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SUBCHAPTER II—TECHNICAL ASSISTANCE AND CAPACITY BUILDING

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CODIFICATION

Subtitles A and B of the Low-Income Housing Preservation and Resident Homeownership Act of 1990, Pub. L. 100-242, title II, as revised generally by Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, comprise subchapter I of this chapter. Prior to the general revision by Pub. L. 101-625 subtitles A and B (§§201-235) of the Emergency Low Income Housing Preservation Act of 1987, Pub. L. 100-242, title II, Feb. 5, 1988, 101 Stat. 1877, as amended by Pub. L. 100-628, title X, §§1021-1027, Nov. 7, 1988, 102 Stat. 3270, 3271; Pub. L. 101-235, title II, §§201, 202(a)-(c), 203(b), Dec. 15, 1989, 103 Stat. 2037, 2038; Pub. L. 101-402, §1, Oct. 1, 1990, 104 Stat. 866; Pub. L. 101-494, §§1(c), 2(a), Oct. 31, 1990, 104 Stat. 1185, were set out as a note under section 1715f of this title and amended section 1715z-6 of this title.

Subtitle C of the Low-Income Housing Preservation and Resident Homeownership Act of 1990, Pub. L. 100-242, title II, as added by Pub. L. 102-550, title III, §312, Oct. 28, 1992, 106 Stat. 3765, comprises subchapter II of this chapter. Another subtitle C of title II of Pub. L. 100-242 amended sections 1472, 1485, and 1487 of Title 42, The Public Health and Welfare.

SUBCHAPTER I—PREPAYMENT OF MORTGAGES INSURED UNDER NATIONAL HOUSING ACT

§ 4101. General prepayment limitation

(a) Prepayment and termination

An owner of eligible low-income housing may prepay, and a mortgagee may accept prepayment of, a mortgage on such housing only in accordance with a plan of action approved by the Secretary under this subchapter or in accordance with section 4114 of this title. An insurance contract with respect to eligible low-income housing may be terminated pursuant to section 1715t of this title only in accordance with a plan of action approved by the Secretary under this subchapter or in accordance with section 4114 of this title.

(b) Foreclosure

A mortgagee may foreclose the mortgage on, or acquire by deed in lieu of foreclosure, any eligible low-income housing project only if the mortgagee also conveys title to the project to the Secretary in connection with a claim for insurance benefits.

(c) Effect of unauthorized prepayment

Any prepayment of a mortgage on eligible low-income housing or termination of the mortgage insurance on such housing not in compliance with the provisions of this subchapter shall be null and void and any low-income affordability restrictions on the housing shall continue to apply to the housing.

(Pub. L. 100-242, title II, §211, as added Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249.)

EFFECTIVE DATE

Pub. L. 101-625, title VI, §605, Nov. 28, 1990, 104 Stat. 4278, provided that: "This subtitle [subtitle A (§§601-605) of title VI of Pub. L. 101-625, enacting this chapter, amending sections 1715z-6 and 1715z-15 of this title and section 1437f of Title 42, The Public Health and Welfare, and enacting provisions set out below] shall take effect on the date of the enactment of this Act [Nov. 28, 1990]."

SHORT TITLE

Pub. L. 100-242, title II, §201, as added by Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, provided that: "This title [enacting this chapter, amending section 1715z-15 of this title and sections 1437f, 1472, 1485, and 1487 of Title 42, The Public Health and Welfare, and enacting provisions set out below] may be cited as the 'Low-Income Housing Preservation and Resident Homeownership Act of 1990.'"

APPLICABILITY

Pub. L. 100-242, title II, §235, as added by Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4274, provided that: "Subject to section 605 of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101-625, set out above], the requirements of this subtitle [subtitle B (§§211-235) of title II of Pub. L. 100-242, enacting this subchapter] shall apply to any project that is eligible low-income housing on or after November 1, 1987."

