apartment owners who participate in the assisted housing program, and interested groups representing public and assisted housing tenants.

From March until October 1995, the Subcommittee on Housing Opportunity and Community Development held a series of six hearings on the mission, management and programs of the Department of Housing and Urban Development and proposals by HUD and others to reorganize the Department and redirect the Nation's housing and community development policies. One of the subcommittee's hearings, on April 27, 1995, was devoted to public housing reform. The subcommittee staff also held a symposium on public housing reform on May 12, 1995 and invited all interested parties to attend.

On September 19, 1995, Senator Mack, Chairman of the Subcommittee on Housing Opportunity and Community Development, introduced S. 1260 with Senators Bond and D'Amato.

On September 28, 1995, the Committee held a full day of hearings on S. 1260. Testifying before the Committee were: The Honorable Henry Cisneros, Secretary of HUD; Mr. Joseph Schiff, a former HUD Assistant Secretary for Public and Indian Housing; Mr. Gregory A. Byrne representing the Council of Large Public Housing Authorities; Mr. Richard Gentry representing the National Association of Housing and Redevelopment Officials; Mr. John Hiscox representing the Public Housing Authority Directors Association; Mr. Paul Graziano representing the National Leased Housing Association; Mr. Thomas Shuler representing the National Multi Housing Council; Ms. Karen Hill representing the National Low-income Housing Coalition; Ms. Nancy Bernstine representing the National Housing Law Project; Mr. Othello Poulard represent-

ing the Center for Community Change; Ms. Rosemary Rittenberg representing the Massachusetts Union of Public Housing Tenants; Ms. Sharron Lipscomb representing The Empowerment Network; Ms. Ann O'Hara representing the Consortium of Citizens with Disabilities; and Ms. Helen Boosalis representing the American Association of Retired Persons. In addition, written testimony was received from the General Accounting Office, the National Council of State Housing Agencies, the New York City Housing Authority, and the California Housing Authorities Association.

NEED FOR LEGISLATION

S. 1260 addresses a growing crisis in the nation's public housing system. Over the years, public housing agencies (PHAs) have been saddled with statutory requirements as well as bureaucratic regulations that make it difficult for even the best of them to operate effectively and efficiently. Public housing developments too often have become warehouses for the poorest of the poor, and the residents of public housing face powerful disincentives to achieving economic independence and self-sufficiency.

The Committee realizes that much of public housing is well-run. Nevertheless, many public housing developments have become havens for crime and drug abuse and islands of welfare dependency. The well-publicized problems in public housing that are so visible in some of the nation's largest cities threaten to discredit an entire public housing system that is home to 1.3 million American families.

Compounding the structural problems of public housing are the dual concerns of budget and HUD capacity. Public housing agencies are facing significant and growing subsidy requirements in an era of diminishing Federal government resources. Given these limited resources, PHAs need the increased flexibility to use their funds in a manner that helps to maintain decent, safe and affordable housing for their residents. In addition, HUD itself faces a potential reduction in overall staffing of 40 percent over the next five years. The prospect of diminishing staff resources means that the Department will lack the capacity to maintain the same degree of oversight and control that it has exercised over the public housing system in recent decades.

These circumstances have required the Committee to make public housing reform a high priority and to develop a comprehensive reform proposal that fundamentally alters the historical relationship between HUD and housing authorities. Increasing flexibility in the use of Federal resources is critical both to increasing the economic viability of public housing developments and providing a platform from which lower income households can achieve economic self-sufficiency. Subject to strict performance standards and comprehensive planning requirements, the bill allows housing authorities to use their funds in a more cost-effective and creative manner, and return greater responsibility over the operation and management of public housing to local housing authorities. The Committee recognizes that the Administration also proposed legislation to reform the public housing system, and S. 1260 incorporates several concepts contained in the Administration-proposed housing reform package.

EXPLANATION OF THE LEGISLATION

Overview

S. 1260 consolidates public housing programs into two flexible block grants—one for operating expenses and one for capital needs—and requires HUD to establish new funding formulae for these activities through negotiated rulemaking. In addition to providing a more flexible source of funding, the bill also eliminates a series of statutory requirements that have prevented the effective and efficient use of funds. For example, the bill repeals the one-for-one replacement requirement. It also streamlines and makes flexible the demolition and disposition process to permit PHAs to demolish or dispose of obsolete or vacant housing. It also allows housing authorities to participate via joint ventures or partnerships in the development of mixed-income communities.

The bill changes targeting requirements that will allow PHAs to serve residents with a greater range of income, while retaining targeting requirements that assure that very low-income families in public and assisted housing will receive a significant portion of available housing assistance. The bill also repeals Federal preferences and allows PHAs to operate according to locally established preferences consistent with local housing needs.

The underlying principles of the bill are local responsibility and resident empowerment. S. 1260 will provide housing authorities with greater flexibility to set their own rents with protections for very low-income families. The bill permits housing authorities to develop rental policies, such as ceiling rents and exemptions from adjustments to income, that will encourage and reward the employment and self-sufficiency of residents. The bill also provides a limited 18-month disallowance of earned income from public housing and section 8 rent determinations for newly employed tenants as a means of encouraging employment. In addition, the bill creates a new, more flexible program that links supportive services to residents of public housing. This program includes a set-aside of funds for resident organizations that provide empowerment-related activities for public housing residents.

While allowing well-run housing authorities much more discretion, the bill also requires strong action against those housing authorities that are troubled. Although small in number, these PHAs with severe management problems control up to 15 percent of the nation's public housing stock. It is critical that the management and physical problems of these PHAs be addressed with HUD and localities becoming more responsible and proactive. The bill requires HUD to take over or appoint a receiver for PHAs that are unable to make significant improvements in their operations. It also gives HUD expanded powers to break up or reconfigure troubled authorities, bring in private management including nonprofit organizations, dispose of their assets, abrogate contracts, or not be bound by State or local law that significantly impede the correction of the housing authority's problems.

The Committee believes that low-income families who are eligible for Federal housing assistance should have the widest possible choice of available affordable housing units. Thus, while a primary focus of the bill is preserving the nation's significant investment in

the public housing stock, it also improves the ability of tenant-based section 8 assistance programs to work successfully. The bill combines the current section 8 certificate and voucher programs into a single, tenant-based assistance program. The new program will emphasize lease requirements similar to those in the private rental marketplace, and it repeals current program requirements such as "take-one, take-all" and Federal preferences, that now discourage landlord participation in the section 8 program.

Finally, the Committee considered the Administration's proposal to convert the public housing system to a market-based system of tenant-based assistance. While the Committee strongly supports providing assisted households with the maximum residential choice, it is concerned that an entirely "voucherized" system is not completely practical, given both the wide local variances in the costs of tenant-based versus project-based assistance and the limited availability of affordable housing in many housing markets which limits resident choice. However, the bill seeks to protect the most vulnerable public housing tenants by requiring that alternative housing including vouchers be provided to residents of distressed and nonviable public housing. It also requires PHAs to conduct development-by-development assessments of the cost of operating their public housing, and gives them the option of "vouchering" out their public housing stock if doing so is more cost-effective than operating developments as public housing and they have demonstrated support from the community.

Findings and purposes

The Committee believes the public and assisted housing programs are in disrepair. They are inefficient, frequently ineffective, and often fail to meet the needs of the households they were created to serve. The Committee also believes that public and assisted housing should be not only sources of affordable, decent, and safe housing, but also the platform from which participating households can achieve economic independence and self-sufficiency and realize the dream of homeownership.

The findings and purposes contained in S. 1260 reflect the problems inherent in the current system of public and assisted housing and the solutions that will make the programs work more effectively and efficiently.

The Committee recognizes, for example, that the current inventory of public housing units owned and operated by public housing authorities represents a substantial Federal investment in affordable low-income housing. However, the Committee observes that the current public housing system is plagued by a series of problems, including the concentration of very poor people in very poor neighborhoods and disincentives to self-sufficiency. Further, the bill cites complex, top-down bureaucratic rules and regulations as aggravating these problems.

The Committee finds that the interests of low-income persons, and the public interest, will be served by a system that: consolidates public housing programs; streamlines program requirements; vests increased authority, discretion and control with appropriate accountability in the hands of public housing agencies that are run well; and rewards employment and economic self-sufficiency. Fur-

ther, the Committee believes that the tenant-based section 8 voucher and certificate programs can be made more effective and successful in assisting low-income families to obtain affordable housing by consolidating the two existing programs into a single, market-driven program.

Therefore, it is the intent of this legislation: (1) to consolidate the programs and activities under the public housing programs administered by HUD in a manner designed to eliminate Federal overregulation; (2) to redirect the responsibility for a consolidated program to States, localities, Indian tribes, and public housing agencies and their tenants; and (3) to focus Federal action on the problems of public housing agencies with severe management problems.

Elimination of regulations

Under the Committee bill, all rules and regulations relating to public housing and tenant-based section 8 are sunsetted after one year from enactment. This provision is intended to force HUD to review all of the current regulations to determine those that are obsolete. While the Committee recognizes that many regulations may still be appropriate for reissuance, it also fully expects the Department to conduct a careful review of every regulation and eliminate those that are obsolete, inconsistent with the goals and provisions of this Act, and unnecessarily micromanage the operations of public housing.

The Committee recognizes that HUD contends that the Department is in the continuing process of reviewing, consolidating, and eliminating burdensome and excessive regulations. However, the Federal regulations involving housing programs continue to grow and become even more complex. The Committee believes that HUD needs affirmative direction to remove conflicting and sometimes incomprehensible rules which govern the public and assisted housing programs. The Committee also recognizes that this is a significant task and expects HUD to implement an expedited review and publication process for those regulations which are critical and necessary to the well-being and proper management of the public housing and section 8 tenant-based programs.

Title I—Public and Indian Housing

Composition of boards of directors of PHA

The Committee bill requires PHAs to have at least one resident on their board of directors. The bill creates an exception for PHAs in which the State requires the board of directors to be salaried and to serve on a full-time basis. The Committee believes that placing a resident on the board is important to promote a greater understanding of tenant concerns and foster a working relationship between PHAs and residents. It is important to ensure meaningful participation by residents in the important decisions that affect their lives.

Ceiling rents

The Committee bill provides PHAs with the flexibility to establish ceiling rents. The Committee bill amends section 3(a)(2) of the 1937 Housing Act to authorize PHAs to establish ceiling rents that

reflect the reasonable market value of comparable housing, but are not less than the cost to operate the housing.

Under the Committee bill, the Secretary is required to carry out the ceiling rent provision through regulation after a notice and public comment period. Prior to the issuance of regulations, PHAs are permitted to adopt ceiling rents: (1) in accordance with current law; (2) at a level equal to the 95th percentile of the rent paid for a unit of comparable size by tenants in the same project or a group of comparable projects totaling 50 units or more; or (3) equal to the fair market rent for the area in which the unit is located. The Committee strongly urges the Department to include these options among the ceiling rent options in the final rule.

During the course of hearings on this bill, numerous concerns were expressed about how the current rent policies detrimentally affect the upward mobility of tenants and discourage tenants from seeking jobs or trying to achieve greater financial independence. Because the current law generally requires tenants to pay 30 percent of their adjusted income for rent, whenever a tenant's income increases, his or her rent also goes up. As a result, it is often the case that residents make rational decisions either to remain in the housing and not work, or to leave public housing because their rent after returning to work exceeds the market value of the unit. This, in turn, affects the rent rolls of PHAs and the composition of public housing by removing the working families who are positive role models. Concentration of very poor families in public housing has directly contributed to the sharp rise in public housing operating subsidies. In addition to discouraging efforts to work, current rent policies also contribute to the break-up of families since the wages of all family members older than 18 years are used to calculate a family's rental payment.

The Committee bill includes changes that begin to address the built-in disincentives in current law by giving PHAs the tools to implement a workable system of ceiling rents. Section 3(a)(2)(A) of the 1937 Act now allows PHAs to establish maximum or ceiling rents. However, the current law is flawed and has had limited use because the formula for establishing ceiling rents includes a calculation of imputed debt service which produces a number that is generally higher than the actual market value of most units.

The Committee believes that the reforms in rental policy made by this legislation will have a positive effect of providing greater incentives for public housing residents to work and economically improve their lives. This, in turn, will create better role models, more stable families, and a healthier social climate in public housing communities, as well as reducing cost burdens on PHAs themselves.

Minimum rents

The Committee bill allows PHAs to establish a minimum rent not to exceed $25 for each family living in public housing or receiving section 8 tenant-based or project-based assistance. Under the Committee bill, minimum rents are voluntary for the PHA and can be anywhere from $0 to $25. The minimum rent provision is intended to promote personal responsibility and resident investment in their living space. It is also intended to ensure that families ben-

efiting from housing assistance are paying something in recognition that there are far more families eligible for housing assistance for whom no assistance is available who are paying excessive rents in the private marketplace.

The Committee does not intend for this provision to create excessive hardship for those simply unable to pay a minimum rent, such as those on fixed-incomes like the elderly and disabled. For this reason, the minimum rent provision is voluntary and up to the PHA to apply fairly and appropriately according to the financial circumstances of the PHA and its residents. For example, a PHA could exempt certain classes of people, such as those on fixed-incomes, from the minimum rent requirement.

The Committee intends that PHAs be allowed to require every family to pay up to $25 for their rent and utilities. The Committee realizes that in some instances residents are reimbursed for the amounts that they pay directly to the utility company. The minimum rent provision is not intended to alter the current treatment of utilities in the calculation of tenant rent contributions.

Rent flexibility and income adjustments

Under the Committee bill, all non-troubled PHAs are permitted to establish rent policies for families whose income exceeds 50 percent of the median income for the area. Families with incomes equal to or less than 50 percent of the area median will continue to pay 30 percent of their monthly adjusted income for rent except where they are paying a ceiling or minimum rent. In addition, the Committee bill allows all PHAs to disregard any income it deems appropriate when calculating a family's rent contribution.

The Committee received extensive comments on the rent provisions. Housing authorities expressed grave concerns that the legislation did not afford PHAs sufficient flexibility in the area of rent setting. They argued that the only way to generate additional revenues and improve social conditions in public housing is to have flexible rent structures developed according to their respective financial conditions and local situations. Further, they warned that many PHAs will face fiscal hardship in these times of decreasing Federal resources for the operation and maintenance of public housing without the ability to set flat rents. Finally, PHAs argued that rent flexibility is essential to develop policies that encourage and reward employment.

