

“(2) such other standards relating to asset quality, earnings, and valuation as the agency determines to be appropriate.”

Subsec. (d). Pub. L. 103-325, § 318(b)(1), struck out “by regulation” after “Standards to be prescribed” in heading.

Subsec. (d)(1). Pub. L. 103-325, § 318(b)(2), inserted “or guideline” before period at end of first sentence and inserted “or guidelines” after “Such regulations” in second sentence.

Subsec. (e)(1)(A). Pub. L. 103-325, § 318(c)(2)(A)–(C), struck out “or depository institution holding company” after “insured depository institution”, substituted “or (b)–

“(i) if such standard is prescribed by regulation of the agency, the agency shall require”

for “or (b) of this section the agency shall require”, struck out “or company” before “to submit an acceptable plan”, substituted “; and” for period at end of cl. (i), and added cl. (ii).

Subsec. (e)(1)(B). Pub. L. 103-325, § 318(c)(2)(A), struck out “or company” before “will take to correct”.

Subsec. (e)(1)(C)(i). Pub. L. 103-325, § 318(c)(2)(A), (D), struck out “and companies” after “institutions” and struck out “or company” after “institution” in two places.

Subsec. (e)(2). Pub. L. 103-325, § 318(c)(2)(B), struck out “or depository institution holding company” after “insured depository institution” in introductory provisions.

Subsec. (e)(2)(A), (B). Pub. L. 103-325, § 318(c)(2)(A), struck out “or company” after “institution” wherever appearing.

1992—Subsec. (d). Pub. L. 102-550, § 956(1), added subsec. (d) and struck out former subsec. (d) which read as follows: “Standards under subsections (a), (b), and (c) of this section shall be prescribed by regulation.”

Subsec. (e)(1)(A). Pub. L. 102-550, § 956(2), substituted “(a) or (b)” for “(a), (b), or (c)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-325, title III, § 318(d), Sept. 23, 1994, 108 Stat. 2224, provided that: “The amendments made by this section [amending this section] shall be construed to have the same effective date as section 39 of the Federal Deposit Insurance Act [this section], as provided in section 132(c) of the Federal Deposit Insurance Corporation Improvement Act of 1991 [Pub. L. 102-242, set out as an Effective Date note below].”

EFFECTIVE DATE

Pub. L. 102-242, title I, § 132(c), Dec. 19, 1991, 105 Stat. 2270, provided that: “The amendment made by subsection (a) [enacting this section] shall become effective on the earlier of—

“(1) the date on which final regulations promulgated in accordance with subsection (b) [set out below] become effective [Final rules were published July 10, 1995, 60 F.R. 35674, eff. Aug. 9, 1995]; or
“(2) December 1, 1993.”

REGULATIONS

Pub. L. 102-242, title I, § 132(b), Dec. 19, 1991, 105 Stat. 2270, provided that: “Each appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) shall promulgate final regulations under section 39 of the Federal Deposit Insurance Act [12 U.S.C. 1831p-1] (as added by subsection (a)) not later than August 1, 1993.”

§ 1831q. FDIC affordable housing program

(a) Purpose

The purpose of this section is to provide homeownership and rental housing opportunities for very low-income, low-income, and moderate-income families.

(b) Funding and limitations of program

(1) Duration of program

The provisions of this section shall be effective, subject to the provisions of paragraph (2), only during the 3-year period beginning upon the commencement of the first fiscal year for which amounts are provided pursuant to paragraph (2)(A).

(2) Annual fiscal limitations

(A) In general

In each fiscal year during the 3-year period referred to in paragraph (1), the provisions of this section shall apply only—

(i) to such extent or in such amounts as are provided in appropriations Acts for any losses resulting during the fiscal year from the sale of properties under this section, except that such amounts for losses may not exceed \$30,000,000 in any fiscal year; and

(ii) to the extent that amounts are provided in appropriations Acts pursuant to subparagraph (C) for any other costs relating to the program under this section.

(B) Definition of losses

For purposes of this paragraph, the amount of losses resulting from the sale of properties under this section during any fiscal year shall be the amount equal to the sum of any affordable housing discounts reasonably anticipated to accrue during the fiscal year.

(C) Authorization of appropriations

There are authorized to be appropriated, for each fiscal year during the 3-year period referred to in paragraph (1), such sums as may be necessary for any costs of the program under this section other than losses resulting from the sale of properties under this section.

(D) Other definitions

For purposes of this paragraph:

(i) Affordable housing discount

The term “affordable housing discount” means, with respect to any eligible residential or eligible condominium property transferred under this section by the Corporation, the difference (if any) between the realizable disposition value of the property and the actual sale price of the property under this section.

(ii) Realizable disposition value

The term “realizable disposition value” means the estimated sale price that the Corporation reasonably would be able to obtain upon the sale of a property by the Corporation under the provisions of this chapter, not including this section, and any other applicable laws. Not later than the expiration of the 120-day period beginning upon the commencement of the first fiscal year for which amounts are provided pursuant to paragraph (2)(A), the Corporation shall establish, and publish in the Federal Register, procedures for determining the realizable disposition value of

a property transferred under this section, which shall take into consideration such factors as the Corporation considers appropriate, including the actual sale prices of properties disposed of by the Resolution Trust Corporation under section 1441a(c)¹ of this title, the prices of other properties sold under similar programs, and the appraised value of the property transferred under this section. Until such procedures are established, the Corporation may consider the realizable disposition value of any eligible residential or condominium property to be equal to the appraised value of the property.

