

fare or their designees in the membership of the National Housing Council of the Housing and Home Finance Agency.

Section 1701i-1, act Sept. 1, 1951, ch. 378, title VI, §615, 65 Stat. 317, included the Secretary of Defense or his designee and excluded the Chairman of Board of Directors of Reconstruction Finance Corporation or his designee from National Housing Council membership.

**§ 1701j. Repealed. Aug. 2, 1954, ch. 649, title VIII, § 813, 68 Stat. 647**

Section, acts Apr. 20, 1950, ch. 94, title V, §504, 64 Stat. 81; Sept. 1, 1951, ch. 378, title VI, §613(a), 65 Stat. 316; June 30, 1953, ch. 170, §23, 67 Stat. 127, related to control of charges and fees, imposed by lenders upon builders and purchasers in connection with home loans, by the Federal Housing Commissioner and the Administrator of Veterans' Affairs.

**§ 1701j-1. Builder's certification as to construction**

**(a) Warranty requirements**

The Secretary of Housing and Urban Development is authorized and directed to require that, in connection with any property upon which there is located a dwelling designed principally for not more than a four-family residence and which is approved for mortgage insurance prior to the beginning of construction, the seller or builder, and such other person as may be required by the said Secretary to become warrantor, shall deliver to the purchaser or owner of such property a warranty that the dwelling is constructed in substantial conformity with the plans and specifications (including any amendments thereof, or changes and variations therein, which have been approved in writing by the Secretary of Housing and Urban Development) on which the Secretary of Housing and Urban Development based his valuation of the dwelling: *Provided*, That the Secretary of Housing and Urban Development shall deliver to the builder, seller, or other warrantor his written approval (which shall be conclusive evidence of such approval) of any amendment of, or change or variation in, such plans and specifications which the Secretary deems to be a substantial amendment thereof, or change or variation therein, and shall file a copy of such written approval with such plans and specifications: *Provided further*, That such warranty shall apply only with respect to such instances of substantial nonconformity to such approved plans and specifications (including any amendments thereof, or changes or variations therein, which have been approved in writing, as provided herein, by the Secretary of Housing and Urban Development) as to which the purchaser or homeowner has given written notice to the warrantor within one year from the date of conveyance of title to, or initial occupancy of, the dwelling, whichever first occurs: *Provided further*, That such warranty shall be in addition to, and not in derogation of, all other rights and privileges which such purchaser or owner may have under any other law or instrument: *And provided further*, That the provisions of this section shall apply to any such property covered by a mortgage insured by the Secretary of Housing and Urban Development on and after October 1, 1954, unless such mortgage is insured pursuant to a commitment therefor made prior to October 1, 1954.

**(b) Availability of plans and specifications**

The Secretary of Housing and Urban Development is further directed to permit copies of the plans and specifications (including written approvals of any amendments thereof, or changes or variations therein, as provided herein) for dwellings in connection with which warranties are required by subsection (a) of this section to be made available in their appropriate local offices for inspection or for copying by any purchaser, homeowner, or warrantor during such hours or periods of time as the said Secretary may determine to be reasonable.

(Aug. 2, 1954, ch. 649, title VIII, §801, 68 Stat. 642; Pub. L. 85-857, §13(s)(2), Sept. 2, 1958, 72 Stat. 1266; Pub. L. 90-19, §10(e), May 25, 1967, 81 Stat. 22.)

**Editorial Notes**

**CODIFICATION**

Section was enacted as part of the Housing Act of 1954, and not as part of the National Housing Act which comprises this chapter.

**AMENDMENTS**

1967—Subsecs. (a), (b). Pub. L. 90-19 substituted "Secretary of Housing and Urban Development" and "Secretary" for "Federal Housing Commissioner" and "Commissioner", respectively.

1958—Subsec. (a). Pub. L. 85-857 struck out provisions that related to Administrator of Veterans' Affairs and to mortgages guaranteed by him.

Subsec. (b). Pub. L. 85-857 struck out provisions that related to Administrator of Veterans' Affairs.

