

103^D CONGRESS
2^D SESSION

H. R. 5115

To improve the management of the project-based rental assistance program under section 8 of the United States Housing Act of 1937.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 1994

Mr. PETERSON of Minnesota introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

A BILL

To improve the management of the project-based rental assistance program under section 8 of the United States Housing Act of 1937.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Section 8 Project-
5 Based Program Management Improvement Act of 1994”.

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 The Congress finds that—

8 (1) approximately 30 percent of the multifamily
9 housing projects provided project-based assistance
10 under section 8 of the United States Housing Act of

1 1937 (in this section referred to as “assisted
2 projects”) do not meet the housing quality standards
3 established by the Department of Housing and
4 Urban Development (in this section referred to as
5 the “Department”), but do meet the standards for
6 classification as “troubled projects”;

7 (2) of the current total of more than 20,000 as-
8 sisted projects, 10,000 are subject to mortgages in-
9 sured by the Department;

10 (3) the Department cannot identify which as-
11 sisted projects are troubled projects;

12 (4) the Department is not adequately inspecting
13 assisted projects nor ensuring that necessary repairs
14 are made to assisted projects;

15 (5) the Department is not taking aggressive en-
16 forcement action against the owners of such troubled
17 assisted projects;

18 (6) the Inspector General of the Department
19 has indicated that aggressive enforcement action is
20 not routinely taken against owners of such troubled
21 assisted projects but is taken only in rare cir-
22 cumstances;

23 (7) many of the administrative sanctions avail-
24 able to improve the conditions and operation of as-

1 sisted projects would not detrimentally affect the
2 tenants of the projects;

3 (8) the inability of the Department to remedy
4 the problems of troubled assisted projects results
5 from a variety of factors, including poor manage-
6 ment, inadequate data systems, staff shortages, and
7 a lack of program accountability;

8 (9) the Department has not conducted a com-
9 plete assessment of troubled assisted projects, but
10 should conduct such an assessment, which should in-
11 clude—

12 (A) conducting a financial and cost-benefit
13 analysis of each troubled assisted project to de-
14 termine proper remedial actions; and

15 (B) examining the social impact the
16 projects have on the tenants, owners, and com-
17 munities of the projects.

18 (10) the rents charged for many of the dwelling
19 units in assisted projects are excessive in comparison
20 to comparable unassisted dwelling units located in
21 the same area;

22 (11) a report issued by the Department in 1993
23 which analyzed 4,125 assisted projects determined
24 that, for 42 percent of such projects, the rents
25 charged for dwelling units in the project were equal

1 to or exceeded 140 percent of the market rents for
2 dwelling units in the area of the project;

3 (12) in 1989 the Congress directed the Depart-
4 ment to issue regulations for conducting rent com-
5 parability reviews, which examine the difference be-
6 tween the rents charged for dwelling units assisted
7 by the Department and similar unassisted dwelling
8 units in the same neighborhood;

9 (13) although the Department issued a pro-
10 posed rule regarding rent comparability reviews in
11 1992, a final rule has not been issued before the
12 date of the enactment of this Act; and

13 (14) the Department has placed a moratorium
14 on conducting rent comparability reviews until the
15 publication of the final rule and, therefore, owners
16 of dwelling units assisted by the Department are
17 currently receiving automatic rent adjustments with-
18 out scrutiny by the Department and will continue to
19 receive such automatic adjustments until publication
20 of the final rule.

21 **SEC. 3. IDENTIFICATION AND IMPROVEMENT OF TROU-**
22 **BLED PROJECTS.**

23 (a) IN GENERAL.—Title IV of the Housing and Com-
24 munity Development Act of 1992 (42 U.S.C. 1715z-1a

1 note) is amended by adding at the end the following new
2 subtitle:

3 **“Subtitle B—Identification and Im-**
4 **provement of Troubled Projects**
5 **Receiving Project-Based Section**
6 **8 Assistance**

7 **“SEC. 421. IDENTIFICATION.**

8 “Not later than 30 days after the commencement of
9 the analysis period (as such term is defined in section
10 426), the Secretary shall—

11 “(1) review all housing projects (as such term
12 is defined in section 426) to determine which
13 projects meet the criteria established under section
14 422 for classification as troubled and severely trou-
15 bled housing projects;

16 “(2) classify the housing projects meeting such
17 criteria as troubled and severely troubled, as appro-
18 priate; and

19 “(3) submit to the Congress a list of the
20 projects classified as troubled and severely troubled.