REGULATIONS

Pub. L. 102-550, title III, §332, Oct. 28, 1992, 106 Stat. 3773, provided that: "Except as otherwise provided in this title [enacting sections 4141 to 4147 of this title, amending sections 1715z-1, 1715z-6, 4103, 4105 to 4112, 4116, 4119, 4121, 4122, 4124, and 4125 of this title, enacting provisions set out as notes under this section and sections 1715z-6, 4109, and 4117 of this title, and amending provisions set out as a note under this section], the Secretary of Housing and Urban Development shall issue interim regulations implementing this title and the amendments made by this title not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], which shall take effect upon issuance. The Secretary shall issue final regulations implementing this title and the amendments made by this title after notice and opportunity for public comment regarding the interim regulations, pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment shall not be less than 60 days, and the final regulations shall be issued not later than the expiration of the 60-day period beginning upon the conclusion of the comment period and shall take effect upon issuance."

LOW-INCOME HOUSING PRESERVATION

Pub. L. 104-204, title II, Sept. 26, 1996, 110 Stat. 2883, provided in part: "That of the total amount provided under this head, \$350,000,000 shall be available for use in conjunction with properties that are eligible for assistance under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) [see Short Title note above] or the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA) [see Codification note set out preceding this section], of which \$75,000,000 shall be available for obligation until March 1, 1997 for projects (1) that are subject to a repayment or settlement agreement that was executed between the owner and the Secretary prior to September 1, 1995; (2) whose submissions were delayed as a result of their location in areas that were designated as a Federal dis-

aster area in a Presidential Disaster Declaration; or (3) whose processing was, in fact or in practical effect, suspended, deferred, or interrupted for a period of twelve months or more because of differing interpretations, by the Secretary and an owner or by the Secretary and a State or local rent regulatory agency, concerning the timing of filing eligibility or the effect of a presumptively applicable State or local rent control law or regulation on the determination of preservation value under section 213 of LIHPRHA, as amended [12 U.S.C. 4103], if the owner of such project filed notice of intent to extend the low-income affordability restrictions of the housing, or transfer to a qualified purchaser who would extend such restrictions, on or before November 1, 1993; and of which, up to \$100,000,000 may be used for rental assistance to prevent displacement of families residing in projects whose owners prepay their mortgages; and the balance of which shall be available from the effective date of this Act [Sept. 26, 1996] for sales to preferred priority purchasers: *Provided further*, That with the exception of projects described in clauses (1), (2), or (3) of the preceding proviso, the Secretary shall, notwithstanding any other provision of law, suspend further processing of preservation applications which have not heretofore received approval of a plan of action: *Provided further*, That \$150,000,000 of amounts recaptured from interest reduction payment contracts for section 236 [12 U.S.C. 1715z-1] projects whose owners prepay their mortgages during fiscal year 1997 shall be rescinded: *Provided further*, That an owner of eligible low-income housing may prepay the mortgage or request voluntary termination of a mortgage insurance contract, so long as said owner agrees not to raise rents for sixty days after such prepayment: *Provided further*, That such developments have been determined to have preservation equity at least equal to the lesser of \$5,000 per unit or \$500,000 per project or the equivalent of eight times the most recently published monthly fair market rent for the area in which the project is located as the appropriate unit size for all of the units in the eligible project: *Provided further*, That the Secretary may modify the regulatory agreement to permit owners and priority purchasers to retain rental income in excess of the basic rental charge in projects assisted under section 236 of the National Housing Act, for the purpose of preserving the low- and moderate-income character of the housing: *Provided further*, That eligible low-income housing shall include properties meeting the requirements of this paragraph with mortgages that are held by a State agency as a result of a sale by the Secretary without insurance, which immediately before the sale would have been eligible low-income housing under LIHPRHA: *Provided further*, That notwithstanding any other provision of law, subject to the availability of appropriated funds, each low-income family, and moderate-income family who is elderly or disabled or is residing in a low-vacancy area, residing in the housing on the date of prepayment or voluntary termination, and whose rent, as a result of a rent increase occurring no later than one year after the date of the prepayment, exceeds 30 percent of adjusted income, shall be offered tenant-based assistance in accordance with section 8 [42 U.S.C. 1437f] or any successor program, under which the family shall pay no less for rent than it paid on such date: *Provided further*, That any family receiving tenant-based assistance under the preceding proviso may elect (1) to remain in the unit of the housing and if the rent exceeds the fair market rent or payment standard, as applicable, the rent shall be deemed to be the applicable standard, so long as the administering public housing agency finds that the rent is reasonable in comparison with rents charged for comparable unassisted housing units in the market or (2) to move from the housing and the rent will be subject to the fair market rent of the payment standard, as applicable, under existing program rules and procedures: *Provided further*, That the tenant-based assistance made available under the preceding two provisos are in lieu of benefits provided in subsections [sic] 223(b), (c), and (d) of the Low-Income Housing Preserva-