(3) Existing contracts

The provisions of this section shall not apply to any eligible residential property or any eligible condominium property that is subject to an agreement entered into by the Corporation before the commencement of the first fiscal year for which amounts are provided pursuant to paragraph (2)(A) that provides for any other disposition of the property.

(c) Rules governing disposition of eligible single family properties

(1) Notice to clearinghouses

Within a reasonable period of time after acquiring title to an eligible single family property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property, including but not limited to location, condition, and information relating to the estimated fair market value of the property. Each clearinghouse shall make such information available, upon request, to other public agencies, other nonprofit organizations, and qualifying households. The Corporation shall allow public agencies, nonprofit organizations, and qualifying households reasonable access to eligible single family property for purposes of inspection.

(2) Offers to sell to nonprofit organizations, public agencies, and qualifying households

During the 180-day period beginning on the date on which the Corporation makes an eligible single family property available for sale, the Corporation shall offer to sell the property to—

(A) qualifying households (including qualifying households with members who are veterans); or

(B) public agencies or nonprofit organizations that agree to (i) make the property available for occupancy by and maintain it as affordable for low-income families (including low-income families with members who are veterans) for the remaining useful life of such property, or (ii) make the property available for purchase by any such family who, except as provided in paragraph (4), agrees to occupy the property as a principal residence for at least 12 months and certifies in writing that the family intends to occupy the property for at least 12 months.

The restrictions described in clause (i) of subparagraph (B) shall be contained in the deed or

other recorded instrument. If, upon the expiration of such 180-day period, no qualifying household, public agency, or nonprofit organization has made a bona fide offer to purchase the property, the Corporation may offer to sell the property to any purchaser. The Corporation shall actively market eligible single family properties for sale to low-income families and to low-income families with members who are veterans.

(3) Recapture of profits from resale

Except as provided in paragraph (4), if any eligible single family property sold (A) to a qualifying household, or (B) to a low-income family pursuant to paragraph (2)(B)(ii), subsection (j)(3)(A), or subsection (k)(2), is resold by the qualifying household or low-income family during the 1-year period beginning upon initial acquisition by the household or low-income family, the Corporation shall recapture 75 percent of the amount of any proceeds from the resale that exceed the sum of (i) the original sale price for the acquisition of the property by the qualifying household or low-income family, (ii) the costs of any improvements to the property made after the date of the acquisition, and (iii) any closing costs in connection with the acquisition.

(4) Exceptions to recapture requirement

(A) Relocation

The Corporation may in its discretion waive the applicability (i) to any qualifying household of the requirement under paragraph (3) and the requirements relating to residency of a qualifying household under subparagraphs (B) and (C) of subsection (p)(12), and (ii) to any low-income family of the requirement under paragraph (3) and the residency requirements under paragraph (2)(B)(ii). The Corporation may grant any such waiver only for good cause shown, including any necessary relocation of the qualifying household or low-income family.

(B) Other recapture provisions

The requirement under paragraph (3) shall not apply to any eligible single family property for which, upon resale by the qualifying household or low-income family during the 1-year period beginning upon initial acquisition by the household or family, a portion of the sale proceeds or any subsidy provided in connection with the acquisition of the property by the household or family is required to be recaptured or repaid under any other Federal, State, or local law (including section 143(m) of title 26) or regulation or under any sale agreement.

(5) Exception to avoid displacement of existing residents

Notwithstanding the first sentence of paragraph (2), during the 180-day period following the date on which the Corporation makes an eligible single family property available for sale, the Corporation may sell the property to the household residing in the property, but only if (A) such household was residing in the property at the time notice regarding the property was provided to clearinghouses under

¹ See References in Text note below.

paragraph (1), (B) such sale is necessary to avoid the displacement of, and unnecessary hardship to, the resident household, (C) the resident household intends to occupy the property as a principal residence for at least 12 months, and (D) the resident household certifies in writing that the household intends to occupy the property for at least 12 months.

(d) Rules governing disposition of eligible multifamily housing properties

(1) Notice to clearinghouses

Within a reasonable period of time after acquiring title to an eligible multifamily housing property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property, including but not limited to location, number of units (identified by number of bedrooms), and information relating to the estimated fair market value of the property. Each clearinghouse shall make such information available, upon request, to qualifying multifamily purchasers. The Corporation shall allow qualifying multifamily purchasers reasonable access to eligible multifamily housing properties for purposes of inspection.

(2) Expression of serious interest

Qualifying multifamily purchasers may give written notice of serious interest in a property during a period ending 90 days after the time the Corporation provides notice under paragraph (1). The notice of serious interest shall be in such form and include such information as the Corporation may prescribe.

(3) Notice of readiness for sale

Upon the expiration of the period referred to in paragraph (2) for a property, the Corporation shall provide written notice to any qualifying multifamily purchaser that has expressed serious interest in the property. Such notice shall specify the minimum terms and conditions for sale of the property.

(4) Offers by qualifying multifamily purchasers

A qualifying multifamily purchaser receiving notice in accordance with paragraph (3) shall have 45 days (from the date notice is received) to make a bona fide offer to purchase the property. The Corporation shall accept an offer that complies with the terms and conditions established by the Corporation. If, before the expiration of such 45-day period, any offer to purchase a property initially accepted by the Corporation is subsequently rejected or fails (for any reason), the Corporation shall accept another offer to purchase the property made during such period that complies with the terms and conditions established by the Corporation (if such another offer is made). The preceding sentence may not be construed to require a qualifying multifamily purchaser whose offer is accepted during the 45-day period to purchase the property before the expiration of the period.