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE OF 1958 AMENDMENT**

Amendment by Pub. L. 85-857 effective Jan. 1, 1959, see section 2 of Pub. L. 85-857, set out as an Effective Date note preceding part 1 of Title 38, Veterans' Benefits.

**STUDY REGARDING HOME WARRANTY PLANS**

Pub. L. 102-550, title V, §514, Oct. 28, 1992, 106 Stat. 3789, directed Secretary of Housing and Urban Development to conduct a study of home and builder's warranties and protection plans regarding construction of, and materials used in, 1- to 4-family dwellings subject to mortgages insured under title II of the National Housing Act (12 U.S.C. 1707 et seq.), and submit a report to Congress regarding findings of the study and any recommendations of the Secretary resulting from the study, not later than the expiration of the 12-month period beginning on Oct. 28, 1992.

**§ 1701j-2. National Institute of Building Sciences**

**(a) Congressional findings and declaration of purpose**

(1) The Congress finds (A) that the lack of an authoritative national source to make findings and to advise both the public and private sectors of the economy with respect to the use of building science and technology in achieving nationally acceptable standards and other technical provision for use in Federal, State, and local housing and building regulations is an obstacle to efforts by and imposes severe burdens upon all those who procure, design, construct, use, operate, maintain, and retire physical facilities, and frequently results in the failure to take full advantage of new and useful developments in

technology which could improve our living environment; (B) that the establishment of model buildings codes or of a single national building code will not completely resolve the problem because of the difficulty at all levels of government in updating their housing and building regulations to reflect new developments in technology, as well as the irregularities and inconsistencies which arise in applying such requirements to particular localities or special local conditions; (C) that the lack of uniform housing and building regulatory provisions increases the costs of construction and thereby reduces the amount of housing and other community facilities which can be provided; and (D) that the existence of a single authoritative nationally recognized institution to provide for the evaluation of new technology could facilitate introduction of such innovations and their acceptance at the Federal, State, and local levels.

(2) The Congress further finds, however, that while an authoritative source of technical findings is needed, various private organizations and institutions, private industry, labor, and Federal and other governmental agencies and entities are presently engaged in building research, technology development, testing, and evaluation, standards and model code development and promulgation, and information dissemination. These existing activities should be encouraged and these capabilities effectively utilized wherever possible and appropriate to the purposes of this section.

(3) The Congress declares that an authoritative nongovernmental instrument needs to be created to address the problems and issues described in paragraph (1), that the creation of such an instrument should be initiated by the Government, with the advice and assistance of the National Academy of Sciences-National Academy of Engineering-National Research Council (hereinafter referred to as the "Academies-Research Council") and of the various sectors of the building community, including labor and management, technical experts in building science and technology, and the various levels of government.

**(b) Establishment; advice and assistance of Academies-Research Council and other agencies and organizations knowledgeable in building technology**

(1) There is authorized to be established, for the purposes described in subsection (a)(3), an appropriate nonprofit, nongovernmental instrument to be known as the National Institute of Building Sciences (hereinafter referred to as the "Institute"), which shall not be an agency or establishment of the United States Government. The Institute shall be subject to the provisions of this section and, to the extent consistent with this section, to a charter of the Congress if such a charter is requested and issued or to the District of Columbia Nonprofit Corporation Act if that is deemed preferable.

(2) The Academies-Research Council, along with other agencies and organizations which are knowledgeable in the field of building technology, shall advise and assist in (A) the establishment of the Institute; (B) the development of an organizational framework to encourage and

provide for the maximum feasible participation of public and private scientific, technical, and financial organizations, institutions, and agencies now engaged in activities pertinent to the development, promulgation, and maintenance of performance criteria, standards, and other technical provisions for building codes and other regulations; and (C) the promulgation of appropriate organizational rules and procedures including those for the selection and operation of a technical staff, such rules and procedures to be based upon the primary object of promoting the public interest and insuring that the widest possible variety of interests and experience essential to the functions of the Institute are represented in the Institute's operations. Recommendations of the Academies-Research Council shall be based upon consultations with and recommendations from various private organizations and institutions, labor, private industry, and governmental agencies entities operating in the field, and the Consultative Council as provided for under subsection (c)(8).