tion and Resident Homeownership Act of 1990 [12 U.S.C. 4113(b), (c), (d)]: *Provided further*, That any sales shall be funded using the capital grant available under section 220(d)(3)(A) of LIHPRHA [12 U.S.C. 4110(d)(3)(A)]: *Provided further*, That any extensions shall be funded using a non-interest-bearing capital (direct) loan by the Secretary not in excess of the amount of the cost of rehabilitation approved in the plan of action plus 65 percent of the property's preservation equity and under such other terms and conditions as the Secretary may prescribe: *Provided further*, That any capital grant shall be limited to seven times, and any capital loan limited to six times, the annual fair market rent for the project, as determined using the fair market rent for fiscal year 1997 for the area in which the project is located, using the appropriate apartment sizes and mix in the eligible project, except where, upon the request of a priority purchaser, the Secretary determines that a greater amount is necessary and appropriate to preserve low-income housing: *Provided further*, That section 241(f) of the National Housing Act [12 U.S.C. 1715z-6(f)] is repealed and insurance under such section shall not be offered as an incentive under LIHPRHA and ELIHPA: *Provided further*, That up to \$10,000,000 of the amount of \$350,000,000 made available by a preceding proviso in this paragraph may be used at the discretion of the Secretary to reimburse owners of eligible properties for which plans of action were submitted prior to the effective date of this Act [Sept. 26, 1996], but were not executed for lack of available funds, with such reimbursement available only for documented costs directly applicable to the preparation of the plan of action as determined by the Secretary, and shall be made available on terms and conditions to be established by the Secretary: *Provided further*, That, notwithstanding any other provision of law, a priority purchaser may utilize assistance under the HOME Investment Partnerships Act [42 U.S.C. 12721 et seq.] or the Low Income Housing Tax Credit [see 26 U.S.C. 42]: *Provided further*, That projects with approved plans of action which exceed the limitations on eligibility for funding imposed by this Act may submit revised plans of action which conform to these limitations by March 1, 1997, and retain the priority for funding otherwise applicable from the original date of approval of their plan of action, subject to securing any additional necessary funding commitments by August 1, 1997."

Pub. L. 104-134, title I, §101(e) [title II], Apr. 26, 1996, 110 Stat. 1321-257, 1321-267; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327, provided in part that: "Of the total amount provided under this head, \$624,000,000, plus amounts recaptured from interest reduction payment contracts for section 236 [12 U.S.C. 1715z-1] projects whose owners prepay their mortgages during fiscal year 1996 (which amounts shall be transferred and merged with this account), shall be for use in conjunction with properties that are eligible for assistance under the Low Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) [see Short Title note above] or the Emergency Low-Income Housing Preservation Act of 1987 (ELIHPA) [see Codification note set out preceding this section]: *Provided*, That prior to August 15, 1996, funding to carry out plans of action shall be limited to sales of projects to non-profit organizations, tenant-sponsored organizations, and other priority purchasers: *Provided further*, That of the amount made available by this paragraph, up to \$10,000,000 shall be available for preservation technical assistance grants pursuant to section 253 of the Housing and Community Development Act of 1987 [12 U.S.C. 4143], as amended: *Provided further*, That with respect to amounts made available by this paragraph, after August 15, 1996, if the Secretary determines that the demand for funding may exceed amounts available for such funding, the Secretary (1) may determine priorities for distributing available funds, including giving priority funding to tenants displaced due to mortgage prepayment and to projects that have not yet been funded but which have approved plans of action; and (2) may impose a temporary mora-