(5) Extension of restricted offer periods

The Corporation may provide notice to clearinghouses regarding, and offer for sale under the provisions of paragraphs (1) through

(4), any eligible multifamily housing property—

(A) in which no qualifying multifamily purchaser has expressed serious interest during the period referred to in paragraph (2), or

(B) for which no qualifying multifamily purchaser has made a bona fide offer before the expiration of the period referred to in paragraph (4),

except that the Corporation may, in the discretion of the Corporation, alter the duration of the periods referred to in paragraphs (2) and (4) in offering any property for sale under this paragraph.

(6) Sale of multifamily properties to other purchasers

(A) Timing

If, upon the expiration of the period referred to in paragraph (2), no qualifying multifamily purchaser has expressed serious interest in a property, the Corporation may offer to sell the property, individually or in combination with other properties, to any purchaser.

(B) Limitation on combination sales

The Corporation may not sell in combination with other properties any property for which a qualifying multifamily purchaser has expressed serious interest in purchasing individually.

(C) Expiration of offer period

If, upon the expiration of the period referred to in paragraph (4), no qualifying multifamily purchaser has made an offer to purchase a property, the Corporation may offer to sell the property, individually or in combination with other properties, to any purchaser.

(7) Low-income occupancy requirements

(A) Single property purchases

With respect to any purchase of a single eligible multifamily housing property by a qualifying multifamily purchaser under paragraph (4) or (5)—

(i) not less than 35 percent of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for low-income and very low-income families during the remaining useful life of the property in which the units are located; provided that

(ii) not less than 20 percent of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for very low-income families during the remaining useful life of the property in which the units are located.

(B) Aggregation requirements for multiproperty purchases

With respect to any purchase under paragraph (4) or (5) by a qualifying multifamily purchaser involving more than one eligible multifamily housing property as a part of the same negotiation, with respect to which the purchaser intends to aggregate the low-income occupancy required under this paragraph over the total number of units so purchased—

(i) not less than 40 percent of the aggregate number of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for low-income and very low-income families during the remaining useful life of the building or structure in which the units are located; provided that

(ii) not less than 20 percent of the aggregate number of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for very low-income families during the remaining useful life of the building or structure in which the units are located; and further provided that

(iii) not less than 10 percent of the dwelling units in each separate property purchased shall be made available for occupancy by and maintained as affordable for low-income families during the remaining useful life of the property in which the units are located.

The requirements of this paragraph shall be contained in the deed or other recorded instrument.

(8) Exemptions

(A) Continued occupancy of current residents

No purchaser of an eligible multifamily property may terminate the occupancy of any person residing in the property on the date of purchase for purposes of meeting the low-income occupancy requirement applicable to the property under paragraph (7). The purchaser shall be considered to be in compliance with this subsection if each newly vacant dwelling unit is reserved for low-income occupancy until the low-income occupancy requirement is met.

(B) Financial infeasibility

The Secretary or the State housing finance agency for the State in which an eligible multifamily housing property is located may temporarily reduce the low-income occupancy requirements under paragraph (7) applicable to the property, if the Secretary or such agency determines that an owner's compliance with such requirements is no longer financially feasible. The owner of the property shall make a good-faith effort to return low-income occupancy to the level required under paragraph (7), and the Secretary or the State housing finance agency, as appropriate, shall review the reduction annually to determine whether financial infeasibility continues to exist.

(e) Rent limitations

(1) In general

With respect to properties under paragraph (2), rents charged to tenants for units made available for occupancy by very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the median income for the area, as determined by the Secretary, with adjustment for family size. Rents charged to tenants for units made available for occupancy by low-

income families other than very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

(2) Applicability

The rent limitations under this subsection shall apply to any eligible single family property sold pursuant to subsection (c)(2)(B)(i) and to any eligible multifamily housing property sold pursuant to subsection (d).

(f) Preferences for sales

(1) In general

In selling any eligible multifamily housing property or combinations of eligible residential properties, the Corporation shall give preference, among substantially similar offers, to the offer that would reserve the highest percentage of dwelling units for occupancy or purchase by very low-income and low-income families and would retain such affordability for the longest term.

(2) Multiproperty purchases

The Corporation shall give preference, among substantially similar offers made under paragraph (4) or (5) of subsection (d) to purchase more than one eligible multifamily housing property as a part of the same negotiation, to offers made by purchasers who agree to maintain low-income occupancy in each separate property purchased in compliance with the levels required for properties under subsection (d)(7)(A).

(3) Definition of substantially similar offers

For purposes of this subsection, a given offer to purchase eligible multifamily housing property or combinations of such properties shall be considered to be substantially similar to another offer if the purchase price under such given offer is not less than 85 percent of the purchase price under the other offer.

(g) Financing sales

(1) Assistance by Corporation

(A) Sale price

The Corporation shall establish a market value for each eligible multifamily housing property. The Corporation shall sell eligible multifamily housing property at the net realizable market value, except that the Corporation may agree to sell eligible multifamily housing property at a price below the net realizable market value to the extent necessary to facilitate an expedited sale of such property and enable a public agency or nonprofit organization to comply with the low-income occupancy requirements applicable to such property under subsection (d)(7). The Corporation may sell eligible single family property or eligible condominium property to qualifying households, nonprofit organizations, and public agencies without regard to any minimum sale price.