On the other hand, advocates for low-income families expressed concerns about the impact that a repeal of the Brooke amendment (or 30 percent requirement) would have on the poorest of the poor. They argued that a flat rent that requires a family to pay more than 30 percent of their income for rent would impose a harsh and undue burden on poor families, and in some cases, could result in the constructive eviction of existing tenants without the resources to pay higher rents.

The Committee recognizes the validity of both of these arguments and, therefore, tried to strike a balanced policy. The Committee bill retains the 30 percent rent requirement for very low-income families to ensure that they are not required to pay more than they can afford for housing and allows non-troubled PHAs the

ability to set rents for families with incomes above 50 percent of the area median.

The Committee also shares the concerns about the disincentives to work built into the current rent provisions. Therefore, the Committee bill provides PHAs with the tools to address this problem by allowing ceiling rents and income adjustments. The Committee bill intentionally designed the provision on income disregards to be simple and flexible to allow PHAs to design innovative rental policies that reward work and encourage economic self-sufficiency.

Disallowance of earned income

The Committee bill replaces the current income disallowance in section 3(c) of the 1937 Housing Act and replaces it with a bar against any rent increase for public housing or section 8 households for 18 months as the result of the employment of a family member who was previously unemployed for 1 or more years. Any household with an income disallowance under present law is grandfathered.

The purpose of this provision is to provide work incentives and to facilitate the transition from welfare to work. The Committee bill applies this provision to all members of the household to remove the disincentives in the present rent rules for dependent children or other adult members in the household to work.

Under the Committee bill, any rent increase due to the continued employment of the family member must be phased in over a 3-year period after the 18 month moratorium. Phasing in any rent increase will prevent the newly employed person from experiencing a large increase in rent that could otherwise discourage them from working or staying in public housing. While the Committee hopes that all families will have the opportunity to make the transition to private housing and economic independence, it is also concerned that public housing communities are losing positive role models and stable living environments when working families move out because of adverse rental policies.

The Committee bill also repeals section 957 of the National Affordable Housing Act of 1990, and section 923 of the Housing and Community Development Act of 1992. Section 957 applies to all assisted housing programs and provides, subject to appropriations, that the rent charged to a family may not rise more than 10 percent per year as a result of a previously unemployed family member becoming employed. This provision was never implemented by HUD because no appropriation was made available. However, the Housing and Community Development Act of 1992 contained language strongly urging the Department to implement this section, and HUD is now being sued by litigants who allege that this latter language takes precedence and requires implementation. The Committee contends that this provision has always been subject to appropriations irrespective of the language in the 1992 Act. The Committee bill, therefore, repeals both section 957 and section 923 to clarify Congressional intent on this matter and to avoid redundancy with provisions on income exclusions contained in this Act.

Public housing agency plan

A major feature of the Committee bill is the creation of the public housing agency plan that is designed to serve as an operations, planning, and management tool for PHAs. The plan is to be developed in consultation with a local advisory board. The plan must also be consistent with the Comprehensive Housing Affordability Strategy (CHAS) for the PHA's jurisdiction and include a certification by an appropriate State, tribal, or local public official that the plan meets the requirements of the CHAS.

The plan must include: an annual statement of policy; an annual statement of low-income housing needs in the community; the PHA's general policies, rules and regulations concerning tenant selection and admission, assignment, occupancy, rents, and project designations; the PHA's policies and rules for the management and operations of the agency; the PHA's policies, rules, and regulations regarding its management and administration of the capital fund, including its capital needs; economic and social self-sufficiency programs; and, an annual audit.

The plan must be submitted to HUD for approval 60 days before the start of the PHA's fiscal year. HUD must review the plan to determine whether it: (1) is complete; (2) is consistent with the information and data available to HUD; and (3) does not include material prohibited by, or inconsistent with, applicable law. Insufficient time to review a plan is not a valid reason for HUD to reject a plan. If HUD fails to approve the plan within 60 days, it is deemed approved.

The intent of this new provision is to provide a framework for local accountability in a new era of deregulation, flexibility, and local discretion. In developing this legislation, the authors believed that in removing many of the Federal statutory and regulatory requirements for PHAs and diminishing HUD's oversight function that it was essential to have a mechanism to ensure that decisions are made with accountability to residents, the community, and local government. The intent is for the PHA to consolidate all of its policies, rules, and regulations into a single planning document that is responsive to local needs and allows residents and community representatives to be instrumental in its development and have open access to its contents.

During the bill development period and hearing process, concerns were raised that this new planning requirement was too bureaucratic and its required contents were more excessive than what is currently required of PHAs to submit to HUD. Concerns were also expressed that this requirement might create an excessive burden on small PHAs, particularly those with limited or part-time staff. Finally, PHAs and HUD commented that the Department does not have the capacity to review thoroughly every aspect of the plan in a timely manner.

The Committee does not intend for the plan to create an excessive bureaucratic burden on PHAs. The intent is that if PHAs are relieved from many of the statutory and regulatory requirements that have tied their hands in the past, then they must develop their own new and clear policies to replace the existing Federal requirements that have been repealed by this legislation. The Committee recognizes that some PHAs may decide to continue operat-

ing as they have in the past while others may welcome the opportunity to develop new policies appropriate to local needs and conditions. Therefore, the process for developing a plan will reflect the extent to which a PHA wishes to adopt new policies. If a PHA wants to rewrite all of its current policies it may do so or it may simply wish to adopt existing policies as part of its plan.

Under the Committee bill, HUD is given the authority to develop a streamlined plan for high-performing PHAs or those with fewer than 250 public housing units. This provision recognizes the difficulties for small PHAs with limited staff to develop comprehensive plans and attempts to reward high-performing PHAs by providing incentives for continued high performance. Final regulations regarding the plan, including what will be required in a streamlined plan, will be developed through negotiated rulemaking. The Committee strongly urges the Department in developing streamlined planning requirements to retain those features of the planning process that maximize tenant involvement in the development of the plan.

The Committee bill also provides the Department with discretion on what aspects of the plan it deems appropriate to review to ensure that it is complete, truthful, and in legal compliance. This provision recognizes the limited capacity and declining resources at HUD to review every aspect of the plan. The Committee believes that the main value of the plan is the local process of consultation and review that it engenders. The Committee believes that the upfront review of the plan by HUD is necessary but, more important, that the post-audit review ensures that the PHA is performing well and operating according to what is outlined in its plan. Therefore, the Committee encourages HUD to focus its attention on audits, including audits of PHA performance vis a vis their plans, and the Public Housing Management Assessment Program (PHMAP). This bill includes a new indicator of PHA compliance with its plan. It is more important for HUD to monitor troubled or near-troubled agencies rather than dedicating its limited resources to an extensive upfront review of PHA plans.

Finally, the Committee bill includes a provision for a General Accounting Office (GAO) audit of the degree of compliance of PHAs with their public housing agency plans. The Committee expects the GAO to review a representative, but limited, sample of PHA plans and to report back to Congress in the time frame specified by the statute with its pending recommendations.

Local advisory board

One of the primary objectives of this legislation is to return power and decision making authority from the Federal government to local housing agencies. With the devolvement of authority, however, comes the need for local participation and accountability. The Committee strongly believes that local agencies are better equipped to make decisions and develop policies to address local needs and conditions. It also recognizes, however, the importance of oversight at the local level and involvement by residents and local citizens in the decisions that impact their lives and communities. Therefore, the Committee bill encourages PHAs to facilitate resident input

and requires the establishment of a local advisory board to participate in the public housing agency planning process.

The local advisory board must be composed of public housing residents and participants in tenant-based programs, representatives of the community and local government officials. Sixty percent of the board must be composed of residents, including representatives of any existing resident organization, and the balance must be representatives of the community and local government officials.

The role of the local advisory board is to make recommendations regarding the development of the plan which the PHA must consider and include in the submission of its plan to HUD. In addition, the local advisory board must review any significant amendments or modifications to the plan that the PHA submits to HUD. The Committee does not intend for the local advisory board to have veto power over the public housing agency plan; however, it does expect the PHA to consider fully the comments and issues raised by the local advisory board when developing its plan.

The Committee received several comments from housing agencies and resident groups that the local advisory board may be redundant in situations where there already exists resident organizations actively involved in the housing authority decision making functions. Another concern was raised about the potential cost and difficulty of conducting a PHA-wide election to select residents to participate on the local advisory board. The Committee does not intend for this provision to create an undue hardship on PHAs nor does it intend to recreate an already successful tenant participation process. Therefore, the Committee bill allows HUD to waive, in whole or in part, the requirements with respect to tenant representation on the local advisory board if the PHA demonstrates that a resident council or other tenant organization of the PHA adequately represents the tenants of the PHA. The resident council or other tenant organization would take on the full responsibilities of the tenant representatives, who would otherwise serve on the local advisory board, in regards to the public housing agency planning process.

Performance measures and accountability

The Committee believes that the Public Housing Management Assessment Program (PHMAP) will provide the critical yardstick for a post-audit review to ensure that PHAs are performing their duties as managers of public and assisted housing.

The Committee bill contains two new additions to PHMAP. The new performance indicators include: the extent to which the PHA provides effective programs to promote the economic self-sufficiency of residents and provides opportunities for residents to be involved in the administration of public housing; and the extent to which the PHA successfully meets the goals and carries out the activities of the public housing agency plan.

These two new indicators of PHA performance reinforce, and are consistent with, two of the primary objectives of this legislation: to empower residents to become more active participants in the decisions that affect their lives and provide them opportunities to break out of the cycle of poverty and achieve economic independence and to place greater emphasis on local decision making.

Rather than attempt to prescribe every aspect of program administration, which has proven to be a failure in the past, the Committee favors the approach of providing greater flexibility to PHAs to design programs that make sense for their residents and local communities. During the development of this legislation, however, concerns were raised about accountability and potential abuses which may occur as a result of the repeal of many Federal requirements governing the public housing program. The Committee carefully considered the comments it received concerning the balance between flexibility and accountability. The Committee bill attempts to achieve that delicate balance by providing PHAs with greater authority to develop policies appropriate to local needs through the public housing agency planning process but adding a new performance indicator making sure that the PHA actually performed according to the objectives set forth in the plan.

As discussed in the section on the public housing agency plan, given the limited resources and oversight capacity at HUD, the Committee intends for the Department to concentrate its efforts on monitoring performance and program implementation rather than spending an inordinate amount of time on the upfront review and approval of public housing agency plans. The Committee believes that the Department's resources will be better utilized by examining results and measuring PHA performance against what they said they were going to do in their plans. The Committee points out that the Secretary of HUD in his testimony before the Committee also stressed the need to emphasize performance monitoring.

During Committee hearings on public housing reform, concerns were also raised about the effectiveness of the PHMAP process. Reports by the HUD Inspector General indicate that in some circumstances information reported by PHAs can be fabricated, and may have been fabricated in the past. Since this legislation places great emphasis on performance reviews and post-audit functions, the Committee expects that HUD will dedicate the appropriate resources to ensuring the integrity of the PHMAP and audit process.

Preferences

The Committee bill repeals Federal preferences for public housing and tenant-based assistance programs and allows each PHA to establish its own system of preferences with input of local residents, community members, and government officials through the adoption of a PHA plan.

Under current law, PHAs are required to target 50 percent of their vacancies or new admissions to people with worst case housing needs. By repealing Federal preferences, PHAs will be provided much broader discretion to admit relatively higher income families to the public housing program or to admit eligible families based on their assessment of local housing needs.

The Committee believes that Federal preferences have been one of the primary causes of concentrating the poorest of the poor and creating unstable public housing communities. This well intentioned provision was originally designed to guarantee that finite housing resources serve families most in need. However, it has resulted in unintended consequences warehousing very low-income families in areas of high concentrations of poverty and despair; for

example, PHAs, on average, house families at 17 percent of area median income down from 32 percent in 1980, before preferences. Eliminating Federal preferences should result in greater local autonomy, better income mixes, and improved social environments in public housing communities. The Committee hopes that the change in this policy will revitalize those communities and lead to even more opportunities for the creation of affordable housing, particularly in mixed-income developments.

Criminal records

The Committee is sympathetic to concerns expressed by both PHAs and residents that public housing should provide stable and secure living environments. Thus, the Committee bill provides PHAs with greater access to criminal conviction records of adult applicants for, and residents of, public housing, for the purposes of applicant screening, lease enforcement, and eviction. PHAs are granted the authority to obtain records from the National Crime Information Center and local law enforcement agencies on convictions occurring up to 5 years before the request for such information was made.

The Committee bill avoids the imposition of an unfunded mandate on local law enforcement agencies by authorizing them to charge a reasonable fee for the service. The Committee expects that this fee will be no greater than the cost of providing the information.

The Committee is also mindful of the need to protect residents and applicants from unfair actions by PHAs. The Committee bill protects the rights of public housing residents and applicants in two ways. First, residents and applicants are provided with an opportunity to dispute the accuracy and relevance of records before adverse decisions are made based on the information contained in the records. Second, PHAs will be required to establish a records management system which will protect the privacy of residents and applicants by maintaining confidentiality, preventing dissemination to unauthorized persons, and ensuring the destruction of records when they are no longer needed. Moreover, by providing this essential information to PHAs, the rights of law-abiding residents of public housing will be safeguarded.

The Committee wishes to emphasize that the criminal records provision contained in the bill is in no way intended to preempt State or local laws to the extent that they allow local law enforcement agencies to provide records of juvenile convictions or criminal convictions which occurred more than five years prior to the date of request.

Eviction for drug-related activity

The Committee bill closes a loophole in current law which establishes as cause for termination of tenancy a drug crime committed "on or near" the premises of the PHA. The Committee believes that any drug-related criminal activity by public housing residents potentially poses a threat to law-abiding residents of public housing developments. Therefore, the Committee bill strikes the "on or near" the premises language and establishes as cause for termi-

nation any commission of a drug crime, regardless of the geographic location of the act.

The Committee bill provides that any tenant or recipient of section 8 assistance who is evicted or whose assistance is terminated by reason of drug-related criminal activity shall be ineligible for public housing or section 8 assistance for three years. An exception is provided for persons who successfully complete a PHA-approved rehabilitation program.

Leases

The Committee bill replaces the current statutory provision requiring specific minimum and maximum time frames which PHAs must comply with when providing written notice of lease termination with a provision requiring that notice requirements be consistent with State or local law.

Troubled public housing authorities

Although the Committee bill generally devolves greater authority to well-performing PHAs, the Committee believes that one clearly appropriate role for HUD is dealing with the problems of so-called "troubled" housing authorities that suffer from chronic and severe management problems. Thus, the Committee bill provides HUD with expanded powers to deal with the problems of troubled PHAs.