(3) Nothing in this section shall be construed as expressing the intent of the Congress that the Academies-Research Council itself be required to assume any function or operation vested in the Institute by or under this section.

**(c) Board of Directors; number; appointment; membership; terms of office; vacancies; appointment, etc., of Chairman and Vice Chairman; employees of United States; travel and subsistence expenses; appointment and compensation of president and other executive officers and employees; establishment, membership, and functions of Consultative Council**

(1) The Institute shall have a Board of Directors (hereinafter referred to as the "Board") consisting of not less than fifteen nor more than twenty-one members, appointed by the President of the United States by and with the advice and consent of the Senate. The Board shall be representative of the various segments of the building community, of the various regions of the country, and of the consumers who are or would be affected by actions taken in the exercise of the functions and responsibilities of the Institute, and shall include (A) representatives of the construction industry, including representatives of construction labor organizations, product manufacturers, and builders, housing management experts, and experts in building standards, codes, and fire safety, and (B) members representative of the public interest in such numbers as may be necessary to assure that a majority of the members of the Board represent the public interest and that there is adequate consideration by the Institute of consumer interests in the exercise of its functions and responsibilities. Those representing the public interest on the Board shall include architects, professional engineers, officials of Federal, State, and local agencies, and representatives of consumer organizations. Such members of the Board shall hold no financial interest or membership in, nor be employed by, or receive other compensation from, any company, association, or other group associated with the manufacture, distribution, installation, or maintenance of

specialized building products, equipment, systems, subsystems, or other construction materials and techniques for which there are available substitutes.

(2) The members of the initial Board shall serve as incorporators and shall take whatever actions are necessary to establish the Institute as provided for under subsection (b)(1).

(3) The term of office of each member of the initial and succeeding Boards shall be three years; except that (A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (B) the terms of office of members first taking office shall begin on the date of incorporation and shall expire, as designated at the time of their appointment, one-third at the end of one year, one-third at the end of two years, and one-third at the end of three years. No member shall be eligible to serve in excess of three consecutive terms of three years each. Notwithstanding the preceding provisions of this subsection, a member whose term has expired may serve until his successor has qualified.

(4) Any vacancy in the initial and succeeding Boards shall not affect its power, but shall be filled in the manner in which the original appointments were made, or, after the first five years of operation, as provided for by the organizational rules and procedures of the Institute; except that, notwithstanding any such rules and procedures as may be adopted by the Institute, the President of the United States, by and with the advice and consent of the Senate, shall appoint, as representative of the public interest, two of the members of the Board of Directors selected each year for terms commencing in that year.

(5) The President shall designate one of the members appointed to the initial Board as Chairman; thereafter, the members of the initial and succeeding Boards shall annually elect one of their number as Chairman. The members of the Board shall also elect one or more of their Members as Vice Chairman. Terms of the Chairman and Vice Chairman shall be for one year and no individual shall serve as Chairman or Vice Chairman for more than two consecutive terms.

(6) The members of the initial or succeeding Boards shall not, by reason of such membership, be deemed to be employees of the United States Government. They shall, while attending meetings of the Board or while engaged in duties related to such meetings or in other activities of the Board pursuant to this section, be entitled to receive compensation at the rate of \$100 per day including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, equal to that authorized under section 5703 of title 5, for persons in the Government service employed intermittently.

(7) The Institute shall have a president and such other executive officers and employees as may be appointed by the Board at rates of compensation fixed by the Board. No such executive officer or employee may receive any salary or

other compensation from any source other than the Institute during the period of his employment by the Institute.