(B) Purchase loan

The Corporation may provide a loan at market interest rates to any purchaser of el-

eligible residential property for all or a portion of the purchase price, which loan shall be secured by a first or second mortgage on the property. The Corporation may provide the loan at below market interest rates to the extent necessary to facilitate an expedited sale of eligible residential property and permit (i) a low-income family to purchase an eligible single family property under subsection (c), or (ii) a public agency or nonprofit organization to comply with the low-income occupancy requirements applicable to the purchase of an eligible residential property under subsection (c) or (d). The Corporation shall provide loans under this subparagraph in a form permitting sale or transfer of the loan to a subsequent holder. In providing financing for combinations of eligible multifamily housing properties under this section, the Corporation may hold a participating share, including a subordinate participation. The Corporation shall periodically provide, to a wide range of minority- and women-owned businesses engaged in providing affordable housing and to nonprofit organizations, more than 50 percent of the control of which is held by 1 or more minority individuals, that are engaged in providing affordable housing, information that is sufficient to inform such businesses and organizations of the availability and terms of financing under this subparagraph; such information may be provided directly, by notices published in periodicals and other publications that regularly provide information to such businesses or organizations, and through persons and organizations that regularly provide information or services to such businesses or organizations. For purposes of this subparagraph, the terms “women-owned business” and “minority-owned business” have the meanings given such terms in section 1441a(r)¹ of this title, and the term “minority” has the meaning given such term in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(2) Assistance by HUD

The Secretary shall take such action as may be necessary to expedite the processing of applications for assistance under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q], the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11360 et seq.], and the National Housing Act [12 U.S.C. 1701 et seq.], to enable any organization or individual to purchase eligible residential property.

(3) Assistance by FMHA

The Secretary of Agriculture shall take such action as may be necessary to expedite the processing of applications for assistance under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.] to enable any organization or individual to purchase eligible residential property.

(4) Exception to disposition rules

Notwithstanding the requirements under paragraphs (1), (2), (3), (4), (6), and (8) of sub-

section (d), the Corporation may provide for the disposition of eligible multifamily housing properties as necessary to facilitate purchase of such properties for use in connection with section 202 of the Housing Act of 1959 [12 U.S.C. 1701q].

(5) Bulk acquisitions under Home Investment Partnerships Act

(A) Purchase price

In providing for bulk acquisition of eligible single family properties by participating jurisdictions for inclusion in affordable housing activities under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.], the Corporation shall agree to an amount to be paid for acquisition of such properties. The acquisition price shall include discounts for bulk purchase and for holding of the property such that the acquisition price for each property shall not exceed the fair market value of the property, as valued individually.

(B) Exemptions

To the extent necessary to facilitate sale of properties under this paragraph, the requirements of subsections (c) and (f) and of paragraph (1) of this subsection shall not apply to such transactions and properties involved in such transactions.

(C) Inventories

To facilitate acquisitions by such participating jurisdictions, the Corporation shall provide the participating jurisdictions with inventories of eligible single family properties not less than 4 times each year.

(h) Coordination with other programs

(1) Use of secondary market agencies

In the disposition of eligible residential properties, the Corporation (in consultation with the Secretary) shall explore opportunities to work with secondary market entities to provide housing for low- and moderate-income families.

(2) Credit enhancement

(A) In general

With respect to such properties, the Secretary may, consistent with statutory authorities, work through the Federal Housing Administration, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and other secondary market entities to develop risk-sharing structures, mortgage insurance, and other credit enhancements to assist in the provision of property ownership, rental, and cooperative housing opportunities for low- and moderate-income families.

(B) Certain tax-exempt bonds

The Corporation may provide credit enhancements with respect to tax-exempt bonds issued on behalf of nonprofit organizations pursuant to section 103, and subpart A of part IV of subchapter A of chapter 1, of title 26, with respect to the disposition of eligible residential properties for the purposes described in subparagraph (A).

(3) National Affordable Housing Act

The Corporation shall coordinate the disposition of eligible residential property under this section with appropriate programs and provisions of, and amendments made by, the Cranston-Gonzalez National Affordable Housing Act, including titles II [42 U.S.C. 12721 et seq.] and IV of such Act.

(i) Exemption for certain transactions with insured depository institutions

The provisions of this section shall not apply with respect to any eligible residential property after the date the Corporation enters into a contract to sell such property to an insured depository institution (as defined in section 1813 of this title), including any sale in connection with a transfer of all or substantially all of the assets of a closed insured depository institution (including such property) to another insured depository institution.

(j) Transfer of certain eligible residential properties to State housing agencies for disposition

Notwithstanding subsections (c), (d), (f), and (g), the Corporation may transfer eligible residential properties to the State housing finance agency or any other State housing agency for the State in which the property is located, or to any local housing agency in whose jurisdiction the property is located. Transfers of eligible residential properties under this subsection may be conducted by direct sale, consignment sale, or any other method the Corporation considers appropriate and shall be subject to the following requirements:

(1) Individual or bulk transfer

The Corporation may transfer such properties individually or in bulk, as agreed to by the Corporation and the State housing finance agency or State or local housing agency.

(2) Acquisition price

The acquisition price paid by the State housing finance agency or State or local housing agency to the Corporation for properties transferred under this subsection shall be an amount agreed to by the Corporation and the transferee agency.