The Committee believes that a more aggressive approach to troubled authorities is essential. The bill will preserve the maximum amount of flexibility for the Department, ensure the timely resolution of the problems of troubled agencies, and protect the interests of the residents in projects operated by those authorities. HUD already possesses numerous tools and administrative authorities to help address the problems of troubled PHAs. These include technical assistance, entering into memoranda of agreement to force corrective action, and the ability to seek a court-ordered receivership. However, these authorities are frequently not exercised or are insufficient to ensure that the problems of troubled authorities can or will be corrected in a timely fashion.

Taking necessary measures to address the problems of chronically troubled agencies should not depend on whether or not HUD has the political will to act. The Committee believes that HUD must be prepared to impose what is, in effect, a "death penalty" on the most poorly run authorities and to assume control of the assets of those authorities.

The Committee bill provides that HUD may give a PHA designated as troubled a one-year period, beginning on the later of the date on which the agency receives notification of its troubled status or the date of enactment of this Act within which to demonstrate satisfactory improvement. If satisfactory improvement is not made, then HUD shall declare the PHA in substantial default of its annual contributions contract and take over the PHA or place it in receivership. The Committee stresses that the one-year "probationary" period is at HUD's discretion. The Committee assumes that in cases where a housing authority has already been designated as troubled for a number of years, HUD will seriously consider exercising its authority to declare the PHA in substantial default immediately. In addition, the Committee urges the Department, in deter-

mining what constitutes "satisfactory" improvement, to require measurable and meaningful progress toward non-troubled status.

The Committee requests that HUD provide the Committee with a current evaluation of all troubled PHAs, including the period of time in which each PHA has been designated as troubled, the specific problems which have resulted in the troubled designation of the PHA, the steps each troubled PHA has taken to remove the troubled designation to date, and the actions taken by HUD to assist each PHA in removing the troubled designation. The Committee would like the evaluation before January 31, 1996.

The Committee is concerned that current law impedes the timely and effective correction of the problems of the troubled authority once a default is declared. Thus, S. 1260 seeks to assure that timely and appropriate action can be taken to protect the government's substantial investment in the housing. It gives HUD choices including seeking a court-ordered receiver for the housing authority or taking possession of the PHA or any of its functions. If a receiver is appointed, the receiver shall have powers accorded by the appointing court and in addition may abrogate contracts that substantially impede correction of the default; demolish or dispose of the assets of the agency; require the establishment of one or more new public housing agencies; and be exempt from certain State or local laws that substantially impede the correction of the substantial default. If HUD takes possession of the PHA, HUD will have the same powers that have been conferred on a court-appointed receiver.

The Committee's decision to establish an administrative procedure for HUD's takeover of a PHA that is parallel to that of a court-appointed receiver is based on the concern that a city or PHA, by contesting the appointment of a court-appointed receiver, can delay by a matter of years the corrective actions that are required to protect the public housing and its residents. However, the Committee also realizes that HUD's capacity to assume direct control over a substantial number of troubled agencies may be limited. Therefore, the Committee expects HUD to continue to rely on the court-ordered receivership process to the greatest extent feasible, or in the alternative, to use its authority to appoint an administrative receiver to assume the responsibilities of HUD, as S. 1260 permits.

Finally, the Committee stresses that it expects HUD to use judiciously its authority to abrogate contracts and preempt State or local laws concerning civil service requirements, employee rights, procurement, or financial or administrative controls. Such expanded authorities should be used only where such laws or contracts have substantially contributed to the default and impede its correction.

Public housing designated for the elderly or disabled

Over one-third of the public housing units are in buildings originally designed for the elderly. In recent years, however, non-elderly disabled persons have come to occupy many of the units in these elderly buildings and constitute the major share of the waiting lists for them. Some of these persons have moved into elderly public housing upon discharge from mental health institutions and programs and from drug and alcohol abuse rehabilitation programs.

Many elderly in public housing across the country—74.3 percent of whom are women and 44 percent over 75 years old—have complained of assaults, deep fear, and incompatible lifestyles.

This problem originated because the 1937 Housing Act included non-elderly disabled under its definition of "elderly"—a requirement that the non-elderly disabled be housed in buildings for the elderly. In 1992, Congress attempted to address this problem through a provision in the Housing and Community Development Act that enabled PHAs to designate buildings for occupancy only by the elderly, or only by the disabled, or jointly by both. However, the provision has not been effective for many PHAs that are unable to ensure, as required by the Act, that adequate resources would be available to non-elderly disabled to make up for units designated for elderly only. This guarantee is particularly difficult in housing authorities with few vacancies and at a time of declining resources for new units.

The Committee bill dispenses with the cumbersome process under current law and places the decision about designation in local hands. Under the Committee bill, PHAs are permitted to designate public housing projects or mixed-income projects for occupancy as elderly housing, disabled housing, or elderly and disabled housing. If there are insufficient elderly families to fill the elderly project, then near elderly families may occupy it. However, any unit that is ready for occupancy that has been vacant for more than 60 consecutive days must be made available for occupancy by any eligible family.

The Committee bill also safeguards current non-elderly residents from unwarranted eviction as a result of the designation of a building and enables such a person on the waiting list to maintain his or her place thereon until appropriate housing is offered. Finally, the bill considers the housing needs of the non-elderly disabled by requiring that PHAs develop a statement of needs including the housing needs of disabled families as part of their public housing agency plan.

The Committee has heard concerns raised by senior citizens that the current statutory provisions on mixed populations has resulted in nonelderly disabled with drug and alcohol problems living in the same buildings as senior citizens. The Committee believes that the right to health, safety, and peaceful enjoyment of one's living environment is fundamental. To this end, the Committee bill provides PHAs with greater authority to screen applicants for tenancy in elderly-only, disabled only, or elderly and disabled housing and to deny occupancy to persons with existing drug or alcohol problems or with a pattern of illegal drug or alcohol abuse that could pose a risk to other tenants.

The Committee believes that these new provisions on designated housing will address a longstanding and often highly emotional problem of mixing elderly and disabled populations in the same developments. Finally, it is expected that PHAs may begin the designation of housing under this provision upon the earlier of the promulgation of the interim rules for the public housing agency plan or 120 days from enactment of this Act.

Repeal of energy conservation

The Committee bill repeals the current section 13 of the 1937 Housing Act. Section 13 currently directs the Secretary to require that newly constructed or substantially rehabilitated projects be equipped with heating and cooling systems selected on the basis of criteria which include a life-cycle cost analysis of such systems.

Repeal of this free-standing requirement is consistent with the Committee's goals of reducing Federal micromanagement of PHAs and delegating, to the maximum extent feasible, decision-making authority to the PHAs. Given the severe budgetary constraints under which PHAs are likely to be operating in the future, the Committee expects that housing authorities will be conscious of the need for energy conservation measures. Nonetheless, the bill requires the new Operating Fund formula to emphasize energy conservation.

Drug elimination grants program

The Committee has also decided to retain for three final years a separate drug elimination grant program. This program provides grants to public housing authorities and to some assisted housing managers to support innovative programs to rid developments of drug-related problems. Public housing agencies have made effective use of the grants for increasing security for residents against drug-related crimes, and providing services to people with substance-abuse problems, as well as for preventive programs like those for at-risk kids.

The Committee is retaining this program separately for an additional year beyond the date prior to consolidating it into the Operating Fund and Capital Fund grant programs in order to provide a smooth transition for successful drug elimination grant programs.

Consortia and joint ventures

The Committee bill expands the authority of PHAs to establish consortia with other PHAs to administer all or some of their housing programs. Under this section, PHAs will have great flexibility in determining the scope of responsibility of any consortia they may form. For example, two PHAs may form a consortia for the purpose of sharing managerial responsibilities, administering a joint section 8 program, or effecting a complete merger.

The Committee bill expands the authority of PHAs to form wholly-owned or -operated subsidiaries and other affiliates. Members of the PHA governing board or other PHA employees would be allowed to direct, manage, or otherwise control these subsidiaries. In addition, the Committee bill allows PHAs to enter into joint ventures, partnerships, or other business arrangements or otherwise contract with persons, organizations, entities, or units of government for the purpose of administering the programs of the PHA.

The purpose of this section is to provide PHAs with the greatest amount of flexibility feasible to engage in entrepreneurial endeavors in order to reduce costs and generate income which must be used for the provision of low-income housing or to otherwise benefit the tenants of the PHA. This section allows PHAs to undertake business arrangements for the purposes of facilitating access to alternative sources of financing (including use of the low-income

housing tax credit), developing mixed-income projects, instituting innovative managerial improvements, and contracting with other entities in order to reduce administrative costs, generate revenues, and empower tenants. Tenant empowerment could take the form of the creation of employment opportunities, expansion of services, or development of mixed-income projects.

The Committee believes that in an era of shrinking resources, PHAs should have the authority to undertake business ventures for the purposes of providing financial stability. To this end, the Committee wishes to emphasize that it does not intend for PHAs which are successful in generating revenue through business ventures authorized by this section to be penalized by an operating fund formula which acts as a disincentive to entrepreneurship such as is embodied in the current Performance Funding System (PFS) formula. Nor is it the intention of the Committee to see the intended grant of authority to PHAs contained in this section stifled by a requirement that PHAs receive the prior approval of HUD, beyond that provided for in the public housing agency plan requirements, before embarking on prudent business ventures—a situation that would amount to micromanagement. At the same time, with new authority must also come a corresponding responsibility; a redesigned operating fund formula should not act as an insurance policy for PHAs which engage in risky business ventures and thus jeopardize their primary function—the provision of affordable housing.

Work requirement

The Committee strongly believes in the principles of empowerment and self-help. Public housing residents should assume a degree of responsibility for their living conditions and the upkeep of their physical surroundings. This will help give residents of public housing a greater stake in their communities.

The legislation requires able adult residents of public housing communities to contribute to the communities in which they reside through a volunteer work contribution of 8 hours per month. As a private homeowner contributes to his or her neighborhood through property maintenance, a resident of public housing can contribute to his or her neighborhood through grounds keeping or through a myriad of other activities within the public housing community.

The Committee asserts that political activities of any nature, including but not limited to petition drives, letter-writing campaigns, phone banks, or rallying, shall not constitute an eligible work activity under any circumstance. In fact, political activities are not permissible using the resources of a public housing agency under any circumstances.

The Committee does not intend for such work requirements to impose an undue hardship on any public housing resident. A hardship would include the creation of a disincentive to the pursuit of work or education. HUD may provide an exemption from the work requirement for any adult who is: not less than 62 years of age; a person with disabilities who is unable to comply with the requirement; working not less than 20 hours per week; a student receiving vocational training, or otherwise meeting work, training or educational requirements of a public assistance program; or a single

parent or the spouse of an otherwise exempt individual who is the primary caretaker of one or more children who are 6 years of age or younger.

The Committee has received comments from several PHAs that are concerned about the potential administrative burden this work requirement will create. The Committee addresses that concern by allowing maximum flexibility on how the work requirement can be administered and recommends that its administration could be delegated to tenants themselves or the work could be performed in conjunction with the local advisory board.

Eligibility for public and assisted housing

The Committee bill changes the current income eligibility standards for public housing and section 8 tenant-based assistance by providing that for any public housing units or vouchers made available for occupancy each fiscal year that: (1) not less than 40 percent shall be occupied by families whose incomes do not exceed 30 percent of the area median; (2) not less than 75 percent shall be occupied by those whose incomes do not exceed 60 percent of the area median; and (3) any remaining units may be made available for families whose incomes do not exceed 80 percent of the area median. This provision applies to new admissions on turnover and to incremental units.

The issue of income targeting raised great concerns by the public housing industry, low-income housing advocates, and HUD. Currently, the income of the average public housing resident is 17 percent of local area median, and the vast majority of all public housing residents have incomes below 50 percent. There is widespread agreement that the public housing program needs to serve families with a broader range of incomes both for social and fiscal reasons, but there are significant disagreements on how to achieve the proper mix.

Those representing the public housing industry argued that PHAs should have greater flexibility to make income targeting determinations. The PHAs pointed out that given the imminent cuts in federal funds for public housing, PHAs will need less stringent income targeting rules to generate more revenues for operation and to achieve greater income diversity.

Both HUD and low-income housing advocacy groups, on the other hand, argued that loosening income targeting rules too much, coupled with the repeal of Federal preferences, will alter the fundamental mission of public housing—to serve low-income families unable to find decent and affordable shelter in the private housing market. While the Department also recognized the need to mix working families with those on welfare, it held the position that income targeting rules should allocate 40 percent of the units to families below 30 percent of the area median income, with the remainder below 60 percent of the area median income. The Department strongly advocated for a 60 percent upper income limit arguing that allowing PHAs to serve families up to 60 percent of the area median income will substantially change the face of public housing. Additionally, it claimed that the revenue earned from rents for families at 60 percent of the median will be substantially the same

as revenue earned from households between 60 and 80 percent due to the likelihood of ceiling rents.

The Department was also concerned that the upper limit of 80 percent in the Committee bill was too high for the section 8 tenant-based program and argued that 75 percent of the vouchers should be targeted to those below 30 percent of the area median income while the remainder should be made available only to households with incomes up to 50 percent of the area median.

S. 1260, as introduced, provided that 40 percent of the public housing units and vouchers must be made available to families whose incomes do not exceed 30 percent of the area median. During mark-up of the legislation, the Committee agreed to strengthen the targeting provision by adopting an additional income band providing that 75 percent of the units and vouchers be made available to families whose incomes do not exceed 60 percent of the area median. The Committee believes that these income targeting provisions combined with the repeal of Federal preferences will provide PHAs with adequate flexibility to attract higher income tenants and at the same time ensure that a fair portion of the units be made available to the very poorest families in our nation. The Committee did not agree to lower the overall eligibility limit to 60 percent because such a policy change would be a retreat from current law and would make it increasingly difficult for PHAs to achieve greater income mixes in public housing communities that everyone agrees is an important and desirable goal. The Committee bill also requires the PHA to achieve a diverse mix of incomes in each development including scattered-site public housing. The Committee included this provision to ensure that PHAs strive to create better income mixes in each development rather than continuing to concentrate the poorest of poor in particular public housing developments. At the same time, the Committee does not intend PHAs to use the more flexible targeting provisions to house only moderate income families in the scattered-site projects. The Committee bill does not, however, prescribe specific percentages or number of families at each income level that should occupy each project in order to allow PHAs flexibility in achieving income mixes according to local conditions. The Committee intends that the PHA shall have the sole discretion to establish its policies and requirements for a diverse income mix according to local needs under the public housing agency plan.