21 **“SEC. 422. CRITERIA FOR CLASSIFICATION AS TROUBLED**
22 **AND SEVERELY TROUBLED HOUSING**
23 **PROJECTS.**

24 “(a) TROUBLED HOUSING PROJECTS.—A housing
25 project shall be classified as troubled if—

1 “(1) the Secretary determines that financial as-
2 sistance for the project is necessary, in addition to
3 the assistance provided under the contract for
4 project-based assistance for the project, to enable
5 the project—

6 “(A) to meet the financial obligations se-
7 cured by or relating to the project; or

8 “(B) to provide the quality of housing and
9 services required under the contract for project-
10 based assistance for the project or the regu-
11 latory agreements relating to the project; and

12 “(2) the project does not meet the criteria es-
13 tablished under subsection (b)(2).

14 “(b) SEVERELY TROUBLED HOUSING PROJECT.—A
15 housing project shall be classified as severely troubled if
16 the Secretary determines that the project—

17 “(1) meets the criteria for classification as a
18 troubled housing project; and

19 “(2) meets such additional criteria, as the Sec-
20 retary shall establish, indicating severe financial or
21 physical problems with the project.

22 **“SEC. 423. FINANCIAL AND SOCIAL IMPACT ANALYSIS.**

23 “(a) SEVERELY TROUBLED PROJECTS.—Not later
24 than the conclusion of the 6th month of the analysis pe-
25 riod, the Secretary shall conduct a financial and social im-

1 pact analysis under this section for each severely troubled
2 housing project. During such 6-month period, the Sec-
3 retary shall complete such analyses for severely troubled
4 housing projects at a rate of not less than $\frac{1}{6}$ of the total
5 number of severely troubled housing projects per month.

6 “(b) TROUBLED PROJECTS.—Not later than the ex-
7 piration of the analysis period, the Secretary shall conduct
8 a financial and social impact analysis under this section
9 for each troubled housing project. During the 12-month
10 period beginning 6 months after the commencement of the
11 analysis period, the Secretary shall complete such analyses
12 for troubled housing projects at a rate of not less than
13 $\frac{1}{12}$ of the total number of troubled housing projects per
14 month.

15 “(c) CONTENTS OF ANALYSIS.—Each financial and
16 social impact analysis conducted under this section for a
17 troubled or severely troubled housing project shall include
18 the following information regarding the project:

19 “(1) BACKGROUND INFORMATION.—

20 “(A) The number of units in the project,
21 the number of units in the project of each bed-
22 room size, the number of units in the project
23 assisted under the contract for project-based as-
24 sistance for the project, the amount of rent
25 charged for each dwelling unit in the project,

1 and the vacancy rate for dwelling units in the
2 project.

3 “(B) The type and amount of assistance
4 provided monthly and annually for the project
5 under the contract for project-based assistance,
6 the original term of the contract, and the re-
7 maining term of the contract.

8 “(C) Any actions previously taken or as-
9 sistance previously provided (in addition to as-
10 sistance under the contract for project-based
11 assistance) to assist the project.

12 “(D) The rents for comparable unassisted
13 dwelling units in the area in which the project
14 is located.

15 “(2) FINANCIAL INFORMATION.—

16 “(A) If the project is subject to a mortgage
17 insured under the National Housing Act, the
18 program under which such insurance is pro-
19 vided, whether the loan secured by the mort-
20 gage is delinquent, in default, or current, and
21 if delinquent or in default, the amount of ar-
22 rears, outstanding balance, interest rate, and
23 remaining term of the delinquent or defaulted
24 loan.

1 “(B) The most recent statement of project
2 income and expenses, which shall be an audited
3 financial statement, if practicable.

4 “(C) The amount of the balance in any re-
5 serve accounts for the project.

6 “(D) The estimated cost of any rehabilita-
7 tion necessary to maintain the project in ac-
8 cordance with applicable building and safety
9 standards and codes or to bring the project into
10 compliance with such standards and codes.

11 “(E) Any Federal, State, local, or private
12 programs or other sources of financing for re-
13 habilitation expenses for the project for which
14 the project is eligible.

15 “(F) The amount of monthly rental reve-
16 nue necessary per dwelling unit to fully support
17 the sum of rehabilitation costs under subpara-
18 graph (D) for the project, the costs of operating
19 the project, and the costs of maintaining the
20 project in accordance with applicable building
21 and safety standards.