(3) Low-income use

Any State housing finance agency or State or local housing agency acquiring properties under this subsection shall offer to sell or transfer the properties only as follows:

(A) Eligible single family properties

For eligible single family properties—

(i) to purchasers described under subparagraphs (A) and (B) of subsection (c)(2);

(ii) if the purchaser is a purchaser described under subsection (c)(2)(B)(i), subject to the rent limitations under subsection (e)(1);

(iii) subject to the requirement in the second sentence of subsection (c)(2); and

(iv) subject to recapture by the Corporation of excess proceeds from resale of the properties under paragraphs (3) and (4) of subsection (c).

(B) Eligible multifamily housing properties

For eligible multifamily housing properties—

(i) to qualifying multifamily purchasers;

(ii) subject to the low-income occupancy requirements under subsection (d)(7);

(iii) subject to the provisions of subsection (d)(8);

(iv) subject to a preference, among financially acceptable offers, to the offer that would reserve the highest percentage of dwelling units for occupancy or purchase by very low- and low-income families and would retain such affordability for the longest term; and

(v) subject to the rent limitations under subsection (e)(1).

(4) Affordability

The State housing finance agency or State or local housing agency shall endeavor to make the properties transferred under this subsection more affordable to low-income families based upon the extent to which the acquisition price of a property under paragraph (2) is less than the market value of the property.

(k) Exception for sales to nonprofit organizations and public agencies**(1) Suspension of offer periods**

With respect to any eligible residential property, the Corporation may (in the discretion of the Corporation) suspend any of the requirements of paragraphs (1) and (2) of subsection (c) and paragraphs (1) through (4) of subsection (d), as applicable, but only to the extent that for the duration of the suspension the Corporation negotiates the sale of the property to a nonprofit organization or public agency. If the property is not sold pursuant to such negotiations, the requirements of any provisions suspended shall apply upon the termination of the suspension. Any time period referred to in such subsections shall toll for the duration of any suspension under this paragraph.

(2) Use restrictions**(A) Eligible single family property**

Any eligible single family property sold under this subsection shall be (i) made available for occupancy by and maintained as affordable for low-income families for the remaining useful life of the property, or made available for purchase by such families, (ii) subject to the rent limitations under subsection (e)(1), (iii) subject to the requirements relating to residency of a qualifying household under subsection (p)(12) and to residency of a low-income family under subsection (c)(2)(B), and (iv) subject to recapture by the Corporation of excess proceeds from resale of the property under paragraphs (3) and (4) of subsection (c).

(B) Eligible multifamily housing property

Any eligible multifamily housing property sold under this subsection shall comply with the low-income occupancy requirements under subsection (d)(7) and shall be subject to the rent limitations under subsection (e)(1).

(I) Rules governing disposition of eligible condominium property**(1) Notice to clearinghouses**

Within a reasonable period of time after acquiring title to an eligible condominium property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property. Each clearinghouse shall make such information available, upon request, to purchasers described in subparagraphs (A) through (D) of paragraph (2). The Corporation shall allow such purchasers reasonable access to an eligible condominium property for purposes of inspection.

(2) Offers to sell

For the 180-day period following the date on which the Corporation makes an eligible condominium property available for sale, the Corporation may offer to sell the property, at the discretion of the Corporation, to 1 or more of the following purchasers:

- (A) Qualifying households.
- (B) Nonprofit organizations.
- (C) Public agencies.
- (D) For-profit entities.

(3) Low-income occupancy requirements**(A) In general**

Except as provided in subparagraph (B), any nonprofit organization, public agency, or for-profit entity that purchases an eligible condominium property shall (i) make the property available for occupancy by and maintain it as affordable for low-income families for the remaining useful life of the property, or (ii) make the property available for purchase by any such family who, except as provided in paragraph (5), agrees to occupy the property as a principal residence for at least 12 months and certifies in writing that the family intends to occupy the property for at least 12 months. The restriction described in clause (i) of the preceding sentence shall be contained in the deed or other recorded instrument.

(B) Multiple-unit purchases

If any nonprofit organization, public agency, or for-profit entity purchases more than 1 eligible condominium property as a part of the same negotiation or purchase, the Corporation may (in the discretion of the Corporation) waive the requirement under subparagraph (A) and provide instead that not less than 35 percent of all eligible condominium properties purchased shall be (i) made available for occupancy by and maintained as affordable for low-income families for the remaining useful life of the property, or (ii) made available for purchase by any such family who, except as provided in paragraph (5), agrees to occupy the property as a principal residence for at least 12 months and certifies in writing that the family intends to occupy the property for at least 12 months. The restriction described in clause (i) of the preceding sentence shall be contained in the deed or other recorded instrument.

(C) Sale to other purchasers

If, upon the expiration of the 180-day period referred to in paragraph (2), no purchaser described in subparagraphs (A) through (D) of paragraph (2) has made a bona fide offer to purchase the property, the Corporation may offer to sell the property to any other purchaser.

(4) Recapture of profits from resale

Except as provided in paragraph (5), if any eligible condominium property sold (A) to a qualifying household, or (B) to a low-income family pursuant to paragraph (3)(A)(i) or (3)(B)(i), is resold by the qualifying household or low-income family during the 1-year period beginning upon initial acquisition by the household or family, the Corporation shall recapture 75 percent of the amount of any proceeds from the resale that exceed the sum of (i) the original sale price for the acquisition of the property by the qualifying household or low-income family, (ii) the costs of any improvements to the property made after the date of the acquisition, and (iii) any closing costs in connection with the acquisition.