Demolition and disposition of public housing units

The Committee bill modifies the standards in section 18 for demolition and sales of public housing units to enhance the ability of PHAs to remove obsolete, distressed and excessively costly units from their developments. Under the bill, HUD must approve an application for demolition or disposition within 60 days of receipt if the PHA certifies: (1) in the case of a demolition, that the project is obsolete and unsuitable for housing purposes and cannot be made useful for housing by any reasonable, cost-effective program; and (2) in the case of disposition that the conditions in the area adversely affect the health or safety of the tenants or the feasible operation of the project; or the disposition allows the acquisition, development or rehabilitation of other properties that will work bet-

ter as low-income housing; or that the non-dwelling property is in excess of the PHA's needs.

In addition to streamlining the approval process, the Committee bill removes the requirement that any units demolished or sold be replaced on a one-for-one basis. The Committee has received numerous comments that the one-for-one replacement requirement has been one of the major impediments to eliminating the most distressed public housing and revitalizing public housing communities.

The Committee bill also provides any eligible resident organization, or nonprofit organization supported by residents, a right of first refusal in appropriate circumstances if a PHA proposes to sell a public housing project or portion of a project. If a resident organization expresses written interest in purchasing a property, no sale of the property may occur for 60 days in order to give the organization the opportunity to obtain a firm commitment for financing the purchase of the property. While the Committee believes it is important to give residents a fair opportunity to purchase properties for their future use, it is also not the intent of this provision to be used to slow down or obstruct the sale of properties where its retention is not in the best interests of the tenants or public housing agency.

The Committee believes that these new provisions will go a long way toward improving public housing communities by giving PHAs greater flexibility in removing obsolete housing that has been a financial drain and threat to the health, safety, and welfare of public housing residents.

The Committee also urges HUD to enter into partnerships with PHAs and nonprofit organizations in disposing of the HUD-owned or held multifamily housing stock for use as affordable housing. The sale of this housing at a nominal cost or for free will help ensure the continuing availability of affordable, low-income housing at little cost to the Federal government.

Voucher system for public housing

The Committee considered seriously the Administration's proposal to convert the public housing system to a market-based system of tenant-based assistance. The Committee strongly supports the concept of residential choice embodied in the voucher program, and this legislation is committed to ensuring that tenant-based section 8 assistance is effective in meeting the housing needs of lower income households. In addition, the Committee is committed to safeguarding the Federal taxpayers' $90 billion investment in the nation's public housing inventory and assuring its continued availability for helping to meet the affordable housing needs of low-income households.

The Committee believes that a total conversion to a voucher system is a "one-size-fits-all" approach that is not appropriate or will not work in all markets or in all circumstances. For example, a June 1995 study by the General Accounting Office determined that while nationwide the cost of vouchers versus the cost of operating public housing is similar, the averages conceal wide differences in these two options in different market areas. Further, while voucher success rates are generally high, the Committee is concerned that voucher utilization rates also vary widely around the country,

which calls into question the viability of converting the entire stock of public housing to vouchers. The Committee has attempted to provide a framework for assessing the relative costs of tenant-based assistance and public housing so that PHAs can make informed judgments about their policies.

The Committee bill generally requires all PHAs to conduct an assessment comparing the costs of continuing to operate each of the projects as public housing with the costs of converting to and operating a system of tenant-based assistance. The required assessments include: (1) a comparison of the costs of continuing operation of the units in question for their remaining useful life as public housing to the costs of providing tenant-based assistance in substantially similar units over the same period of time; (2) an analysis of the market value of the project both before and after rehabilitation and before and after conversion to a system of tenant-based assistance; (3) an analysis of local rental market conditions and the likely success and feasibility of providing tenant-based assistance for the specific residents of the project in question, including an assessment of the availability of decent and safe dwellings rented at or below the payment standard established by the entity administering tenant-based assistance in the local area; and (4) an assessment of the impact of a conversion on the neighborhood where the project is located (taking into account such circumstances where projects act as anchors of their communities).

HUD may provide a waiver of the assessment requirement as a result of a request by a PHA or HUD's own authority. In addition to the waiver authority, HUD may allow PHAs, in certain circumstances, to perform a streamlined assessment, either as a result of a request by the PHA or HUD's own authority. HUD may provide a waiver or otherwise provide for a streamlined assessment for specific projects or classes of projects such as projects designated as elderly housing, disabled housing, or elderly and disabled housing, scattered-site, or mixed-income projects. HUD may provide a waiver or provide a streamlined assessment to PHAs that are not planning to convert, are small PHAs, or are large PHAs where conducting an assessment for each of its projects would constitute an unnecessary burden. In these cases, HUD may provide for a streamlined assessment which may include less detail, or allow for a single PHA-wide assessment or allow for consolidated assessments for multiple substantially similar projects.

The broad authority granted to HUD to waive or provide for a streamlined assessment is based on the Committee's intent to avoid placing a burdensome and unfunded mandate on PHAs. It is the Committee's intent that the assessments conducted under this section may be based on existing data and shall not require expensive new appraisals. Nevertheless, the Committee feels that the assessments conducted under this section will provide a useful and invaluable source of data on which the Congress, HUD, and the PHA will be able to draw upon in order to make informed decisions concerning the future of the public housing portfolio. HUD is urged to develop a mechanism for collecting, aggregating, and analyzing the data in the conversion assessments.

The Committee bill provides an option to PHAs which conduct a conversion assessment to develop a plan to convert a public hous-

ing project or portion of a project to a system of tenant-based assistance. In order to implement such a plan, the PHA must demonstrate that the conversion would principally benefit the residents, the PHA, and the community and that the costs of providing families occupying the units in question with vouchers would not be more expensive than continuing to operate the units as public housing. In addition, HUD shall disapprove a plan where it is plainly inconsistent with the findings of the assessment or with reliable data and information known to HUD.

The Committee bill requires the assessments and plans conducted under this section to be made in consultation with public officials and with the significant participation of the affected residents. In addition, the assessments and plans must be submitted as part of the applicable public housing agency plan and must comply with the requirements of the plan including timing, notice, hearing, opportunity for public comment, review by the local advisory board, consistency with the local CHAS, and review and approval by HUD.

The Committee feels that providing an option to convert to tenant-based assistance will provide an added incentive for PHAs to perform well and maintain safe and decent living conditions, particularly in light of the possibility that residents and local governments may bring added pressure on PHAs to improve their operations or exercise the option to voucher out.

Repeal of family investment centers

The Committee bill repeals the current section 22 of the 1937 Housing Act which provides for the creation of Family Investment Centers. Consistent with the Committee's goal of program consolidation, the establishment of similar programs for the benefit of residents becomes an eligible activity under a new section 31 social services program.

Repeal of family self-sufficiency program

The Committee bill repeals the requirement for PHAs to develop a family self-sufficiency program. While the Committee strongly supports the goals and concept of the Family Self-Sufficiency Program and encourages PHAs to adopt such programs, where feasible, the Committee was concerned that the program became an unfunded mandate on PHAs with no separate appropriation available for program administration. Therefore, the Committee bill repeals the program and makes it an eligible activity under the new block grants. In addition, self-sufficiency activities may be funded under the new program for supportive services and resident empowerment activities in section 31. Existing family self-sufficiency programs are maintained to the extent that there are any existing contracts or agreements made under this program.

Homeownership opportunities

The Committee bill repeals section 5(h) of the 1937 Housing Act but adds a new, more flexible provision in section 23. Section 23 authorizes a PHA to sell any of its units to its low-income tenants or to a conduit organization for sale to tenants. The sales price is determined by the PHA in accordance with its plan, and the pro-

ceeds must be used by the PHA for purposes related to low-income housing. The legislation also contains a resale restriction to prevent purchasing tenants from gaining a windfall if they resell the property within one year. The Committee patterned the new homeownership provision according to the section 5(h) program which has proven to be a highly successful program for assisting public housing tenants in becoming homeowners.

In order to expand the opportunities for resident homeownership, the Committee incorporated a provision that allows a PHA to use its operating or capital funds as well as any other sources of income to provide assistance to residents to purchase a home. Such assistance is intended to help low-income families who are financially capable of becoming homeowners, but lack adequate savings to purchase a home. Assistance is intended to include downpayment assistance, below market interest rate loans, closing cost assistance and other financial assistance to bridge the gap to homeownership. Residents may receive such assistance to help them purchase either a public housing unit or a single family house, condominium or cooperative unit owned by a public or private entity.

The Committee strongly supports the expansion of homeownership opportunities for residents of public and assisted housing to provide incentives for upward mobility and economic self-sufficiency.

Severely distressed public housing

The Committee recognizes the value of retaining a severely distressed public housing program, similar to HOPE VI, for three additional years. HOPE VI provides grants to public housing authorities for the demolition and replacement of severely distressed public housing. The National Commission on Severely Distressed Public Housing estimates that 86,000 out of a total inventory of 1.4 million units nationwide are severely distressed. This program provides local authorities with the flexibility they need when determining which developments need to come down and where they are located. HOPE VI represents efforts to remake public housing into the type of housing envisioned throughout this bill. The new developments will be less dense, include greater income mix and integrate services for low-income residents. Extending this program three more years will enable housing authorities with projects in progress to finish the work they have begun. This program provides necessary and large capital grants to tear down obsolete public housing which activity would be normally too costly under the Capital Fund.

Mixed-income projects

The Committee bill addresses many of the issues faced by PHAs that are working with private partners to create mixed-income developments, often in HOPE VI or in other endeavors to replace or reconfigure obsolete developments. The Committee has broadened significantly the ways in which a PHA can develop housing to replace its obsolete stock or to respond to needs identified in its public housing agency plan. The bill authorizes PHAs to form public-private partnerships with private for-profit or nonprofit entities to develop affordable housing that serves residents with a broad

range of incomes and avoids concentrations of poverty. A PHA can invest its capital funds and deploy its operating subsidies in such mixed-income developments to provide opportunities to those it serves to live in more socially diverse, stable housing communities. For example, the Committee bill allows a PHA to form a public-private partnership, to transfer some of its operating subsidies to fund public housing units in a building owned by that partnership, and to convert the previously subsidized units owned by the PHA to market rate units (so long as the number of subsidized public housing units remains the same). The Committee intends this provision to include partnerships that could also include State or local public partners.

Under the Committee bill, a PHA can also elect to remove itself from day-to-day real estate management by turning that task over to its private partners or other contractors, thus enabling the PHA to be an asset manager for the community's low-income housing needs. These arrangements will bring into play resources beyond those of public housing, such as private investment, low-income housing tax credit proceeds, HOME funds, CDBG funds, and State and local programs. With the decline in Federal funds dedicated to the operation and maintenance of public housing, these added resources will assist in removing old, obsolete public housing and creating additional housing units for low-income families in more stable and healthy environments.

The Committee bill also seeks to encourage public-private partnerships and simplify the creation of mixed-income developments by allowing a PHA to elect to exempt the units assisted by it from the often cumbersome requirements of section 6(d) of the 1937 Housing Act relating to cooperation agreements and payments in lieu of taxes. Instead, the units could be made subject to the same real estate taxes as apply to the rest of the development where such a choice facilitates the mixed-income development.

Conversion of distressed public housing to tenant-based assistance

The Committee believes that a high priority of public housing reform should be to protect tenants who are currently trapped in non-viable or seriously substandard public housing developments.

The Committee bill requires PHAs to identify developments in their inventory that are distressed and remove them from the public housing inventory. Distressed housing is defined according to criteria in the Final Report of the National Commission on Severely Distressed Public Housing. It includes developments where the PHA cannot assure the long-term viability as public housing and where the cost of continued operation and modernization of the property exceeds the cost of providing section 8 vouchers for all families in the development. PHAs are required to develop a five-year plan to remove all such distressed housing from their inventory. If a PHA fails to develop the required plans and implement them appropriately, HUD is given the authority to step in. The Committee stresses, however, that most decisions concerning public housing conversions are local decisions and that HUD should get involved only in circumstances where it is obvious that the PHA is acting in bad faith and making decisions that are detrimental to residents.

S. 1260, as introduced, included the following factors in the definition of distressed: developments that total more than 600 dwelling units or in the case of high-rise family buildings or substantially vacant buildings, 300 dwelling units and developments that have a vacancy rate of at least 10 percent for dwelling units not in funded, on-schedule modernization programs. The Committee was concerned that such a definition was too limiting and potentially excluded up to half of all distressed properties that should be eliminated. Therefore, the Committee adopted a new definition of severely distressed housing in the managers amendment to S. 1260 that requires PHAs to identify distressed developments based on criteria similar to those used in the Final Report of the National Commission on Severely Distressed Public Housing that was intended to broaden the definition of distressed public housing.

While the Committee fully expects PHAs to eliminate the most distressed public housing stock that currently traps people in dangerous situations, it also recognizes the current budgetary, relocation, rental market, and redevelopment scheduling constraints that may make it difficult to dispose immediately of such housing and provide replacement housing for families in occupancy. Therefore, the Committee bill allows HUD to extend the 5-year deadline but only if the 5-year deadline is impracticable.

Linking services to public housing residents

The Committee bill authorizes a new program in section 31 to allow HUD to make grants to PHAs, resident management corporations, resident councils, or resident organizations for supportive services and resident empowerment activities to assist public housing residents in becoming economically self-sufficient. Except for funds provided directly to resident councils, funds may be allocated on the basis of either a competition or a formula. The intent of this provision is to consolidate the numerous existing set-asides, demonstration programs, and categorical grants into a single program that emphasizes services and self-sufficiency on behalf of residents.

Resident management corporations and resident councils have been funded in the past for the purpose of exploring the feasibility of resident management of public housing and for developing resident capacity so that such management might be possible. Resident management has been quite successful in many public housing developments throughout the country and should be encouraged to continue and expand wherever possible. Evaluations of resident management programs have shown, however, that the program has worked most effectively when focused on the broader goal of self-sufficiency and economic up-lift rather than just resident management of public housing.

The expanded program gives PHAs, RMCs, RCs, and other resident organizations financial assistance for: physical improvements to a public housing project to provide space for supportive services; the provision of service coordinators; the provision of services related to work readiness including academic skills training, adult literacy, job search assistance, and vocational and entrepreneurship development; resident management activities; and such other activities designed to enhance the self-sufficiency of residents. The Committee intended to allow a broad range of eligible activities in

order to give grant recipients the opportunity and flexibility to design innovative programs to enhance the economic self-sufficiency of residents.

The Committee bill requires that for funds appropriated under this section, not less than $25,000,000 be provided directly to resident organizations to ensure that they are actively involved in the development and implementation of these programs.

The Committee is concerned by recent reports of misuse of funds in the current Tenant Opportunity Program, and urges HUD to take prudent steps to ensure the accountability of funds provided under this program.