22 “(G) The estimated revenue losses result-
23 ing from vacancies in dwelling units in the
24 project.

1 “(3) COMPARISON OF AVAILABLE OPTIONS.—A
2 description, analysis, and comparison of the feasibil-
3 ity, effectiveness, and costs of various actions that
4 may be taken to resolve or remedy the factors result-
5 ing in the project being classified as troubled or se-
6 verely troubled, as the case may be, which actions
7 shall include—

8 “(A) continuing or increasing the amount
9 of assistance provided for the project under the
10 contract for project-based assistance;

11 “(B) imposing or enforcing sanctions
12 against the owner of the project for failure to
13 comply with conditions of the contract for
14 project-based assistance or regulatory agree-
15 ments relating to the project;

16 “(C) providing assistance to rehabilitate
17 the project;

18 “(D) providing tenant-based assistance for
19 the residents of dwelling units in the project to
20 be used to obtain dwelling units elsewhere;

21 “(E) providing assistance for the project
22 under other programs administered by the Sec-
23 retary of Housing and Urban Development;

1 “(F) if the project is subject to a mortgage
2 insured under the National Housing Act, fore-
3 closing the mortgage; and

4 “(G) any other actions the Secretary or
5 the owner consider appropriate for the project.

6 “(4) SOCIAL IMPACT INFORMATION.—

7 “(A) Pursuant to a survey involving direct
8 interviews with a representative number of ten-
9 ants of the project, a description of the atti-
10 tudes of tenants of the project regarding resid-
11 ing—

12 “(i) in the project under the condi-
13 tions existing in the project;

14 “(ii) in the project after the project is
15 rehabilitated; and

16 “(iii) in dwelling units not located in
17 the project using tenant-based assistance
18 provided under section 8 of the United
19 States Housing Act of 1937.

20 “(B) An identification and description of
21 the community or neighborhood in which the
22 project is located and the living conditions in
23 the community or neighborhood.

24 “(C) A description of the financial invest-
25 ment and interest in the project of the owner

1 of the project and of the extent of control by
2 the owner over the management of the project.

3 “(D) An analysis of the economic incen-
4 tives and disincentives for investing additional
5 amounts of Federal assistance in the project.

6 “(E) A description of the reasons for clas-
7 sification of the project as troubled or severely
8 troubled, as the case may be, and the reasons
9 why the owner failed to prevent the financial
10 and physical conditions of the project from
11 reaching a state requiring such classification.

12 “(5) ADDITIONAL INFORMATION.—Any other
13 information that the Secretary considers appro-
14 priate.

15 “(d) PLAN FOR REMEDIAL ACTIONS.—Each financial
16 and social impact analysis conducted under this section
17 for a troubled or severely troubled housing project shall
18 include a plan of actions to be taken with respect to the
19 project to resolve or remedy the factors resulting in the
20 project being classified as troubled or severely troubled,
21 as the case may be, which shall include—

22 “(1) a plan for implementing one or more of
23 the actions described in subsection (c)(3) that the
24 Secretary has determined are feasible, cost-effective,
25 legally viable, and available for the project;

1 “(2) a description of the anticipated effects that
2 taking the actions pursuant to paragraph (1) will
3 have on—

4 “(A) tenants of project;

5 “(B) the community or neighborhood in
6 which the project is located; and

7 “(C) the owner of the project; and

8 “(3) a description of the reasons for selecting
9 the particular actions included in the plan pursuant
10 to paragraph (1).

11 “(e) COMPLIANCE WITH PLAN OF ACTION.—

12 “(1) IN GENERAL.—In making assistance avail-
13 able for a troubled or severely troubled housing
14 project, the Secretary shall comply with the plan of
15 actions established under subsection (d) for the
16 project (to the extent that amounts are available to
17 carry out such plan).

18 “(2) SEVERELY TROUBLED PROJECTS.—Not
19 later than the conclusion of the 6th month of the
20 analysis period, the Secretary shall, for each severely
21 troubled housing project, initiate the actions in-
22 cluded (pursuant to subsection (d)(1)) in the plan of
23 actions established under subsection (d) for the
24 project (to the extent amounts for such actions are
25 available).

1 “(3) TROUBLED PROJECTS.—Not later than the
2 expiration of the analysis period, the Secretary shall,
3 for each troubled housing project, initiate the actions
4 included (pursuant to subsection (d)(1)) in the plan
5 of actions established under subsection (d) for the
6 project (to the extent amounts for such actions are
7 available).