(5) Exception to recapture requirement

The Corporation (or its successor) may in its discretion waive the applicability to any qualifying household or low-income family of the requirement under paragraph (4) and the requirements relating to residency of a qualifying household or low-income family (under subsection (p)(12) and paragraph (3) of this subsection, respectively). The Corporation may grant any such a waiver only for good cause shown, including any necessary relocation of the qualifying household or low-income family.

(6) Limitations on multiple unit purchases

The Corporation may not sell or offer to sell as part of the same negotiation or purchase any eligible condominium properties that are not located in the same condominium project (as such term is defined in section 3603 of title 15). The preceding sentence may not be construed to require all eligible condominium properties offered or sold as part of the same negotiation or purchase to be located in the same structure.

(7) Rent limitations

Rents charged to tenants of eligible condominium properties made available for occupancy by very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the median income for the area, as determined by the Secretary, with adjustment for family size. Rents charged to tenants of eligible condominium properties made available for occupancy by low-income families other than very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

(m) Liability provisions**(1) In general**

The provisions of this section, or any failure by the Corporation to comply with such provi-

sions, may not be used by any person to attack or defeat any title to property after it is conveyed by the Corporation.

(2) Low-income occupancy

The low-income occupancy requirements under subsections (c), (d), (j)(3), (k)(2), and (l)(3) shall be judicially enforceable against purchasers of property under this section and their successors in interest by affected very low- and low-income families, State housing finance agencies, and any agency, corporation, or authority of the United States. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

(3) Clearinghouses

A clearinghouse shall not be subject to suit for its failure to comply with the requirements of this section.

(4) Corporation

The Corporation shall not be liable to any depositor, creditor, or shareholder of any insured depository institution for which the Corporation has been appointed receiver or conservator, or of any subsidiary corporation of a depository institution under receivership or conservatorship, or any claimant against such institution or subsidiary, because the disposition of assets of the institution or the subsidiary under this section affects the amount of return from the assets.

(n) Unified affordable housing programs

(1) In general

Not later than 4 months after December 17, 1993, the Corporation shall enter into an agreement, as described in paragraph (3), with the Resolution Trust Corporation that sets out a plan for the orderly unification of the Corporation's activities, authorities, and responsibilities under this section with the authorities, activities, and responsibilities of the Resolution Trust Corporation pursuant to section 1441a(c)¹ of this title in a manner that best achieves an effective and comprehensive affordable housing program management structure. The agreement shall be entered into after consultation with the Affordable Housing Advisory Board under section 14(b) of the Resolution Trust Corporation Completion Act.

(2) Authority and implementation

The Corporation shall have the authority to carry out the provisions of the agreement entered into pursuant to paragraph (1) and shall implement such agreement as soon as practicable but in no event later than 8 months after December 17, 1993.

(3) Terms of agreement

The agreement required under paragraph (1) shall provide a plan for—

(A) a program unifying all activities and responsibilities of the Corporation and the Resolution Trust Corporation, and the design of the unified program shall take into consideration the substantial experience of the Resolution Trust Corporation regarding—

(i) seller financing;

(ii) technical assistance;
(iii) marketing skills and relationships with public and nonprofit entities; and
(iv) staff resources;

(B) the elimination of duplicative and unnecessary administrative costs and resources;

(C) the management structure of the unified program;

(D) a timetable for the unification; and

(E) a methodology to determine the extent to which the provisions of this section shall be effective, in accordance with the limitations under subsection (b)(2).

(4) Transfer to FDIC

Beginning not later than October 1, 1995, the Corporation shall carry out any remaining authority and responsibilities of the Resolution Trust Corporation, as set forth in section 1441a(c)¹ of this title.

(o) Report

To the extent applicable, in the annual report submitted by the Secretary to the Congress under section 3536 of title 42, the Secretary shall include a detailed description of any activities under this section, including recommendations for any additional authority the Secretary considers necessary to implement the provisions of this section.

(p) Definitions

For purposes of this section:

(1) Adjusted income and income

The terms “adjusted income” and “income” shall have the meaning given such terms in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)].

(2) Clearinghouse

The term “clearinghouse” means—

(A) the State housing finance agency for the State in which an eligible residential property or eligible condominium property is located;

(B) the Office of Community Investment (or other comparable division) within the Federal Housing Finance Board; and

(C) any national nonprofit organizations (including any nonprofit entity established by the corporation established under title IX of the Housing and Community Development Act of 1968 [42 U.S.C. 3931 et seq.]) that the Corporation determines has the capacity to act as a clearinghouse for information.

(3) Corporation

The term “Corporation” means the Federal Deposit Insurance Corporation acting in its corporate capacity or its capacity as receiver.

(4) Eligible condominium property

The term “eligible condominium property” means a condominium unit, as such term is defined in section 3603 of title 15—

(A) to which such Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receiv-

ership, which subsidiary has as its principal business the ownership of real property); and

(B) that has an appraised value that does not exceed the amount provided in section 203(b)(2)(A) of the National Housing Act [12 U.S.C. 1709(b)(2)(A)] except that such amount shall not exceed \$101,250 in the case of a 1-family residence, \$114,000 in the case of a 2-family residence, \$138,000 in the case of a 3-family residence, and \$160,000 in the case of a 4-family residence.