Title II—Section 8 Rental Assistance

Tenant-based section 8 rental assistance has become a very effective and powerful means of meeting the housing needs of low-income families. To date, the programs have successfully assisted well over a million families in obtaining affordable, quality housing in the private market. Unlike public housing, the flexibility and portability of these programs have empowered families to choose where they live based on personal and economic needs. According to a recent congressionally mandated study (excluding New York) about 87 percent of tenant-based section 8 subsidy holders successfully obtain housing, and success rates have steadily increased in recent studies. Studies have also found that recipients of tenant-based rental assistance were less likely than public housing residents to live in concentrated poor urban communities; however, the Committee is concerned that concentration of poor and minority households has also occurred in the tenant-based program.

Despite the success of the section 8 certificate and voucher program, the process in obtaining housing has been often demanding and difficult, and landlord acceptance of section 8 has been limited. Also, tenant-based section 8 has been less well accepted in tight housing markets. The Committee recognizes that reforms are critical to address these deficiencies and intends that the bill's reforms will make the program operate so that low-income families can use section 8 to rent affordable housing more widely in the private market. These reforms are especially important as Congress considers measures that expand the use of tenant-based assistance as an alternative means of providing affordable quality housing. For example, the public housing reforms of the Committee bill will provide some public housing residents with tenant-based assistance in cases where distressed public housing is sold or demolished. The Committee also believes the section 8 reforms are necessary to assist residents in multifamily properties insured by the Federal Housing Administration where owners prepay their mortgages. As the Committee considers broader reforms to HUD's assisted housing programs, this bill's reforms will allow vouchers to work better if Congress decides to convert project-based assistance to tenant-based assistance.

The Committee bill recognizes that administrative reforms to tenant-based section 8 programs are critical to the effectiveness and efficiency of the program. By combining the best features of the section 8 voucher and certificate programs into a single voucher program, the reforms provide housing agencies the flexibility to de-

sign their programs and respond to local needs while ensuring an adequate level of accountability to residents, local governments, and the Federal government. A more streamlined program will encourage more private owners to participate, provide section 8 families with a greater selection of housing choices, and increase the success rate in obtaining quality affordable housing. The Committee urges HUD to collect the appropriate data to monitor the effects of the reforms in this bill on the success rate for section 8.

The section 8 certificate and voucher programs were created separately in 1974 and 1983, respectively. The programs currently serve about 1.4 million low-income families. About 2,500 State and local housing agencies administer the section 8 programs. HUD has entered into about 30,000 multi-year contracts with these housing agencies to operate these programs. Housing agencies are responsible for determining household eligibility, selecting families and individuals to receive subsidies, contracting with landlords whose rental units have been selected by the subsidy holders, and determining that units meet rent and housing quality standards.

Housing agencies and HUD have been administering two separate programs with similar statutory requirements, rules, regulations, and funding notices. While most requirements are the same for both programs, significant differences still exist. For example, except in limited circumstances, certificate holders cannot pay more than 30 percent of their income for rent. Under the voucher program, however, assisted households can pay more or less than 30 percent of their income for rent, and voucher holders have a "shopping incentive" to seek lower-cost apartments. The Committee bill merges the existing certificate and voucher programs into a single, market-driven, streamlined program that embraces the best features of both programs. Many reforms are modeled after S. 2281, which the Committee approved in 1994. Other changes are based on studies by and discussions with HUD, PHAs, the General Accounting Office, and low-income housing providers and advocates.

Merger of certificates and vouchers

Under the Committee bill, the existing certificate and voucher programs are merged into a single voucher program under a revised section 8(o) of the 1937 Housing Act. The new voucher program retains the current program administrative system used under the existing certificate and voucher programs since the current administrators (public housing agencies and state agencies) understand the intricacies of the programs, the local market they operate in, and the clientele they serve. Using the existing administrative structures will ease the transition to a merged program.

The new voucher program also retains certain features of the current certificate and voucher programs while providing additional flexibility to housing agencies to respond to local market conditions with minimal Federal involvement. For example, the Committee bill allows housing agencies to set a payment standard between 90 percent and 120 percent of HUD's fair market rents (FMR). This flexibility will allow housing agencies to react more quickly to changing real estate markets than is possible under the current certificate program's FMR system.

In general, the value of the subsidy is the difference between the payment standard and 30 percent of a tenant's adjusted income. An assisted family's monthly rent is the highest of 30 percent of adjusted income, 10 percent of gross income, or if a family is receiving welfare assistance designated for housing, the portion of those payments that is so designated. If the initial rent on a unit exceeds the payment standard, the assisted family is responsible for paying the difference up to 40 percent of income. However, this provision only applies to the initial rent, and an assisted family can pay more than 40 percent of income towards rent when rents are increased.

Eligibility

Eligibility for tenant-based assistance remains the same as current law and includes very low-income families, previously assisted families, low-income families, families that qualify under a homeownership program, and eligible families under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA). The new voucher program recognizes that certain low-income families, such as working families that need temporary housing assistance, deserve to participate in the section 8 program. The Committee, however, intends that housing agencies will continue to serve a significant number of very low-income families in response to local housing needs. Accordingly, the bill targets 40 percent of new vouchers, both incremental and turnover, to families with incomes at or below 30 percent of area median income; 75 percent of new vouchers to families below 60 of area median; and the rest to families below 80 percent of area median. These targeting standards are the same as those established for public housing in Title I of this Act.

Rent burden

The new voucher program retains the feature of the current voucher program that allows assisted families to pay rent levels of more than 30 percent of adjusted income while setting reasonable parameters on initial rent burdens. Assisted families are allowed to rent a unit above the payment standard. The tenant rent contribution, therefore, could be higher than 30 percent of adjusted income. However, the Committee bill limits the rent burden upon move-in at 40 percent of adjusted income. This would prevent assisted families from paying excessive rent burdens.

The Committee is concerned that some housing agencies may set artificially low payment standards, which do not reflect local rental rates and that assisted families may be required to pay excessive rent burdens. To address this concern, the Committee bill gives HUD the discretion to require housing agencies to submit their proposed payment standard for approval.

The Committee bill also requires HUD to monitor rent burdens and to review any payment standard that results in a significant percentage of assisted families paying more than 30 percent of adjusted income for rent. Housing agencies are required to modify the payment standard if the results of the review establishes that the payment standard is too low for a particular market and that too

many voucher holders will have to pay an excessive percentage of their income for rent.

Preferences

The Committee bill repeals preferences for all project-based and tenant-based section 8 programs and allows housing agencies to establish local preferences consistent with their public housing agency plan. Local flexibility in establishing preferences for housing assistance has the benefit of allowing local housing agencies to respond to their community needs. The Committee believes that locally established preferences would be determined after a comprehensive and careful review of the locality's housing needs, which would include the needs of vulnerable populations such as the elderly, disabled, homeless, and very low-income families.

Ineligibility of tenants evicted for drug-related activities

The Committee bill expects that assisted families will act responsibly as a condition of receiving Federal rental assistance. Accordingly, assisted families who have been evicted from housing by reason of drug-related criminal activity are ineligible from receiving assistance during a 3-year period from the date of such eviction, unless the tenant successfully completes an approved rehabilitation program. Current law does not prohibit a household evicted from a section 8 unit from receiving assistance elsewhere.

Increasing owner participation

One of the key factors to the success of the tenant-based rental assistance program is the ability to attract property owners to participate in the program. Owner participation plays a significant role in providing a broad range of housing choices for assisted families. The history of section 8 has shown, however, that private owners have been reluctant to participate in large part because of time-consuming and costly program requirements which conflict with normal market practices. Some program requirements have constrained the ability of owners to make rational business decisions. For example, the "take one, take all" rule requires landlords who rent to one section 8 recipient to rent to all otherwise qualified section 8 recipients and not refuse to lease to such recipients because they receive section 8 assistance. Further, section 8 leases have no set terms and section 8 landlords are required to renew leases for section 8 tenants (the "endless lease" rule).

The Committee bill reforms section 8 to make the program operate like the unassisted market as much as possible while maintaining the program goals of providing low-income families with decent and affordable housing. The Committee bill expects that these changes, combined with landlord outreach efforts conducted by housing agencies as part of their program administration, will greatly expand the choice and availability of housing units.

The key reforms that encourage greater owner participation include providing flexibility in resident screening and selection, minimizing housing agency involvement in tenant-owner relations, eliminating the "take one, take all" and "endless lease" rules, and conforming section 8 leases to generally accepted leasing practices. These reforms streamline and simplify the program by reducing

the involvement of the Federal government. The Committee bill recognizes that rules such as "take one, take all" and the "endless lease" were created to protect assisted households from owner discrimination. The Committee bill, however, does not anticipate that the repeal of these rules will adversely affect assisted households because protections will be continued under State, tribal, and local tenant laws as well as Federal protections under the Fair Housing Act and the Americans with Disabilities Act. The intent of the repeals is not to excuse discrimination against section 8 holders but to remove disincentives for owner participation and to expand the number of housing choices available to section 8 families.

Lease conditions

The Committee bill recognizes that the lease conditions under the current section 8 programs have deterred private owners from participating in the programs because they require owners to treat assisted residents differently from unassisted residents. The Committee bill reforms the lease conditions to make the new voucher program operate as much like the unassisted market as possible.

The most significant change is the elimination of the "endless lease" rule, which has prevented an owner from terminating a section 8 tenancy unless the owner instituted court action. The new voucher program permits the use of section 8 leases that are similar to a standard market lease. The Committee bill specifies that the use of standard market leases be the same as those used in the locality, contain terms and conditions that are consistent with State, tribal, and local law, and are also applicable to unassisted residents.

Lease terms of one year are permitted under the Committee bill and shorter term leases in cases where housing choices would be expanded for section 8 holders. The Committee does not expect that the use of lease terms shorter than one year would be used frequently and safeguards against this by requiring the approval of the housing agency. The Committee recognizes that some small private owners use six month term leases as standard practice and that assisted families should be allowed to access such housing. However, the Committee intends that rental assistance under the new section 8 voucher program be used only as a permanent housing resource and not be diverted for temporary shelter purposes.

The Committee bill also allows owners to terminate the tenancy on the same basis and in the same manner as they would for unassisted tenants in the property. Lease terminations would have to comply with applicable State, tribal, and local law. Further, owners are required to provide written notice to the tenant, which would specify the reasons for terminating the lease.

Repeal of the 90-day notice requirement

The new voucher program will no longer require that a participating owner provide a 90-day notice to HUD when it intends to terminate a section 8 contract. This requirement has been a meaningless paperwork burden on HUD and owners by involving HUD in the owner's termination of section 8 contracts. This has discouraged owner participation and hurt the program's effectiveness.

Where an owner terminates a contract, section 8 assistance will ordinarily continue to be provided to families.

Housing inspection procedures

The new voucher program retains current requirements for a housing agency to inspect units to assure that they meet housing quality standards (HQS). The Committee bill, however, makes inspection procedures more flexible by allowing inspectors to use local housing codes or housing codes adopted by public housing agencies instead of HUD's HQS. These two optional codes may only be used if they equal or exceed HUD's HQS and do not severely restrict housing choice. The Committee recognizes that in some cases the optional codes may have excessive housing requirements and therefore, may limit housing choices. In these cases, the optional codes should not be used.

The Committee bill also requires that the Secretary designate another entity to make inspections and rent determinations for units that are owned by PHAs. The intent is to prevent a conflict of interest for PHAs. The Committee expects that HUD would consider a variety of entities in addition to local government agencies, such as nonprofit and private sector contractors to perform this function.

Housing quality inspections would be required before lease-up and periodically during the section 8 contract term. The intent is to provide some flexibility for housing agencies in performing inspections in response to different housing circumstances. The Committee recognizes the importance of ensuring that the government is subsidizing quality housing units, and this provision is not intended to compromise this goal. Further, this provision does not preclude housing agencies from performing inspections more frequently than annually for certain circumstances where the unit's physical condition has been damaged due to vandalism, disasters, or other special circumstances. The Committee expects that housing agencies will develop policies and procedures to ensure that timely inspections are performed to safeguard the physical condition of units occupied by section 8 residents without overburdening owners.

A fourth measure that addresses housing inspections is the establishment of a housing inspection procedures demonstration program. Section 8 owners have expressed concern with delays in completing the inspections. As a result, the bill provides for the creation of a demonstration program where HUD would test various procedures that attempt to expedite the inspection process. The demonstration would also test procedures in expediting repairs of section 8 units.

Late payments

Housing agencies are required to make timely payments of rent to owners or they will be subject to penalties in cases where they are responsible. To ensure that late payments are not funded out of subsidy allocations, the Committee bill requires that late payments be paid from the housing agency's administrative fees. The Committee recognizes, however, that in some instances, late payments are not due to the housing agency but to factors beyond

their control. If HUD determines that late payments are due to factors beyond the control of the housing authority, no penalty would be assessed.

The Committee believes that HUD should closely monitor the frequency of late payment penalties for housing agencies and consider strong sanctions for such housing agencies that repeatedly and consistently fail in making timely payments. One possible sanction is to contract the administration of the program to another entity.

Assistance for manufactured housing

Tenant-based rental assistance will continue to be provided to families who own a manufactured home and rent the property on which it is located. Housing agencies would establish a payment standard which could not exceed an amount established or approved by HUD. The Committee encourages HUD to rely more on local rental cost data for manufactured home properties in lieu of establishing separate FMRs.

The calculation for the subsidy payment to manufactured homeowners who rent their property is revised to provide a more generous subsidy amount based on a less complicated formula. This calculation uses the same subsidy determination like that used for housing assistance payment for other tenant-based units in the new voucher program by basing the subsidy on the real property rented, plus an allowance for any tenant-paid utilities. The mortgage payment would be excluded from the original formula calculation.

Shopping incentive

The existing voucher program contains a "shopping incentive," whereas the certificate program does not. The purpose of the shopping incentive was to provide assisted households the monetary incentive to seek the lowest possible rent by allowing the tenant to keep the difference between the rent and the payment standard. If tenants could lower their housing costs, they would then have additional money available for other uses, such as food, health care, or transportation. Also, the shopping incentive was expected to prevent inflation in rents.