torium on applications by potential recipients of such funding: *Provided further*, That an owner of eligible low-income housing may prepay the mortgage or request voluntary termination of a mortgage insurance contract, so long as said owner agrees not to raise rents for sixty days after such prepayment: *Provided further*, That an owner of eligible low-income housing who has not timely filed a second notice under section 216(d) [12 U.S.C. 4106(d)] prior to the effective date of this Act [Apr. 26, 1996] may file such notice by April 15, 1996: *Provided further*, That such developments have been determined to have preservation equity at least equal to the lesser of \$5,000 per unit or \$500,000 per project or the equivalent of eight times the most recently published fair market rent for the area in which the project is located as the appropriate unit size for all of the units in the eligible project: *Provided further*, That the Secretary may modify the regulatory agreement to permit owners and priority purchasers to retain rental income in excess of the basic rental charge in projects assisted under section 236 of the National Housing Act [12 U.S.C. 1715z-1], for the purpose of preserving the low and moderate income character of the housing: *Provided further*, That the Secretary may give priority to funding and processing the following projects provided that the funding is obligated not later than September 15, 1996: (1) projects with approved plans of action to retain the housing that file a modified plan of action no later than August 15, 1996 to transfer the housing; (2) projects with approved plans of action that are subject to a repayment or settlement agreement that was executed between the owner and the Secretary prior to September 1, 1995; (3) projects for which submissions were delayed as a result of their location in areas that were designated as a Federal disaster area in a Presidential Disaster Declaration; and (4) projects whose processing was, in fact, or in practical effect, suspended, deferred, or interrupted for a period of nine months or more because of differing interpretations, by the Secretary and an owner concerning the time of the ability of an uninsured section 236 [12 U.S.C. 1715z-1] property to prepay or by the Secretary and a State or local rent regulatory agency, concerning the effect of a presumptively applicable State or local rent control law or regulation on the determination of preservation value under section 213 of LIHPRHA, as amended [12 U.S.C. 4103], if the owner of such project filed notice of intent to extend the low-income affordability restrictions of the housing, or transfer to a qualified purchaser who would extend such restrictions, on or before November 1, 1993: *Provided further*, That eligible low-income housing shall include properties meeting the requirements of this paragraph with mortgages that are held by a State agency as a result of a sale by the Secretary without insurance, which immediately before the sale would have been eligible low-income housing under LIHPRHA: *Provided further*, That notwithstanding any other provision of law, subject to the availability of appropriated funds, each unassisted low-income family residing in the housing on the date of prepayment or voluntary termination, and whose rent, as a result of a rent increase occurring no later than one year after the date of the prepayment, exceeds 30 percent of adjusted income, shall be offered tenant-based assistance in accordance with section 8 [42 U.S.C. 1437f] or any successor program, under which the family shall pay no less for rent than it paid on such date: *Provided further*, That any family receiving tenant-based assistance under the preceding proviso may elect (1) to remain in the unit of the housing and if the rent exceeds the fair market rent or payment standard, as applicable, the rent shall be deemed to be the applicable standard, so long as the administering public housing agency finds that the rent is reasonable in comparison with rents charged for comparable unassisted housing units in the market or (2) to move from the housing and the rent will be subject to the fair market rent of the payment standard, as applicable, under existing program rules and procedures: *Provided further*, That rents and rent increases for tenants of projects for which plans of