(5) Eligible multifamily housing property

The term “eligible multifamily housing property” means a property consisting of more than 4 dwelling units—

(A) to which the Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property); and

(B) that has an appraised value that does not exceed the applicable dollar amount specified in section 221(d)(3)(ii) of the National Housing Act [12 U.S.C. 1715(d)(3)(ii)] for elevator-type structures, as such dollar amount is increased under such section for geographical areas or on a project-by-project basis (except that any such increase on a project-by-project basis shall be made pursuant to a determination by the Corporation that such increase is necessary).

(6) Eligible residential property

The term “eligible residential property” includes eligible single family properties and eligible multifamily housing properties.

(7) Eligible single family property

The term “eligible single family property” means a 1- to 4-family residence (including a manufactured home)—

(A) to which the Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property); and

(B) that has an appraised value that does not exceed the amount provided in section 203(b)(2)(A) of the National Housing Act [12 U.S.C. 1709(b)(2)(A)] except that such amount shall not exceed \$101,250 in the case of a 1-family residence, \$114,000 in the case of a 2-family residence, \$138,000 in the case of a 3-family residence, and \$160,000 in the case of a 4-family residence.

(8) Low-income families

The term “low-income families” means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary, with adjustment for family size.

(9) Net realizable market value

The term “net realizable market value” means a price below the market value that

takes into account (A) any reductions in holding costs resulting from the expedited sale of a property, including foregone real estate taxes, insurance, maintenance costs, security costs, and loss of use of funds, and (B) the avoidance, if applicable, of fees paid to real estate brokers, auctioneers, or other individuals or organizations involved in the sale of property owned by the Corporation.

(10) Nonprofit organization

The term “nonprofit organization” means a private organization (including a limited equity cooperative)—

(A) no part of the earnings of which inures to the benefit of any member, shareholder, founder, contributor, or individual; and

(B) that is approved by the Corporation as to financial responsibility.

(11) Public agency

The term “public agency” means any Federal, State, local, or other governmental entity, and includes any public housing agency.

(12) Qualifying household

The term “qualifying household” means a household—

(A) who intends to occupy eligible single family property as a principal residence;

(B) who agrees to occupy the property as a principal residence for at least 12 months;

(C) who certifies in writing that the household intends to occupy the property as a principal residence for at least 12 months; and

(D) whose income does not exceed 115 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

(13) Qualifying multifamily purchaser

The term “qualifying multifamily purchaser” means—

(A) a public agency;

(B) a nonprofit organization; or

(C) a for-profit entity, which makes a commitment (for itself or any related entity) to comply with the low-income occupancy requirements under subsection (d)(7) for any eligible multifamily housing property for which an offer to purchase is made during or after the periods specified under subsection (d).

(14) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development.

(15) State housing finance agency

The term “State housing finance agency” means the public agency, authority, corporation, or other instrumentality of a State that has the authority to provide residential mortgage loan financing throughout the State.

(16) Very low-income families

The term “very low-income families” means families and individuals whose incomes do not exceed 50 percent of the median income of the area involved, as determined by the Secretary, with adjustment for family size.

(q) Notice to clearinghouses regarding ineligible properties**(1) In general**

Within a reasonable period of time after acquiring title to an ineligible residential property, the Corporation shall, to the extent practicable, provide written notice to clearinghouses.

(2) Content

For ineligible single family properties, such notice shall contain the same information about such properties that the notice required under subsection (c)(1) contains with respect to eligible single family properties. For ineligible multifamily housing properties, such notice shall contain the same information about such properties that the notice required under subsection (d)(1) contains with respect to eligible multifamily housing properties. For ineligible condominium properties, such notice shall contain the same information about such properties that the notice required under subsection (l)(1) contains with respect to eligible condominium properties.

(3) Availability

The clearinghouses shall make such information available, upon request, to other public agencies, other nonprofit organizations, qualifying households, qualifying multifamily purchasers, and other purchasers, as appropriate.

(4) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Ineligible condominium property

The term “ineligible condominium property” means any eligible condominium property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A).

(B) Ineligible multifamily housing property

The term “ineligible multifamily housing property” means any eligible multifamily housing property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A).

(C) Ineligible single family property

The term “ineligible single family property” means any eligible single family property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A).

(D) Ineligible residential property

The term “ineligible residential property” includes ineligible single family properties, ineligible multifamily housing properties, and ineligible condominium properties.

(Sept. 21, 1950, ch. 967, §2[40], as added Pub. L. 102-242, title II, §241(a), Dec. 19, 1991, 105 Stat. 2317; amended Pub. L. 102-389, title II, Oct. 6, 1992, 106 Stat. 1592, 1593; Pub. L. 102-550, title V, §503(c)(4), Oct. 28, 1992, 106 Stat. 3780; Pub. L. 103-204, §§13, 14(a)(2), (d)(2), (e)(2), (f)(2), Dec. 17, 1993, 107 Stat. 2391, 2393, 2396, 2398; Pub. L. 103-325, title VI, §602(a)(65), (66), Sept. 23, 1994,

108 Stat. 2291; Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675.)

Editorial Notes

REFERENCES IN TEXT

Section 1441a of this title, referred to in subsecs. (b)(2)(D)(ii), (g)(1)(B), and (n)(1), (4), was repealed by Pub. L. 111-203, title III, §364(b), July 21, 2010, 124 Stat. 1555.

Section 1204(c)(3) of the Financial Institutions Recovery, and Enforcement Act of 1989, referred to in subsec. (g)(1)(B), is section 1204(c)(3) of Pub. L. 101-73, which is set out as a note under section 1811 of this title.