The Committee bill eliminates the shopping incentive. The Committee believes that this will reduce Federal costs for the tenant-based programs since about one-third of voucher holders in fact do not shop for the best buys but actually remain in the units that they already occupied prior to receiving assistance. If the shopping incentive were continued in 1996, the average shopping incentive for those that receive it would be about $1,100 per year. Some have argued that eliminating the incentive would persuade assisted families to move to more expensive units. However, a 1990 study by Abt Associates found that more than one-third of all certificate holders, who do not receive a shopping incentive, rented units below the FMR. Therefore, the comparison between the certificate and voucher programs have found that the shopping incentive did not appear to persuade families to select the best buys. Furthermore, HUD has not found any evidence that the shopping incentive helps to prevent inflation in rents. Excess subsidy saved from

eliminating the shopping incentive could be used to assist more families.

Portability

One of the most distinctive features of the tenant-based program is the ability to use the rental assistance in a variety of communities and neighborhoods. The Committee believes that assisted families should have the maximum flexibility in choosing where to live. The new voucher program promotes portability for assisted families to fully explore and select from a multitude of housing options.

The portability feature under the new voucher program allows assisted families to move anywhere within and outside a PHA's jurisdiction. The Committee bill recognizes that the section 8 program is a national program and therefore reforms the program to allow portability anywhere in the country where the program is being administered. National portability will also permit voucher holders to respond to job and educational opportunities and other significant changes in their lives without loss of subsidy.

In order to make the portability feature work effectively and efficiently, the Committee bill authorizes the Secretary to establish procedures and reserve funds for compensating PHAs that issue vouchers to families that move into or out of another PHA jurisdiction. The Committee recognizes that when assisted families leave their jurisdictions, an enormous administrative burden for PHAs is created. These provisions should resolve these administrative difficulties created by billing receiving jurisdictions.

The Committee expects that these changes combined with intensive counseling for voucher holders will make mobility easier for families while addressing the PHA's concerns in administering the portability feature. The Committee is aware that some metropolitan-wide jurisdictions have dealt with the administrative problems effectively, but in other locations PHAs have discouraged families from exercising their portability rights. The Committee expects that PHAs will develop procedures to make the portability feature work effectively.

Homeownership option

Section 8 currently requires PHAs to make the homeownership option available to tenant-based assisted families through cooperative housing. The present law allows assisted families to use this option if they meet certain employment and income criteria such as being a first-time homeowner and participant in the PHA's Family Self-Sufficiency (FSS) program. However, the current section 8 homeownership program has significant statutory limitations that make it an ineffective tool for achieving homeownership.

The Committee believes that the homeownership option has the potential to serve as an effective tool for expanding housing choices and residential mobility for assisted families. The bill amends section 8 in several ways. First, it allows a family to receive section 8 assistance for homeownership through shares in a cooperative housing development, whether or not the family is a first-time homeowner. Second, the assistance formula for families receiving assistance for homeownership is modified to make it similar to the

tenant-based rental assistance formula. Third, the bill removes a complicated provision for recapturing the reduction in the household's share of housing cost resulting from excluding home equity from income. Finally, the requirement that at least 80 percent of the downpayment amount must come from the homebuyer's own resources is eliminated.

The reforms to the homeownership option will help in making the program easier to implement and administer. Since the program is optional for PHAs to administer, the Committee bill allows PHAs to contract with nonprofit organizations to administer the program. The Committee provides this option because some PHAs may not be interested in or capable of running a section 8 homeownership program. The Committee expects that PHAs will encourage assisted families to explore the homeownership option and foster the implementation of this program whether the PHA administers or contracts out the program.

Repeal of Moving to Opportunity Program

The Committee bill repeals the Moving to Opportunity Demonstration program (MTO), which was created in the Housing and Community Development Act of 1992. The goal of the program, which was modeled after the Gautreaux experiment in Chicago, was to provide counseling and tenant-based section 8 assistance for low-income households to move from poverty-concentrated neighborhoods to areas with lower poverty rates. Section 8 certificates and vouchers were provided to families in conjunction with funding for tenant counseling and landlord recruitment by fair housing and community-based organizations.

The Committee is not convinced that MTO has achieved its original goal of assisting low-income families to move to housing that provided more economic and social opportunities. Instead, the program has been plagued by poor implementation that has created opposition to it in numerous communities. Further, the Committee believes that some of the opposition to the program has resulted from the perception that HUD is attempting to transform a program designed to complement the voucher program into a much broader, social experiment for dispersing low-income families to middle-income suburban neighborhoods. Moreover, the Committee believes it is wrong to require low-income families to move to certain neighborhoods. Families will be empowered when provided with information which provides real housing options through informed choice.

The Committee recognizes that assisted housing programs have both real and perceived impacts on inner cities, abutting communities, and suburban neighborhoods. The Committee believes that the reforms it has proposed to the section 8 program—to eliminate some of the barriers to landlord participation, to encourage homeownership and work, and to screen applicants for criminal or drug histories—will help promote wider acceptance of section 8.

Finally, the Committee also expects that some functions of the MTO program, such as tenant counseling and screening and landlord outreach can and will be performed regularly by PHAs as part of their administrative functions.

Implementation

The transition period for merging the existing certificate and voucher programs will require thoughtful and careful planning and discussions with housing agencies, owners, section 8 tenants, and other interested parties. A General Accounting Office study of merging the two programs pointed out that during a transition period, HUD and housing agencies would have to administer three programs—the certificate program, the voucher program, and the new merged program. Accordingly, negotiated rulemaking procedures will be used to develop regulations to implement the new voucher program. After the regulations for the new voucher program are implemented, HUD will be allowed to continue to apply former law where necessary to simplify the program administration or to avoid hardship to assisted families and owners. The Committee believes that the coordination and cooperation of all parties will be important in ensuring a smooth merger.

SECTION-BY-SECTION

Section 1. Short title; table of contents

This section states that this Act may be cited as the Public Housing Reform and Empowerment Act of 1995.

Section 2. Findings and purpose

This section describes Congress' intent to reform public housing and section 8 tenant-based programs by consolidating programs, streamlining program requirements, and providing well-performing public housing agencies (PHAs) with maximum discretion and control in conjunction with accountability to tenants and localities. It also stresses the need to reform public housing to remove disincentives for economic self-sufficiency of residents by allowing PHAs the flexibility to design programs that reward employment.

In addition, the section stresses the need to improve the section 8 tenant-based assistance programs using market-based principles.

Section 3. Definitions

This section defines "public housing agency" and "Secretary".

Section 4. Effective date

This section states that unless otherwise specifically provided, the Act and amendments made by the Act shall be effective upon date of enactment.

Section 5. Proposed regulations; technical recommendations

Subsection (a) requires all new proposed regulations necessary to implement the law to be submitted to Congress within 9 months of enactment.

Subsection (b) requires HUD to submit to the appropriate committees of Congress within nine months of enactment any recommended technical and conforming legislative changes to carry out this Act.

Section 6. Elimination of obsolete documents

This section prohibits the enforcement, after one year from the date of enactment, of any rule, regulation or order promulgated under the U.S. Housing Act of 1937 prior to the enactment of this Act, as it relates to the public housing and section 8 tenant-based programs.

Section 7. Annual reports

This section requires the Secretary to report to the Congress annually on what impact the amendments made by this Act have had on public housing tenants and households receiving tenant-based assistance, and on the economic viability of PHAs.

Title I—Public and Indian Housing

Section 101. Declaration of policy

This section amends section 2 of the 1937 Act to state that it is policy of the U.S. to: assist States and localities to remedy unsafe housing conditions and the acute shortage of decent and safe housing; assist States and localities to address the shortage of low-income affordable housing; and vest in PHAs that perform well the maximum amount of responsibility and flexibility in program administration in conjunction with local accountability to public housing tenants and localities.

Section 102. Membership on board of directors

This section adds a new section 27 at the end of Title I of the 1937 Act. The new section requires that a PHA board of directors contain at least one member who is a public housing resident, except on boards where the members are salaried and serve on a full-time basis. It also prohibits discrimination against public housing residents in the selection of governing bodies of public housing agencies. The requirement for a public housing resident on a PHA board is inapplicable to PHAs with no board of directors.

Section 103. Authority of public housing agencies

Subsection (a) permits PHAs to adopt ceiling rents that reflect the market value of the public housing units, but are not less than the cost to operate the public housing units. Until final regulations are issued, PHAs are permitted to set ceiling rents (1) at existing ceiling rent levels; (2) equal to the 95th percentile of the rent paid for a unit of comparable size in the development; or (3) equal to the fair market rent for the area in which the unit is located. Subsection (a) also allows PHAs to adopt a minimum monthly rent of no more than $25 for public housing and for section 8 tenant-based and project-based programs. This subsection allows rental of public housing units to police officers who are not otherwise eligible. Finally, subsection (a) requires PHAs to establish rental policies that encourage and reward employment and economic self-sufficiency.

Subsection (b) permits non-troubled PHAs to set their own rents, except that, for families with adjusted incomes below 50 percent of median income, the rent, in general, cannot be more than 30 percent of income or a minimum rent of $25.

Section 104. Definitions

Subsection (a)(1) amends the definition of "single persons" to provide discretion for PHAs, as opposed to HUD under existing law, to establish a preference for elderly or disabled persons before single persons who are otherwise eligible.

Subsection (a)(2) clarifies the definition of "adjusted income." The definition would also permit PHAs the flexibility to establish any other deduction from income, such as employment income, that a PHA deems appropriate.

Subsection (a)(3) amends the definitions of "Indian Housing Authority" (IHA) and "Indian Tribe" to clarify that only Federally recognized tribes and IHAs will be eligible for funding under this Act in the future. This amendment does not affect IHAs established before the date of enactment.

Subsection (b) requires PHAs, when calculating a family's rental payment under the public housing and section 8 tenant-based programs, to disregard increases in income for 18 months as a result of employment of a member of the family who was previously unemployed for one or more years. After the 18 months, there would be a phase-in of the income increases over a three-year period.

Subsection (c) defines terms used in reference to public housing. It makes it clear that costs related to obtaining non-Federal financing for development are eligible development costs and that financing charges for developments with non-Federal funds are eligible operating costs. Subsection (c) also contains new definitions for the following terms: public housing agency plan, disabled housing, elderly housing, mixed-income project, capital fund, and operating fund.

Section 105. Contributions for lower income housing projects

This section deletes sections 5 (h) through (l) of the 1937 Act which: permit PHAs to sell public housing units to their tenants; require use of solar energy; place restrictions on PHAs eligible for development funding; authorize the use of development funding for major rehabilitation of obsolete housing; and prohibit recapture of development funds until 30 months after they were made available. The legislation transfers authority for PHAs to sell public housing units to their tenants to section 117 of this Act.

Section 106. Public housing agency plan

Subsection (a) adds a new section 5A of the 1937 Act, establishing requirements for the submission of written public housing agency plans.

This section requires each PHA to submit to HUD a public housing agency plan which must be developed in consultation with a local advisory board and be consistent with the jurisdiction's comprehensive housing affordability strategy (CHAS).

The plan must contain generally: a certification that the PHA is a public body authorized to develop and operate low-income housing; an annual statement of policy identifying goals and objectives of the PHA, including all proposed costs and activities under the Capital and Operating Funds; and a statement of housing needs of low-income families in the community and other low-income fami-

lies on the waiting list, and the means by which the PHA intends, to the maximum extent practicable, to address those needs.

The plan must also include policies, rules, and regulations concerning, among other things: (1) tenant selection and admission including screening; preferences for selection and admission; income verification procedures; administration of waiting lists; assignment requirements; occupancy requirements; rent rules; and procedures for designating projects as elderly or disabled; (2) the management of the public housing agency including a description of the PHA's organization and the administration of the Operating Fund; policies concerning the rental of properties; policies relating to a safe and secure environment; policies relating to mixed-income projects; policies relating to services to families; procedures for the implementation of work requirements under section 12(c); procedures for identifying management weaknesses; objectives for improving management practices; a description of management initiatives to control costs; a plan for preventative and routine maintenance; policies for the conversion of public housing to tenant-based assistance; policies relating to the operation of any homeownership program; and objectives for management controls and management improvements; and (3) the management and administration of the Capital Fund including a description of the PHA's capital needs; plans for ensuring a safe and secure environment in public housing developments; policies relating to mixed-income projects; an annual and, if appropriate, five-year plan for the modernization of existing units; a plan covering emergencies and disasters; plans covering the use of funds for new or additional units, plans for the sale of units; plans for the conversion of public housing units to vouchers; and any plans for the demolition and disposition of public housing units. Other items the plan must include are a description of any programs to enhance the economic and social self-sufficiency of tenants and the results of an annual audit conducted by an independent certified public accounting firm.

In addition, the new subsection 5A(c): (1) requires each PHA to establish a local advisory board representing tenants, members of the community, and local government officials to assist in developing the PHA plan; allows HUD to waive the requirement pertaining to tenant representation on the local advisory board if the PHA demonstrates that the existing resident organizations adequately represent the interests of the tenants; (2) requires a public hearing on the plan with public notice and an opportunity to inspect the plan; (3) requires each PHA, in conjunction with the State or local government, to establish procedures to ensure that the plan is consistent with the CHAS; (4) requires that any significant amendments to the plan be adopted at a duly-called meeting of public housing commissioners (or other comparable governing body); be considered by the local advisory board; be consistent with the CHAS; and be approved by HUD; (5) requires HUD to review and approve plans and significant amendments within 60 days of submission and allows HUD to reject plans and significant amendments only if they are incomplete, inconsistent with information available to HUD, or prohibited by law; (6) allows HUD to request additional information from troubled or near-troubled PHAs; and

(7) allows HUD to establish streamlined planning requirements for small, non-troubled PHAs and high-performing PHAs.

Subsection (b) requires negotiated rulemaking within one year for development of regulations on the plan and also requires HUD to issue an interim rule within 120 days of enactment. This subsection also allows HUD to develop separate rules and regulations for the Indian housing program.

Subsection (c) requires the General Accounting Office (GAO) to audit and review a representative sample of PHAs and report to Congress on the degree of compliance of PHAs with their plans. The GAO must conduct the audit within one year of the effective date of the regulations and report to Congress within 2 years after the plans are initially required to be submitted to HUD.

Section 107. Contract provisions and requirements

Subsection (a) amends section 6(a) of the 1937 Housing Act by adding a provision requiring that any contract for loans, contributions, sales, leases, mortgages, or any other agreement made pursuant to this Act be consistent with the public housing agency plan.

Subsection (b) repeals section 6(c) that, in general, contains the system of Federal and local preferences for admission to public housing. PHAs will have the flexibility to develop their own preference system for admission to public housing.

Subsection (c) repeals an obsolete provision requiring excess funds from annual contribution contracts to be offset against subsequent year annual contributions.