8 “(f) SUBMISSION OF ANALYSES TO CONGRESS.—
9 Upon the conclusion of each month during the analysis
10 period, the Secretary shall submit to the Congress a copy
11 of each financial and social impact analysis completed dur-
12 ing such month.

13 “(g) CRITERIA FOR CHOOSING REMEDIAL AC-
14 TIONS.—Not later than the expiration of the 30-day period
15 beginning on the date of the enactment of the Section 8
16 Project-Based Program Management Improvement Act of
17 1994, the Secretary shall establish, and submit to the
18 Congress, guidelines for determining which remedial ac-
19 tions described in subsection (c)(3) are to be included in
20 a plan of actions established under subsection (d) for a
21 troubled or severely troubled housing project.

1 **“SEC. 424. PROHIBITION OF ADDITIONAL ASSISTANCE BE-**
2 **FORE FINANCIAL AND SOCIAL IMPACT ANAL-**
3 **YSIS.**

4 “(a) PROHIBITION.—Notwithstanding any other pro-
5 vision of law, the Secretary may not provide assistance de-
6 scribed in subsection (b) for any housing project before
7 the completion of the financial and social impact analysis
8 for the project required under section 423.

9 “(b) PROHIBITED ASSISTANCE.—Assistance de-
10 scribed in this subsection is assistance provided—

11 “(1) pursuant to a commitment to provide such
12 assistance made after the date of the enactment of
13 the Section 8 Project-Based Program Management
14 Improvement Act of 1994; and

15 “(2) under—

16 “(A) the loan management set-aside pro-
17 gram under section 8 of the United States
18 Housing Act of 1937;

19 “(B) the flexible subsidy program under
20 section 201 of the Housing and Community De-
21 velopment Amendments of 1978; or

22 “(C) section 8 of the United States Hous-
23 ing Act of 1937, in the form of—

24 “(i) increases in maximum rents in
25 excess of the minimum amount required

1 under the existing contract for project-
2 based assistance for the project; or

3 “(ii) additional amounts for the
4 project not required under the existing
5 contract for project-based assistance for
6 the project.

7 **“SEC. 425. REPORT REGARDING LEGISLATIVE CHANGES.**

8 “Not later than the expiration of the 12-month period
9 beginning on the date of the enactment of the Section 8
10 Project-Based Program Management Improvement Act of
11 1994, the Secretary shall submit a report to the Congress
12 describing any legislative provisions necessary or appro-
13 priate to assist the Secretary in carrying out the purposes
14 of this subtitle.

15 **“SEC. 426. DEFINITIONS.**

16 “For purposes of this subtitle, the following defini-
17 tions shall apply:

18 “(1) ANALYSIS PERIOD.—The term ‘analysis
19 period’ means the 18-month period beginning on the
20 first day of the first month that commences after
21 the date of the enactment of the Section 8 Project-
22 Based Program Management Improvement Act of
23 1994.

24 “(2) HOUSING PROJECT.—The terms ‘housing
25 project’ and ‘project’ mean a multifamily housing

1 project for which project-based assistance is provided
2 pursuant to an existing contract for such assistance.

3 “(3) PROJECT-BASED ASSISTANCE.—The term
4 ‘project-based assistance’ means assistance provided
5 under section 8 of the United States Housing Act of
6 1937 that is attached to the structure pursuant to
7 subsection (d)(2) of such section.

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

10 “(5) SEVERELY TROUBLED HOUSING
11 PROJECT.—The term ‘severely troubled housing
12 project’ means a housing project that meets the cri-
13 teria established under section 422(b) and is classi-
14 fied by the Secretary as severely troubled pursuant
15 to section 421.

16 “(6) TROUBLED HOUSING PROJECT.—The term
17 ‘troubled housing project’ means a housing project
18 that meets the criteria established under section
19 422(a) and is classified by the Secretary as troubled
20 pursuant to section 421.

21 **“SEC. 427. REGULATIONS.**

22 “The Secretary may issue any regulations necessary
23 to carry out this subtitle.”.