(8) The Institute shall establish, with the advice and assistance of the Academies-Research Council and other agencies and organizations which are knowledgeable in the field of building technology, a Consultative Council, membership in which shall be available to representatives of all appropriate private trade, professional, and labor organizations, private and public standards, code, and testing bodies, public regulatory agencies, and consumer groups, so as to insure a direct line of communication between such groups and the Institute and a vehicle for representative hearings on matters before the Institute.

**(d) Financial restrictions and prohibitions**

(1) The Institute shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Institute shall inure to the benefit of any director, officer, employee, or other individual except as salary or reasonable compensation for services.

(3) The Institute shall not contribute to or otherwise support any political party or candidate for elective public office.

**(e) Exercise of functions and responsibilities**

(1) The Institute shall exercise its functions and responsibilities in four general areas, relating to building regulations, as follows:

(A) Development, promulgation, and maintenance of nationally recognized performance criteria, standards, and other technical provisions for maintenance of life, safety, health, and public welfare suitable for adoption by building regulating jurisdictions and agencies, including test methods and other evaluative techniques relating to building systems, subsystems, components, products, and materials with due regard for consumer problems.

(B) Evaluation and prequalification of existing and new building technology in accordance with subparagraph (A).

(C) Conduct of needed investigations in direct support of subparagraphs (A) and (B).

(D) Assembly, storage, and dissemination of technical data and other information directly related to subparagraphs (A), (B), and (C).

(2) The Institute in exercising its functions and responsibilities described in paragraph (1) shall assign and delegate, to the maximum extent possible, responsibility for conducting each of the needed activities described in paragraph (1) to one or more of the private organizations, institutions, agencies, and Federal and other governmental entities with a capacity to exercise or contribute to the exercise of such responsibility, monitor the performance achieved through assignment and delegation, and, when deemed necessary, reassign and delegate such responsibility.

(3) The Institute in exercising its functions and responsibilities under paragraphs (1) and (2) shall (A) give particular attention to the development of methods for encouraging all sectors of the economy to cooperate with the Institute and to accept and use its technical findings, and

to accept and use the nationally recognized performance criteria, standards, and other technical provisions developed for use in Federal, State, and local building codes and other regulations which result from the program of the Institute; (B) seek to assure that its actions are coordinated with related requirements which are imposed in connection with community and environmental development generally; and (C) consult with the Department of Justice and other agencies of government to the extent necessary to insure that the national interest is protected and promoted in the exercise of its functions and responsibilities.

**(f) Contract and grant authorization; donations; fees; amounts received in addition to amounts appropriated**

(1) The Institute is authorized to accept contracts and grants from Federal, State, and local governmental agencies and other entities, and grants and donations from private organizations, institutions, and individuals.

(2) The Institute may, in accordance with rates and schedules established with guidance as provided under subsection (b)(2), establish fees and other charges for services provided by the Institute or under its authorization.

(3) Amounts received by the Institute under this section shall be in addition to any amounts which may be appropriated to provide its initial operating capital under subsection (h).

**(g) Technical findings and performance criteria and standards; applicability and use by Federal departments, agencies, and establishments, and State and local governments; supporting grants and contracts**

(1) Every department, agency, and establishment of the Federal Government, in carrying out any building or construction, or any building- or construction-related programs, which involves direct expenditures, and in developing technical requirements for any such building or construction, shall be encouraged to accept the technical findings of the Institute, or any nationally recognized performance criteria, standards, and other technical provisions for building regulations brought about by the Institute, which may be applicable.

(2) All projects and programs involving Federal assistance in the form of loans, grants, guarantees, insurance, or technical aid, or in any other form, shall be encouraged to accept, use, and comply with any of the technical findings of the Institute, or any nationally recognized performance criteria, standards, and other technical provisions for building codes and other regulations brought about by the Institute, which may be applicable to the purposes for which the assistance is to be used.

(3) Every department, agency, and establishment of the Federal Government having responsibility for building or construction, or for building- or construction-related programs, is authorized and encouraged to request authorization and appropriations for grants to the Institute for its general support, and is authorized to contract with and accept contracts from the Institute for specific services where deemed appropriate by the responsible Federal official involved.