Subsection (d) makes technical amendments to the Public Housing Management Assessment Program (PHMAP) for assessing the management performance of PHAs and adds two new PHMAP indicators: (1) the extent to which the PHA provides effective programs to promote economic self-sufficiency of residents and provides opportunities for residents to be involved in the administration of public housing, and (2) the extent to which the PHA successfully meets the goals and carries out the activities of the public housing agency plan. Subsection (d) also allows HUD to use a simplified system of performance indicators for PHAs with fewer than 250 units.

Subsection (e) deletes provisions specifying the timing of notices of lease terminations and instead allows PHAs to follow State law. Subsection (e) also expands the grounds for eviction for criminal activity.

Subsection (f) deletes a provision in section 6(o) of the 1937 Act concerning the Family Unification program. The bill makes activities under the Family Unification program eligible as long as they are contained in the public housing agency plan.

Subsection (g) deletes section 6(p) of the 1937 Act, which requires a preference for public housing development for areas with an inadequate supply of very low-income housing.

Subsection (h) generally requires law enforcement agencies to make available to PHAs information on criminal convictions of applicants or residents within the past 5 years. Subsection (h) also denies housing assistance to any tenant evicted from housing for drug-related criminal activity for a 3-year period unless the evicted

tenant successfully completes a rehabilitation program approved by the PHA.

Subsection (i) provides a transition to allow PHAs to establish local preferences between the date of enactment of the Act and approval of the PHA plan.

Section 108. Expansion of powers

This section amends section 6 of the 1937 Act involving troubled PHAs.

Subsection (a) establishes procedures for dealing with troubled housing authorities. At the Secretary's discretion, this section provides troubled PHAs with one year to demonstrate improvement. If the PHA has not demonstrated satisfactory improvement after one year, the Secretary must declare the agency in substantial default and either petition for a receiver or take possession of the PHA or any of its projects.

Subsection (a) also provides additional powers where HUD or a receiver has taken over a PHA to: abrogate contracts impeding correction of the substantial default; demolish or dispose of PHA properties and transfer ownership to resident-supported nonprofit entities; break up the troubled PHA into one or more new PHAs; and preempt State or local law relating to civil service requirements, employee rights, procurement, or financial controls which substantially impede the correction of the substantial default.

Subsection (b) states that this section applies to PHAs found to be in substantial default on or after the date of enactment.

Section 109. Public housing designated for the elderly and disabled

This section amends section 7 of the 1937 Act involving designated housing.

Subsection (a) allows a PHA to designate developments (or portions thereof) for the elderly, disabled or both. It eliminates current onerous requirements for HUD approval of the designation of this housing, which have limited the ability of PHAs to reasonably designate housing.

Subsection (b) allows a PHA to offer units to "near-elderly" families in developments designated for the elderly where there are not enough elderly families to fill the units in the designated housing.

Subsection (c) states that the decision by a disabled family not to occupy a unit or accept assistance shall not adversely affect the family with respect to a PHA offering them another public housing unit or other assistance.

Subsection (d) prohibits the eviction of any tenant who is lawfully residing in a unit as a result of the designation of the project.

Subsection (e) denies occupancy to any person in a designated project where that person's illegal use (or pattern of illegal use) of drugs or abuse (or pattern of abuse) of alcohol constitutes a disability and provides a PHA with reasonable cause to believe that such person's occupancy in such housing could interfere with the health, safety, or right to peaceful enjoyment of the project by the tenants. Subsection (e) also requires an applicant for designated housing to sign a statement stating that no person who will be occupying the unit illegally uses drugs or abuses alcohol in a manner that would

interfere with the health, safety, or right of peaceful enjoyment of the tenants of the project.

Section 110. Public housing capital and operating funds

This section rewrites section 9 of the 1937 Act involving annual contributions.

Under the amended section 9, all public housing programs are merged into two funds, a Capital Fund and Operating Fund. Under this section, the Capital Fund, in general, may be used for: development and modernization, vacancy reduction, deferred maintenance, code compliance, management improvements, demolition and replacement, tenant relocation, empowerment activities, and security.

This section provides several factors for HUD to consider in developing the Capital Fund formula including: the number of units and percentage occupied by very low-income families, the number of units converted to vouchers; the costs to rehabilitate; reconstruct, develop; or demolish units; the degree of household poverty; security costs; and the ability of the PHA to administer effectively the Capital Fund.

Under this section, the Operating Fund may be used for: management systems, routine preventative maintenance, anti-crime and anti-drug activities, tenant services, resident management activities, operation of mixed-income projects, insurance, energy costs, and administration of the public housing work program under section 12.

This section provides several factors for HUD to consider in developing the Operating Fund formula including: operating costs, the number of units and percentage occupied by very low-income families, the degree of household poverty, activities to promote economic self-sufficiency, the number of chronically vacant units, security costs, and costs to administer effectively the Operating Fund.

The amended section 9 also: (1) allows a PHA to use up to 20 percent of its Capital Fund for activities eligible under the Operating Fund; (2) disallows the use of assistance under the Capital or Operating Funds for the construction of public housing that would result in a net increase in the number of public housing units owned and operated by the PHA; (3) requires HUD to provide operating and capital assistance directly to resident management corporations managing public housing projects under contract with a PHA; (4) calls for HUD to establish formulae and programs for Indian housing programs; (5) authorizes HUD to provide technical assistance (TA) funds to PHAs and resident organizations including training and TA to PHAs at risk of becoming troubled or already troubled; (6) includes a two percent set-aside for emergencies, settlement of litigation, and costs to administer a witness relocation program with the Department of Justice; (7) requires the formulae for the Capital and Operating Funds to be established through negotiated rulemaking and provides for a transition period whereby operating and modernization funds would be allocated to PHAs according to current distribution mechanisms under sections 9 and 14 of the 1937 Act; and (8) authorizes drug elimination grants for use in eliminating drug-related crime and drug elimination clearinghouse services, but sunsets the program October 1, 1998.

Section 111. Labor standards

This section amends section 12 of the 1937 Act involving labor standards.

Section 111 adds a new Subsection (c) to section 12 that requires adult members of families to contribute at least 8 hours of volunteer work within the community in which the adult resides. Such volunteer work may not include political activity. Exceptions from the work requirement include the elderly, the disabled, those working 20 hours per week, students, those receiving vocational training, those otherwise meeting work requirements of a public assistance program, or single parents who are primary caretakers of children under 6.

Section 112. Repeal of energy conservation; consortia and joint ventures

This section repeals section 13 of the 1937 Act, which requires life cycle cost analyses of energy systems for new construction and modernization developments.

Section 112 establishes a new section 13 that permits any two or more PHAs to form a consortium to receive assistance and allows PHAs to enter into joint ventures, partnerships or other business arrangements with other entities to administer public housing programs.

Section 113. Repeal of modernization fund

This section repeals the public housing modernization program in section 14 of the 1937 Act and makes numerous technical and conforming amendments.

Section 114. Income eligibility for assisted housing

This section replaces section 16 of the 1937 Act involving income eligibility for public housing and tenant-based assistance.

Subsection (a) states that for any units or vouchers that become available each year, PHAs are allowed to serve families up to 80 percent of the area median income, but requires that 75 percent of the units or vouchers be made available to families with incomes at or below 60 percent of the area median, and 40 percent of the units or vouchers be made available to families with incomes at or below 30 percent of the area median.

Subsection (a) also requires PHAs to achieve a diverse income mix among tenants in each development and among scattered site public housing.

Subsection (b) denies housing assistance to any person who the PHA determines is illegally using drugs or if the PHA has reasonable cause to believe that such person's illegal use (or pattern of illegal use) of drugs or abuse (or pattern of abuse) of alcohol could interfere with the health, safety, or right of peaceful enjoyment of other tenants. Subsection (b) also allows a PHA to evict a tenant who is illegally using drugs or whose illegal use of drugs or abuse of alcohol, is determined by the PHA to interfere with the health, safety, or right of peaceful enjoyment of the premises by tenants of the public housing project.

Subsection (c) states that these provisions do not apply to Indian housing.

Section 115. Demolition and disposition

This section replaces section 18 of the 1937 Act concerning the demolition and disposition of public housing.

Section 115 makes the following amendments to section 18: (1) streamlines the requirements for demolition and disposition; (2) establishes standards that PHAs must meet in order to sell or demolish public housing units (In order to demolish a project, a PHA must certify that the project is obsolete and not cost-effective to rehabilitate. In order to sell a project, the PHA must certify that its retention is not in the best interests of the tenants or the PHA); (3) allows HUD to disapprove an application for demolition and disposition if it determines that any certification made by the PHA is clearly inconsistent with the information available to HUD; (4) provides tenants with the opportunity to purchase developments in the case of proposed sales—not demolitions; (5) permits any replacement units to be built on the same site but only if the number of replacement units is fewer than the number of units demolished; and (6) repeals the one-for-one replacement requirement.

Section 116. Repeal of family investment centers; voucher system for public housing

Subsection (a) amends section 22 of 1937 Act by repealing the program for family investment centers and replacing it with a new section involving a voucher system for public housing.

Section 22, as amended: (1) allows PHAs to develop a plan to convert public housing units to a system of tenant-based assistance (or vouchers); (2) requires PHAs to develop a conversion assessment within 2 years of enactment (The assessment must include a cost analysis, market analysis, impact analysis on the affected community, and a plan to achieve such a conversion if the PHA intends to take any action with regard to converting any developments to vouchers); (3) allows HUD to waive the assessment requirement for some projects or classes of projects or allow for a streamlined assessment; (4) allows a PHA to implement a conversion plan if the conversion assessment demonstrates that the conversion will principally benefit the residents, PHA, and community; if the costs of conversion do not exceed the costs of continued operation as public housing; and if the plan is not inconsistent with the data available to HUD or with the PHA's assessment plan; and (5) states that the funds to provide vouchers shall be added to the housing assistance payment contract.

Subsection (b) includes a savings provision for any contracts under the Family Investment Centers program entered into prior to date of enactment of this Act.

Section 117. Repeal of family self-sufficiency; homeownership opportunities

Subsection (a) amends section 23 of the 1937 Act by repealing the Family Self-Sufficiency Program and replacing it with a new section allowing PHAs to sell their units to their residents and allowing PHAs to provide assistance to residents to purchase a home. Section 23, as amended: (1) includes purchase requirements that require tenants to occupy the property as their principal residence and to certify that they will occupy the property for one year and

require PHAs to recapture 75 percent of the proceeds if a family sells the property within one year; (2) allows PHAs to use sale proceeds for low-income housing consistent with its public housing agency plan; and (3) allows PHAs to use operating or capital funds or other earned income to provide assistance to residents to purchase a principal residence, including a residence other than public housing.

Subsection (c) makes it clear that the amendments made by this section do not affect any contracts under the Family Self-Sufficiency Program entered into prior to the date of enactment of this Act.

Section 118. Revitalizing severely distressed public housing

This section rewrites section 24 of the 1937 Act involving the revitalization of several distressed public housing. This new simplified program allows HUD to provide competitive grants to PHAs for demolition of obsolete projects, site revitalization and replacement housing. The competition will be based on: (1) the need for additional resources; (2) the need for affordable housing; (3) the supply of other housing available and affordable to voucher holders; and (4) the local impact of the proposed revitalization.

This section sunsets the grant program on October 1, 1998.

Section 119. Mixed-income and mixed-ownership projects

This section adds a new section 28 to the 1937 Act to allow PHAs to own, operate, or assist in the development of mixed-income projects. The proportion of public housing units to total units should equal the proportion of public housing financial commitment to total financial commitments in the mixed-income project.

The new section 28 permits a mixed-income development to elect to have all units taxable, or for the PHA to elect that the public housing units that are part of the mixed income development be exempt from local taxes. Where a PHA is unable to fulfill its contractual obligations to a mixed-income development as a result of a reduction in appropriations for capital or operating funds, this section allows the entity that owns or operates the development to deviate (under regulations developed by HUD) from otherwise applicable restrictions governing public housing rents and income eligibility to preserve the viability of the units.

Section 120. Conversion of distressed public housing to tenant-based assistance

This section adds a new section 29 to the 1937 Act that requires, to the extent provided for in appropriations, each PHA, in consultation with tenants and the local government, to identify public housing units that are distressed and develop a plan for removal of such units over a five year period. Public housing agencies shall use guidelines based on criteria established by the National Commission on Severely Distressed Public Housing in determining which projects are distressed.

The new section 29 requires a PHA to provide families with notification of the elimination of the distressed units and provide affected families with vouchers, other project-based section 8, or units in another public housing project. Where the PHA fails to

adequately develop or implement a plan for removing distressed properties from the public housing inventory, this section requires HUD to take actions to ensure the removal of such units.

Section 121. Public housing mortgages and security interests

This section adds a new section 30 to the 1937 Act to allow PHAs to mortgage or grant a security interest in any project where approved by HUD. Each mortgage or security interest must have a term that is consistent with the terms of private loans in the market area and that does not exceed 30 years, and have conditions that are consistent with conditions to which private loans in the market area are subject.

Section 122. Linking services to public housing residents

This section adds a new section 31 to the 1937 Act to allow HUD to make grants to PHAs, resident management corporations, resident councils, or resident organizations for supportive services and resident empowerment activities to assist public housing residents in becoming economically self-sufficient.

Grants may be used for: physical improvements to a public housing project in order to provide space for supportive services for residents; the provision of service coordinators; the provision of services related to work readiness; resident management activities; and other activities designed to improve the self-sufficiency of residents.

The new section 31 requires that $25,000,000 of the amount appropriated for this program be made available to resident councils, resident organizations, and resident management corporations.

Section 123. Applicability to Indian housing

This section states that except as otherwise provided, amendments made by this bill are also applicable to Indian housing.

Title II—Section 8 Rental Assistance

Section 201. Merger of the certificate and voucher programs

This section amends section 8(o) of the 1937 Act to create a single tenant-based assistance program from the section 8 existing certificate and voucher programs. Some of the features of the new voucher program include the following:

(1) *Payment standard.*—Public housing agencies (PHA) may set a payment standard above 90 percent of HUD's fair market rents (FMR) and below 120 percent of the FMR. The subsidy value is generally the difference between the payment standard and 30 percent of a tenant's adjusted income.

(2) *Rent burden cap.*—If the tenant wishes to lease a unit where the initial rent on a unit exceeds the payment standard, tenants may pay the difference up to 40 percent of their income.

(3) *Program eligibility.*—Eligibility remains the same as current law. Those who qualify include very low-income families, previously assisted families, low-income families, families that qualify under a homeownership program, and certain families that reside in properties eligible for preservation incentives.

(4) *Local preferences.*—PHAs are allowed to establish local preferences consistent with their public housing agency plan. (Federal preferences are repealed in Section 202.)