action are funded under section 220(d)(3)(B) of LIHPRHA [12 U.S.C. 4110(d)(3)(B)] shall be governed in accordance with the requirements of the program under which the first mortgage is insured or made (sections 236 or 221(d)(3) BMIR [12 U.S.C. 1715z-1, 4111(d)(3)], as appropriate): *Provided further*, That the immediately foregoing proviso shall apply hereafter to projects for which plans of action are to be funded under such section 220(d)(3)(B) [12 U.S.C. 4110(d)(3)(B)], and shall apply to any project that has been funded under such section starting one year after the date that such project was funded: *Provided further*, That up to \$10,000,000 of the amount made available by this paragraph may be used at the discretion of the Secretary to reimburse owners of eligible properties for which plans of action were submitted prior to the effective date of this Act [Apr. 26, 1996], but were not executed for lack of available funds, with such reimbursement available only for documented costs directly applicable to the preparation of the plan of action as determined by the Secretary, and shall be made available on terms and conditions to be established by the Secretary: *Provided further*, That, notwithstanding any other provision of law, effective October 1, 1996, the Secretary shall suspend further processing of preservation applications which do not have approved plans of action."

For similar provisions see Pub. L. 104-120, §2(b), Mar. 28, 1996, 110 Stat. 834.

CONDITIONS OF ASSISTANCE

Pub. L. 102-550, title III, §314, Oct. 28, 1992, 106 Stat. 3770, provided that:

"(a) ELIHPA OF 1987.—The Secretary may not require, as a condition of eligibility for or receipt of technical assistance made available under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Public Law 102-139 [105 Stat. 736, see Tables for classification]) (including any phase of a grant), that an applicant participate in a training program sponsored or conducted by the Department of Housing and Urban Development for acquisition of eligible low income housing under the provisions of the Emergency Low Income Housing Preservation Act of 1987 [see Codification note above], and may not provide any preference or priority for such assistance for any applicant based on participation in such a program.

"(b) LIHPRHA OF 1990.—The Secretary may require, as a condition of eligibility for or receipt of technical assistance made available under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Public Law 102-139) (including any phase of a grant), that an applicant participate in a training program sponsored or conducted by the Department of Housing and Urban Development for acquisition of eligible low-income housing under this title [enacting sections 4141 to 4147 of this title, amending sections 1715z-1, 1715z-6, 4103, 4105 to 4112, 4116, 4119, 4121, 4122, 4124, and 4125 of this title, enacting provisions set out as notes under this section and sections 1715z-6, 4109, and 4117 of this title, and amending provisions set out as a note under this section], and may provide preference or priority for such assistance for applicants based on participation in such a program, but only if the program is made available on a nationwide basis not later than March 1, 1993."

TRANSITION PROVISIONS

Pub. L. 101-625, title VI, §604, Nov. 28, 1990, 104 Stat. 4277, as amended by Pub. L. 102-550, title III, §313, Oct. 28, 1992, 106 Stat. 3769, provided that:

"(a) HOUSING ELIGIBLE FOR ELECTION.—Any owner of housing that becomes eligible low-income housing before January 1, 1991 and who, before such date, filed a notice of intent under section 222 of the Emergency Low Income Housing Preservation Act of 1987 [formerly set out in a note under section 1715l of this title] (as such section existed before the date of the enactment of

this Act [Nov. 28, 1990] or under section 212 of such Act [12 U.S.C. 4102] (as amended by section 601(a)) may elect to be subject to (1) the provisions of such Act as in effect before the date of the enactment of this Act, or (2) the provisions of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [see Short Title note above], after the date of the enactment of this Act. The Secretary shall establish procedures for owners to make the election under the preceding sentence. An owner that elects to be subject to the provisions of the Emergency Low Income Housing Preservation Act of 1987 shall comply with section 212(b), section 217(a)(2), and section 217(c) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4102(b) and 4107(a)(2), (c)].

“(b) **RIGHT OF CONVERSION TO NEW SYSTEM.**—Any owner who has filed a plan of action on or before October 11, 1990, shall have the right to convert to the system of incentives and restrictions under this subtitle [subtitle A of title VI of Pub. L. 101-625, see Effective Date note above], with such adjustments as the Secretary determines to be appropriate to compensate for the value of any incentives the owner received under the Emergency Low Income Housing Preservation Act of 1987 [see Codification note preceding this section]. Owners filing plans after such date shall not have any right under this subsection.