(4) The Institute shall establish and carry on a specific and continuing program of cooperation with the States and their political subdivisions designed to encourage their acceptance of its technical findings and of nationally recognized performance criteria, standards, and other technical provisions for building regulations brought about by the Institute. Such program shall include (A) efforts to encourage any changes in existing State and local law to utilize or embody such findings and regulatory provisions; and (B) assistance to States in the development of in-service training programs for building officials, and in the establishment of fully staffed and qualified State technical agencies to advise local officials on questions of technical interpretation.

**(h) Advanced Building Technology Program**

**(1) Establishment of Advanced Building Technology Council**

There is established within the Institute, the Advanced Building Technology Council (hereafter referred to as the "Council").

**(2) Purposes**

The Council shall carry out an Advanced Building Technology Program for the purposes of—

(A) identifying, selecting, and evaluating existing and new building technologies, including energy cost savings technologies, that conform to recognized performance criteria and meet applicable test standards for maintenance of life, safety, health, and public welfare when used in occupied buildings;

(B) to the extent necessary, developing criteria for the use of such technology;

(C) conducting economic analyses of proposed new technologies when produced and installed in buildings at volumes associated with comparable conventional technologies;

(D) in cooperation with the appropriate Federal agencies, advising building designers, installers, subcontractors, contractors and supervisory officials on the appropriate design and use of new building technology incorporated in federally owned or operated buildings;

(E) in cooperation with the appropriate Federal agencies, monitoring and evaluating the performance of new building technologies for at least 1 year after installation and building occupancy; and

(F) disseminating resulting data to affected parties through automated information management systems.

**(3) Council membership**

The Council shall be comprised of not less than 6 and not more than 11 members selected by the Secretary of Housing and Urban Development from among representatives of the various segments of the nationwide building community that have extensive experience in building industries, including, but not limited to—

(A) product manufacturers;

(B) experts in the fields of health, fire hazards, and safety; and

(C) independent representatives of the public interest such as architects, professional

engineers, and representatives of consumer organizations,

except that serving members of the National Institute of Building Sciences Advisory Council shall not be eligible to serve simultaneously on the Council.

**(4) Federal participation**

**(A) In general**

Any agency of the Federal Government involved in any building or construction may participate in the Advanced Building Technology Program with the Council to develop and implement programs to incorporate one or more of the recommended new technologies in a new or existing building within the agency.

**(B) Required assurances**

Upon agreement between a participating Federal agency and the Council, with respect to the selection of the appropriate technology and the schedule of necessary work, the Council shall—

(i) provide the Federal agency with a 5-year guarantee from the technology manufacturer that—

(I) all necessary corrections to the technology will be made in the design, installation, and maintenance of the technology;

(II) all malfunctions will be repaired without delay; and

(III) the technology manufacturer will be responsible for removal of the technology in the event of its failure to perform as required;

(ii) provide the Federal agency and its officials responsible for constructing or renovating buildings utilizing the new technology, as well as the designers, installers, subcontractors, and contractors responsible for the design, construction, or renovation of the buildings utilizing such technology with the technical information necessary to ensure its most appropriate use,

(iii) in cooperation with the Federal agency, monitor and evaluate the performance of the new technology, and

(iv) prepare reports to be made available to public agencies at all levels of government, the industry, and the public on the performance of the new technology.

**(5) Report to the Institute**

The Council shall submit to the Institute annually a description of its activities under the Advanced Building Technology Program for inclusion in the Institute's annual report to the Congress under subsection (j).