(5) *Drug evictions.*—Voucher holders who have been evicted from housing for drug-related criminal activity are ineligible for assistance during a 3-year period from the date of such eviction, unless the tenant successfully completes a rehabilitation program.

(6) *"Endless lease."*—The amendment eliminates the "endless lease" rule, which prevents an owner from terminating a section 8 tenancy unless the owner institutes court action. The new program: (a) permits PHAs to approve section 8 leases for a term of not less than one year unless a shorter lease term will improve the tenant's housing opportunities; (b) allows owners to use a standard market lease that is used in the locality by the owner; and (c) clarifies that a section 8 tenant would have access to remedies under State, tribal, and local law on the same basis as any other tenant.

(7) *Inspection of Units.*—PHAs are required to inspect section 8 units periodically to ensure that the units meet decent and safe housing quality standards (HQS) established by HUD, the local housing agency, or local codes, whichever are stricter and do not severely restrict housing choice. The provision also requires that HUD designate another entity to make inspections and rent determinations for units that are owned by PHAs.

(8) *Expedited inspection demonstration project.*—The new voucher program retains current requirements for a PHA to inspect units to assure they meet HQS but also provides for the creation of a demonstration program where HUD would establish procedures that would expedite the inspection process. The demonstration would also test procedures in expediting repairs of section 8 units.

(9) *Rent reasonableness.*—PHAs are required to check for rent reasonableness in the same way that they do under the existing tenant-based programs. Families may also request PHA assistance in negotiating a reasonable rent.

(10) *Timely payments.*—PHAs are required to make timely payments of rent to owners or they could be subject to late payment penalties in cases where PHAs are responsible for the late payment and where late fees are permissible under local law. In these cases, the penalties will be paid out of the PHA's administrative fees.

(11) *Manufactured housing.*—Rental assistance is still permissible to families who own a manufactured home and rent the property on which the home is located.

(12) *Project-basing.*—PHAs will have the discretion to project-base up to 15 percent of their section 8 vouchers.

(13) *Elimination of "shopping incentive."*—The bill deletes the provision which allows families to pay less rent if they lease a unit renting for less than the payment standard.

Section 202. Repeal of Federal preferences

This section repeals Federal preferences for all section 8 programs—both project-based and tenant-based.

Section 203. Portability

The state/metropolitan portability feature is expanded to a national level. Also, discretion is provided to HUD for creating a pool

to reimburse PHAs which lose vouchers to tenants leaving their jurisdictions. The reimbursement pool will allow the receiving PHA to absorb the new vouchers without a loss to the sending PHA. This section also prohibits assisted households from receiving a voucher if they have moved out of their unit in violation of a lease.

Section 204. Leasing to voucher holders

This section eliminates the "take one, take all" rule, which requires owners to accept all section 8 tenants once they have begun participating in the program.

Section 205. Homeownership option

This section amends the current homeownership option authority by allowing voucher holders to obtain homeownership through shares in a cooperative housing development, whether or not the family is a first-time homeowner. The provision also alters the assistance formula for families receiving assistance for homeownership which would make it comparable to the new formula for tenant-based assistance. Further, the provision allows PHAs to contract with a nonprofit entity to administer the program.

Current law allows families participating in the Family Self-Sufficiency (FSS) program to participate in the homeownership program regardless of income. The bill amends the law by allowing participation only if the PHA determines that the families have sufficient resources.

Section 206. Technical and conforming amendments

This section repeals the 90-day notice requirement which compels a landlord to provide a 90-day notice to HUD when the landlord decides to terminate a section 8 contract.

This section also repeals the Moving to Opportunity demonstration program authority.

Section 207. Implementation

This section requires that HUD use negotiated rulemaking procedures to develop regulations that carry out the amendments made by this Act.

Section 208. Effective date

This section provides that the amendments made by Title II shall be effective not later than 1 year after the date of enactment of this Act.

Title III—Miscellaneous Provisions

Section 301. Public housing flexibility in the CHAS

This section amends the 1990 National Affordability Housing Act to require that the Comprehensive Housing Affordability Strategy (CHAS) include a description of how the jurisdiction will help address the needs of public housing and coordinate with the local public housing agency plan.

Section 302. Repeal of certain provisions

This section repeals section 957 of the 1990 National Affordable Housing Act and Section 923 of the Housing and Community Development Act of 1992 involving income disregards. Neither section has been implemented.

Section 303. Determination of income limits

This section excludes Rockland County, NY from the New York City metropolitan area for purposes of determining the income level of low-income families.

Section 304. Demolition of public housing

This section permits the demolition of certain public housing units that were prohibited from being demolished by section 415 of the Department of Housing and Urban Development—Independent Agencies Appropriations Act of 1988.

CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirements of paragraph 12 of Rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11 of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement regarding the regulatory impact of the bill.

On balance, the Committee believes that the various provisions of the reported measure would reduce regulatory and administrative burdens. In addition to significant programmatic reforms, the Committee bill would sunset all existing rules, regulations or orders issued under the United States Housing Act of 1937, unless they are re-proposed by the Department of Housing and Urban Development (HUD).

Title I of the bill would consolidate approximately 10 separate programs into two formula block grants, and it provides for substantially less Federal regulation of the day-to-day management and operation of well-run housing authorities. It reduces or eliminates numerous program requirements that public housing authorities have found particularly burdensome or costly, and which frequently have required up-front approval by HUD. These include providing increased flexibility in the use of public housing modernization funds, repeal of certain requirements for the demolition and disposition of public housing; and repeal of the Family Self-Sufficiency Program, which is an unfunded mandate.

Title II of the bill would consolidate two parallel rental assistance programs and streamline program requirements for both public housing authorities and private rental property owners.

The Committee does create a new public housing agency planning process, and requires most housing authorities to conduct a one-time assessment of the costs of administering each of their public housing developments. The bill also would establish a work requirement for some public housing residents, which housing authorities would be required to administer. However, the Committee

believes that any cost that might be incurred in administering this program could be offset by having participating residents themselves administer it.

COST ESTIMATE

In accordance with rule XXVI(11)(a), the Committee submits the following estimate of the costs of S. 1260 prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 18, 1995.

Senator ALFONSE M. D'AMATO,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office (CBO) has reviewed S. 1260, the Public Housing Reform and Empowerment Act of 1995, as ordered reported by the Committee on Banking, Housing, and Urban Affairs on October 26, 1995. This bill would extensively revise the major programs through which the U.S. Department of Housing and Urban Development (HUD) provides housing assistance to low-income households.

IMPACT ON THE FEDERAL GOVERNMENT

Although the bill would reduce HUD's administrative role in assisted housing, federal funding through the annual appropriations process would remain the major source of program financing. S. 1260 does not authorize any appropriations, nor does CBO estimate that the bill would have any effects on direct spending. Therefore, pay-as-you-go procedures would not apply to this bill.

Title I of the bill would establish a capital fund and an operating fund into which would be placed any sums appropriated for fiscal year 1998 or later. The capital fund would be used to finance the development and modernization of public housing projects and other activities specified in the bill. The operating fund would make assistance available to local public housing agencies (PHAs) to assist them to meet this operating and management responsibilities. The Congress provided $6.0 billion dollars in fiscal year 1995 for these activities.

The bill would give PHAs considerably more flexibility to set tenant rents and would provide the PHAs with other management options as well. The Secretary of HUD, however, would be given more power to control or, if necessary, dispose of seriously troubled housing projects.

Title II would amend section 8 of the United States Housing Act of 1937. Section 8 includes the principal low-income rental assistance program of the federal government. The bill would replace the two methods currently authorized for tenant-based assistance. Assistance would still be directed to households with low or very-low incomes, and rents would still be based on similar, unassisted units. As with public housing, local housing authorities would have more control over the management of the program at the local level.

The basic costs of providing housing assistance to low-income tenants through PHAs would not be significantly affected by S. 1260, but the bill could affect the amount of resources the department would need to administer the programs. Initially, S. 1260 would require HUD to issue new regulations implementing the revised program, but it would also reduce the budgetary resources needed to run the program in the longer run. The precise timing and amount of these resource requirements would depend upon the nature and number of new regulations the department eventually would issue, and these cannot be predicted at this time.

IMPACTS ON STATE AND LOCAL GOVERNMENTS

CBO estimates that the provisions of S. 1260 would affect public and Indian housing agencies (PHAs) by imposing some new reporting and public review requirements on them that could result in short-term costs totaling about $40 million in the first year. Some of these costs could continue into future years if PHAs hire permanent staff to meet these requirements. The bill would also provide these agencies flexibility in managing programs that could result in long-term savings that would at least partially offset these costs.

New Reporting and Public Review Requirements.—S. 1260 would require PHAs to submit a comprehensive plan to HUD that would provide much of the information that HUD currently requires in one form or another. Because PHAs would have to provide new information and aggregate existing information from various reports into a new document (possibly in a new format), CBO expects that many PHAs would be required to hire consultants or additional staff.

PHAs would also be required to establish a new public review process by creating local advisory boards. These new boards would be responsible for reviewing and commenting on the plans developed by the PHAs. CBO believes that the introduction of new public boards would result in delays in carrying out the new plan and additional constraints on PHA staff resources.

CBO estimates that the nation's approximately 3,300 PHAs would incur additional costs that vary between $10,000 and $25,000 per agency. Small housing agencies (those with under 250 units) would likely incur costs at the higher end of the range because of limited staff resources. The bill would allow HUD to permit streamlined plans for certain PHAs, and we estimate that more than two-thirds of all PHAs would qualify to submit such plans. For purposes of this estimate, we assume that HUD would allow streamlined plans, and estimate that compliance costs for PHAs submitting such plans would vary between $5,000 and $12,500 per agency. In total, CBO estimates compliance costs to be approximately $40 million in the first year.

The bill does not provide any additional funds to PHAs for implementing these plans nor does it provide for any penalties for noncompliance. CBO assumes that PHAs would pay these costs out of the operating subsidies or administrative fees that they receive from the federal government. To the extent these funds are used for development of these new plans, PHAs would have to reorganize their priorities and reduce other spending.

Public Housing Agency Flexibility.—S. 1260 would provide PHAs flexibility to repealing all rules, regulations, and orders currently pertaining to public housing programs and requiring HUD to implement new rules and regulations. The new regulations under S. 1260 would be less restrictive than current regulations, thereby easing to administrative burdens borne by the PHAs. For instance, greater flexibility in setting rents might allow PHAs to increase their rental income over the long term. This flexibility could lead to savings for PHAs. CBO cannot predict what types of regulations would be issued by HUD or how the PHAs would respond, and thus we cannot estimate the savings at this time.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, *Director*).

ADDITIONAL VIEWS OF SENATOR FAIRCLOTH

I support S. 1260. This legislation is a good first step in reforming public housing, however, I personally believe that public housing has been a failure and may be beyond simple reform.

I question whether public housing is the method that we should use to meet affordable housing needs. This year the U.S. will spend over $10 billion on housing assistance. The federal government will also provide nearly $3 billion in operating subsidies to public housing authorities. We simply cannot afford to continue increasing the public housing stock. We have to provide more housing vouchers for assistance and provide incentives to the private sector to increase the stock of affordable housing.

Because of these concerns, an important part of this bill is the limit on building new public housing. At the Committee mark-up, I offered an amendment to *stop* construction of public housing that would cause there to be a net increase in new public housing units.

Beyond this issue, S. 1260 has some very good provisions, chief among them is the work requirement as contained in section 111 of the bill. Last year, I offered this as an amendment to housing legislation. I strongly believe that the state of public housing, its safety and physical condition, will be greatly improved if residents are required to volunteer eight hours a month within the community.

I also support the provision in S. 1260 that encourages public housing authorities to develop policies that reward employment and economic self sufficiency. Further, in order to improve the safety of public housing, S. 1260 allows police officers to live in public housing even though they might not otherwise qualify for public housing assistance.

Section 106 of S. 1260 requires each public housing agency to develop a comprehensive annual plan demonstrating its commitment to many important goals. Unfortunately, under the bill, the Secretary is permitted to develop an alternative "streamlined plan" for small and high-performing public housing authorities. This provision may exclude nearly 80% of the public housing authorities from having to develop the comprehensive plan.

Section 107 of the bill allows public housing authorities to access criminal records of tenants for screening and eviction purpose. I am concerned that this may be unfairly limited to just "convictions" and not criminal arrest records. Further, accessing the records is limited to five prior years, which I think is too short a time period.

Section 116 permits public housing authorities to convert public housing units to vouchers that are tenant based assistance. This section requires each public housing authority to undergo a conversion assessment plan, including a cost analysis to determine if a conversion to vouchers would be less expensive. Regrettably, under the bill, even if the PHA determines that vouchers would be less expensive, there is no hard trigger requiring them to make such a conversion. I support a mandatory conversion if it would be less expensive to convert to vouchers.

Section 120 of the legislation requires that all distressed public housing be converted to housing vouchers. I strongly support this provision, however, it is conceivable that the bill permits this to done over a ten year period, not five years. I prefer the shorter time period with no extensions.

Finally, I regret that the bill does not address the long term future of the Department of Housing and Urban Development (HUD). HUD was created in 1965. When it was created, the purpose of this Department was to revitalize our urban areas and provide safe, decent housing for all Americans.

In short, I think HUD has been an enormous failure. Since 1965, HUD has spent hundreds of billions of dollars—that adjusted to inflation—probably exceeds a trillion dollars. Yet today, despite this massive spending, I do not think the American people are any better off.

HUD is a massive bureaucracy with over 11,000 employees. It has over 240 housing programs—so many that the Secretary of HUD did not even know HUD had that many. HUD has over $192 billion dollars in un-used budget authority. HUD has even entangled the American taxpayer in 23,000 long term contracts that run until the year 2020.

HUD's spending is increasing so rapidly that by the year 2000, housing assistance will be the largest discretionary spending function in our budget.

Knowing all of this, I do not see how the U.S. can afford not to abolish HUD. I have often said that if one wanted to provide housing assistance to four million families, would anyone design the current HUD has the method to do so.

At Committee, I offered a reasonable approach for eliminating HUD. I proposed that HUD remain a Cabinet Department for another three years until October 1, 1998.

In the interim, the amendment I offered in Committee calls for a GAO study, a CBO study, and finally, a Presidential Commission to study housing and make recommendations for eliminating HUD.

This would put in place a time certain by which HUD would not exist. The comprehensive studies would allow time and careful consideration to eliminate HUD and permit a redesign of America's

housing programs. I think this is a necessary part of any housing bill that this Congress considers.

LAUCH FAIRCLOTH.

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