“(c) **EFFECTIVENESS OF REPEALED PROVISIONS.**—Notwithstanding the amendment made by section 601(a) [enacting this chapter], the provisions of the Emergency Low Income Housing Preservation Act of 1987 (as in effect immediately before the date of the enactment of this Act [Nov. 28, 1990]) shall apply with respect to any housing for which the election under subsection (a)(1) is made. With respect to housing for which such an election is made—

“(1) in making incentives under section 224 of such Act [formerly set out in a note under section 1715f of this title] available to such housing, the Secretary—

“(A) shall, for approvable plans of action, provide assistance sufficient to enable a nonprofit organization that has purchased or will purchase an eligible low income housing project to meet project oversight costs; and

“(B) may not refuse to offer incentives referred to in such section to any owner who filed a notice of intent under section 222 of such Act before October 15, 1991, based solely on the date of filing of the plan of action for the housing; and

“(2) the provisions of section 233(1)(A)(i) of such Act [formerly set out in a note under section 1715f of this title] shall not apply, and the term ‘eligible low income housing’ shall, for purposes of such Act, shall [sic] include housing financed by a loan or mortgage that is insured or held by the Secretary or a State or State agency under section 221(d)(3) of the National Housing Act [12 U.S.C. 1715f(d)(3)] and receiving loan management assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] due to a conversion from section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s].

“(d) **REGULATIONS.**—Not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Nov. 28, 1990], the Secretary of Housing and Urban Development shall, subject to the provisions of section 553 of title 5, United States Code, publish proposed rules to implement this subtitle and the amendments made by this subtitle. Not later than 45 days after the expiration of the period under the preceding sentence the Secretary shall issue interim or final rules to implement such provisions.”

§ 4102. Notice of intent

(a) Filing with Secretary

An owner of eligible low-income housing that intends to terminate the low-income affordability restrictions through prepayment or voluntary termination in accordance with section

4108 of this title, extend the low-income affordability restrictions of the housing in accordance with section 4109 of this title, or transfer the housing to a qualified purchaser in accordance with section 4110 of this title, shall file with the Secretary a notice indicating such intent in the form and manner as the Secretary shall prescribe.

(b) Filing with State or local government, tenants, and mortgagee

The owner, upon filing a notice of intent under this section, shall simultaneously file the notice of intent with the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located and with the mortgagee, and shall inform the tenants of the housing of the filing.

(c) Ineligibility for filing

An owner shall not be eligible to file a notice of intent under this section if the mortgage covering the housing—

(1) falls into default on or after November 28, 1990; or

(2)(A) fell into default before, but is current as of, November 28, 1990; and

(B) the owner does not agree to recompense the appropriate Insurance Fund, in the amount the Secretary determines appropriate, for any losses sustained by the Fund as a result of any work-out or other arrangement agreed to by the Secretary and the owner with respect to the defaulted mortgage.

The Secretary shall carry out this subsection in a manner consistent with the provisions of section 1701z-11 of this title.

(Pub. L. 100-242, title II, §212, as added Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249.)

§ 4103. Appraisal and preservation value of eligible low-income housing

(a) Appraisal

Upon receiving notice of intent regarding an eligible low-income housing project indicating an intent to extend the low-income affordability restrictions under section 4109 of this title or transfer the housing under section 4110 of this title, the Secretary shall provide for determination of the preservation value of the housing, as follows:

(1) Appraisers

The preservation value shall be determined by 2 independent appraisers, one of whom shall be selected by the Secretary and one of whom shall be selected by the owner. The appraisals shall be conducted not later than 4 months after filing the notice of intent under section 4102 of this title, and the owner shall submit to the Secretary the appraisal made by the owner's selected appraiser not later than 90 days after receipt of the notice under paragraph (2). If the 2 appraisers fail to agree on the preservation value, and the Secretary and the owner also fail to agree on the preservation value, the Secretary and the owner shall jointly select and jointly compensate a third appraiser, whose appraisal shall be binding on the parties.