**(i) Authorization of appropriations**

There is authorized to be appropriated to the Institute not to exceed \$5,000,000 for the fiscal year 1975, and \$5,000,000 for the fiscal year 1976, and \$5,000,000 for each of the fiscal years 1977 and 1978, and any amounts not appropriated in fiscal years 1977 and 1978 may be appropriated in any fiscal year through 1984 (with not more than \$500,000 to be appropriated for each of the fiscal

years 1982, 1983, and 1984 and with each appropriation to be available until expended), to provide the Institute with initial capital adequate for the exercise of its functions and responsibilities during such years; and thereafter the Institute shall be financially self-sustaining through the means described in subsection (f). In addition to the amounts authorized to be appropriated under the first sentence of this section, there are authorized to be appropriated to the Institute to carry out the provisions of this section not to exceed \$512,000 for fiscal year 1991 and \$534,000 for fiscal year 1992. Any amount appropriated under the preceding sentence shall be made available for expenditure or obligation by the Institute only to the extent of an equal amount received by the Institute after November 30, 1983, from persons or entities other than the Federal Government.

**(j) Annual report to President for transmittal to Congress; contents**

The Institute shall submit an annual report for the preceding fiscal year to the President for transmittal to the Congress within sixty days of its receipt. The report shall include a comprehensive and detailed report of the Institute's operations, activities, financial condition, and accomplishments under this section and may include such recommendations as the Institute deems appropriate.

(Pub. L. 93-383, title VIII, § 809, Aug. 22, 1974, 88 Stat. 729; Pub. L. 94-375, § 24, Aug. 3, 1976, 90 Stat. 1078; Pub. L. 95-557, title III, § 319, Oct. 31, 1978, 92 Stat. 2101; Pub. L. 97-35, title III, § 339E, Aug. 13, 1981, 95 Stat. 417; Pub. L. 98-181, title I [title IV, § 462], Nov. 30, 1983, 97 Stat. 1232; Pub. L. 100-242, title V, § 570(f), Feb. 5, 1988, 101 Stat. 1950; Pub. L. 101-625, title IX, § 952(a), Nov. 28, 1990, 104 Stat. 4418; Pub. L. 102-550, title IX, § 904(a), Oct. 28, 1992, 106 Stat. 3868.)

**Editorial Notes**

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (b)(1), is Pub. L. 87-569, Aug. 6, 1962, 76 Stat. 265, as amended, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1974, and not as part of the National Housing Act which comprises this chapter.

AMENDMENTS

1992—Subsecs. (h) to (j). Pub. L. 102-550 added subsec. (h) and redesignated former subsecs. (h) and (i) as (i) and (j), respectively.

1990—Subsec. (h). Pub. L. 101-625 amended second sentence generally. Prior to amendment, second sentence read as follows: "In addition to the amounts authorized to be appropriated under the first sentence of this section, there is authorized to be appropriated to the Institute to carry out the provisions of this section not to exceed \$250,000 for fiscal year 1984."

1988—Subsec. (g)(4). Pub. L. 100-242, § 570(f)(1), substituted "of its" for "and its".

Subsec. (h). Pub. L. 100-242, § 570(f)(2), substituted "preceding" for "preceeding".

1983—Subsec. (h). Pub. L. 98-181 inserted provisions relating to the appropriation of not to exceed \$250,000 for fiscal 1984, such amount to be made available for expenditure only to the extent of an equal amount re-

ceived from persons or entities other than the Federal Government.

1981—Subsec. (c)(4). Pub. L. 97-35, § 339E(b), inserted provisions respecting Presidential appointment powers to the Board.

Subsec. (h). Pub. L. 97-35, § 339E(a), inserted provisions which extended authorization from 1982 to 1984, and enumerated amount for fiscal years 1982, 1983, and 1984.

1978—Subsec. (h). Pub. L. 95-557 inserted “, and any amounts not appropriated in fiscal years 1977 and 1978 may be appropriated in any fiscal year through 1982” after “1978”.

1976—Subsec. (h). Pub. L. 94-375 inserted “, and \$5,000,000 for each of the fiscal years 1977 and 1978” after “fiscal year 1976”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of this title.