1 (b) CLERICAL AMENDMENTS.—Title IV of the Hous-
2 ing and Community Development Act of 1992 (42 U.S.C.
3 1715z-1a note) is amended

4 (1) in sections 401, 402(a), 403(a), 404(a), and
5 404(e), by striking “title” each place it appears and
6 inserting “subtitle”; and

7 (2) by inserting after the title heading the fol-
8 lowing new subtitle heading:

9 **“Subtitle A—Comprehensive Needs**
10 **Assessments for Assisted Multi-**
11 **family Housing”**.

12 (c) CONFORMING AMENDMENT.—Section 201(n) of
13 the Housing and Community Development Amendments
14 of 1978 (12 U.S.C. 1715z-1a(n)) is amended by inserting
15 “subtitle A of” before “title IV of the Housing and Com-
16 munity Development Act of 1992”, each place it appears.

17 **SEC. 4. TERMINATION AND REUSE OF SECTION 8 HAP CON-**
18 **TRACT BUDGET AUTHORITY.**

19 Section 8 of the United States Housing Act of 1937
20 (42 U.S.C. 1437f) is amended by adding at the end the
21 following new subsection:

22 “(z) TERMINATION OF PROJECT-BASED CONTRACTS
23 AND REUSE OF RECAPTURED BUDGET AUTHORITY.—

24 “(1) GENERAL AUTHORITY.—The Secretary
25 may reuse any budget authority that is recaptured

1 on account of the termination, in whole or in part,
2 of a housing assistance payments contract (other
3 than a contract for tenant-based assistance) to pro-
4 vide tenant-based assistance under this section to
5 families occupying units formerly assisted under the
6 terminated contract. Such assistance shall be made
7 available only pursuant to a contract for such assist-
8 ance entered into by the Secretary and a public
9 housing agency.

10 “(2) FAMILIES OCCUPYING UNITS FORMERLY
11 ASSISTED UNDER TERMINATED CONTRACT.—In pro-
12 viding tenant-based assistance pursuant to this sec-
13 tion, the Secretary shall make such assistance avail-
14 able first to families occupying units formerly as-
15 sisted under the terminated contract.

16 “(3) NEW RENTS.—Rents established in con-
17 nection with a contract under this subsection shall
18 be established in accordance with subsection (c)(2),
19 but shall not exceed the amount of rent previously
20 paid under the terminated contract.

21 “(4) BUDGET SAVINGS.—To the extent that
22 new rents established under paragraph (3) are less
23 than the amount of rent previously paid under the
24 terminated contract, any budget authority remaining
25 shall be rescinded.”.

1 **SEC. 5. REPEAL OF PROHIBITION ON LOWERING SECTION**
2 **8 RENTS.**

3 Section 8(c)(2)(C) of the United States Housing Act
4 of 1937 (42 U.S.C. 1437f(c)(2)(C)) is amended by strik-
5 ing the antepenultimate sentence.

6 **SEC. 6. ISSUANCE OF FINAL REGULATIONS FOR COM-**
7 **PARABILITY REVIEWS.**

8 The Secretary of Housing and Urban Development
9 shall issue final regulations to carry out the amendments
10 made by section 801(c) of the Department of Housing and
11 Urban Development Reform Act of 1989 (relating to an-
12 nual adjustment factors and comparability studies) not
13 later than the expiration of the 30-day period beginning
14 upon the date of the enactment of this Act. Such regula-
15 tions shall take effect upon the date of issuance.

16 **SEC. 7. LIMITATIONS ON RENT INCREASES FOR NEW CON-**
17 **STRUCTION AND SUBSTANTIAL REHABILITA-**
18 **TION PROJECTS.**

19 Section 8(c)(2) of the United States Housing Act of
20 1937 (42 U.S.C. 1437f(c)(2)) is amended by adding at
21 the end the following new subparagraph:

22 “(D) With respect to housing constructed or substan-
23 tially rehabilitated pursuant to assistance provided under
24 subsection (b)(2) (as such section was in effect before Oc-
25 tober 1, 1983), notwithstanding the provisions of subpara-
26 graph (C), upon the refinancing of the project debt se-

1 cured by a mortgage on the housing the Secretary may
2 (in the sole discretion of the Secretary) provide for any
3 subsequent annual (or more frequent) adjustments to
4 maximum monthly rents for the project required under
5 subparagraph (A) to be made on the basis of—

6 “(i) the reasonable formula established by the
7 Secretary pursuant to subparagraph (A); or

8 “(ii) an operating budget submitted to the Sec-
9 retary by the owner of the housing reflecting actual
10 and necessary expenses of owning and maintaining
11 the housing.”.

○

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