##### NATIONAL INSTITUTE OF BUILDING SCIENCES TRUST FUND; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 98-396, title I, Aug. 22, 1984, 98 Stat. 1384, provided that: “There is appropriated out of funds not otherwise appropriated, the sum of \$5,000,000 to a ‘National Institute of Building Sciences Trust Fund’ which is hereby established in the Treasury of the United States: *Provided*, That the Secretary shall invest such funds in U.S. Treasury special issue securities at a fixed rate of ten per centum per annum, that such interest shall be credited to the Trust Fund on a quarterly basis, and that the Secretary shall make quarterly disbursements from such interest to the National Institute of Building Sciences: *Provided further*, That the total amount of such payment during any fiscal year may not exceed \$500,000 or the amount equivalent to non-Federal funds received by the Institute during the preceding fiscal year, whichever is less: *Provided further*, That any amount of interest not used for any such annual payment shall be paid into the general fund of the Treasury: *Provided further*, That the appropriation of \$5,000,000 made in this paragraph shall revert to the Treasury, on October 1, 1989, and the National Institute of Building Sciences Trust Fund shall terminate following the final quarterly disbursement of interest provided for in this paragraph.”

#### § 1701j-3. Preemption of due-on-sale prohibitions

##### (a) Definitions

For the purpose of this section—

(1) the term “due-on-sale clause” means a contract provision which authorizes a lender, at its option, to declare due and payable sums secured by the lender’s security instrument if all or any part of the property, or an interest therein, securing the real property loan is sold or transferred without the lender’s prior written consent;

(2) the term “lender” means a person or government agency making a real property loan or any assignee or transferee, in whole or in part, of such a person or agency;

(3) the term “real property loan” means a loan, mortgage, advance, or credit sale secured by a lien on real property, the stock allocated to a dwelling unit in a cooperative housing corporation, or a residential manufactured home, whether real or personal property; and

(4) the term “residential manufactured home” means a manufactured home as defined in section 5402(6) of title 42 which is used as a residence; and

(5) the term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, and the Trust Territory of the Pacific Islands.

##### (b) Loan contract and terms governing execution or enforcement of due-on-sale options and rights and remedies of lenders and borrowers; assumptions of loan rates

(1) Notwithstanding any provision of the constitution or laws (including the judicial decisions) of any State to the contrary, a lender may, subject to subsection (c), enter into or enforce a contract containing a due-on-sale clause with respect to a real property loan.

(2) Except as otherwise provided in subsection (d), the exercise by the lender of its option pursuant to such a clause shall be exclusively governed by the terms of the loan contract, and all rights and remedies of the lender and the borrower shall be fixed and governed by the contract.

(3) In the exercise of its option under a due-on-sale clause, a lender is encouraged to permit an assumption of a real property loan at the existing contract rate or at a rate which is at or below the average between the contract and market rates, and nothing in this section shall be interpreted to prohibit any such assumption.

##### (c) State prohibitions applicable for prescribed period; subsection (b) provisions applicable upon expiration of such period; loans subject to State and Federal regulation or subsection (b) provisions when authorized by State laws or Federal regulations

(1) In the case of a contract involving a real property loan which was made or assumed, including a transfer of the lien property subject to the real property loan, during the period beginning on the date a State adopted a constitutional provision or statute prohibiting the exercise of due-on-sale clauses, or the date on which the highest court of such State has rendered a decision (or if the highest court has not so decided, the date on which the next highest appellate court has rendered a decision resulting in a final judgment if such decision applies State-wide) prohibiting such exercise, and ending on October 15, 1982, the provisions of subsection (b) shall apply only in the case of a transfer which occurs on or after the expiration of 3 years after October 15, 1982, except that—

(A) a State, by a State law enacted by the State legislature prior to the close of such 3-year period, with respect to real property loans originated in the State by lenders other than national banks, Federal savings and loan associations, Federal savings banks, and Federal credit unions, may otherwise regulate such contracts, in which case subsection (b) shall apply only if such State law so provides; and

(B) the Comptroller of the Currency with respect to real property loans originated by national banks or the National Credit Union Administration Board with respect to real property loans originated by Federal credit unions may, by regulation prescribed prior to the close of such period, otherwise regulate such