The United States Housing Act of 1937, referred to in subsec. (g)(2), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (g)(2), is Pub. L. 100-77, July 22, 1987, 101 Stat. 482. Title IV of the Act is classified generally to subchapter IV (§11360 et seq.) of chapter 119 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

The National Housing Act, referred to in subsec. (g)(2), is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to chapter 13 (§1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Housing Act of 1949, referred to in subsec. (g)(3), is act July 15, 1949, ch. 338, 63 Stat. 413. Title V of the Act is classified generally to subchapter III (§1471 et seq.) of chapter 8A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsecs. (g)(5)(A) and (h)(3), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, also known as the “HOME Investment Partnerships Act”, is classified principally to subchapter II (§12721 et seq.) of chapter 130 of Title 42, The Public Health and Welfare. Title IV of the Act, also known as the “Homeownership and Opportunity Through HOPE Act”, enacted subchapter II-A (§1437aaa et seq.) of chapter 8 of Title 42 and subchapter IV (§12871 et seq.) of chapter 130 of Title 42, amended sections 1437c, 1437f, 1437p, 1437r, and 1437s of Title 42 and section 1709 of this title, and enacted provisions set out as notes under sections 1437c, 1437aa, and 1437aaa of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of Title 42 and Tables.

Section 14(b) of the Resolution Trust Corporation Completion Act, referred to in subsec. (n)(1), is section 14(b) of Pub. L. 103-204, which is set out below.

The Housing and Community Development Act of 1968, referred to in subsec. (p)(2)(C), probably means the Housing and Urban Development Act of 1968, Pub. L. 90-448, Aug. 1, 1968, 82 Stat. 476. Title IX of the Act is classified principally to chapter 49 (§3931 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title of 1968 Amendments note set out under section 1701 of this title and Tables.

CODIFICATION

Another section 2[40] of act Sept. 21, 1950, was renumbered section 2[43] and is classified to section 1831t of this title.

AMENDMENTS

2000—Subsec. (g)(2). Pub. L. 106-400 substituted “McKinney-Vento Homeless Assistance Act” for “Stewart B. McKinney Homeless Assistance Act”.

1994—Subsec. (c)(4)(A). Pub. L. 103-325, §602(a)(65), substituted “subparagraphs (B) and (C) of subsection (p)(12) of this section” for “subsections (p)(12)(B) and (C) of this section”.

Subsec. (d)(8)(A). Pub. L. 103-325, §602(a)(66), substituted “meeting the” for “meeting”.

1993—Subsec. (g)(1)(B). Pub. L. 103-204, §14(d)(2), inserted at end “The Corporation shall periodically provide, to a wide range of minority- and women-owned businesses engaged in providing affordable housing and to nonprofit organizations, more than 50 percent of the control of which is held by 1 or more minority individuals, that are engaged in providing affordable housing, information that is sufficient to inform such businesses and organizations of the availability and terms of financing under this subparagraph; such information may be provided directly, by notices published in periodicals and other publications that regularly provide information to such businesses or organizations, and through persons and organizations that regularly provide information or services to such businesses or organizations. For purposes of this subparagraph, the terms ‘women-owned business’ and ‘minority-owned business’ have the meanings given such terms in section 1441a(r) of this title, and the term ‘minority’ has the meaning given such term in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.”

Subsec. (m)(4). Pub. L. 103-204, §14(f)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The Corporation shall not be liable to any depositor, creditor, or shareholder of any insured depository institution for which the Corporation has been appointed receiver, or any claimant against such an institution, because the disposition of assets of the institution under this section affects the amount of return from the assets.”

Subsec. (n). Pub. L. 103-204, §14(e)(2), amended subsec. (n) generally. Prior to amendment, subsec. (n) read as follows: “AFFORDABLE HOUSING PROGRAM OFFICE.—The Corporation shall establish an Affordable Housing Program Office within the Corporation to carry out the provisions of this section and shall dedicate certain staff of the Corporation to the office.”

Subsec. (p)(4)(A), (5)(A), (7)(A). Pub. L. 103-204, §13, inserted “in its corporate capacity, its capacity as conservator, or its capacity as receiver (including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property)” before “; and”.

Subsec. (q). Pub. L. 103-204, §14(a)(2), added subsec. (q).

1992—Subsec. (p)(4)(B). Pub. L. 102-550 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “that has an appraised value that does not exceed the applicable dollar amount specified in the first sentence of section 203(b)(2) of the National Housing Act, as such dollar amount is increased on an area-by-area basis under such section for areas with high prevailing housing sales prices, except that for purposes of this paragraph no such increase may exceed 150 percent of the dollar amount specified in section 203(b)(2).”

Pub. L. 102-389 added subpar. (B) and struck out former subpar. (B) which read as follows: “that has an appraised value that does not exceed the applicable dollar amount set forth in the first sentence of section 203(b)(2) of the National Housing Act (which may, in the discretion of the Corporation, take into consideration any increase of such amount for high-cost areas).”

Subsec. (p)(5)(B). Pub. L. 102-389 added subpar. (B) and struck out former subpar. (B) which read as follows: “that has an appraised value that does not exceed the applicable dollar amount set forth in section 221(d)(3)(ii) of the National Housing Act for elevator-type structures (which may, in the discretion of the Corporation, take into consideration any increase of such amount for high-cost areas).”

Subsec. (p)(7)(B). Pub. L. 102-550 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “that has an appraised value that does not exceed the applicable dollar amount specified in the first sentence of section 203(b)(2) of the National Housing Act, as such dollar amount is increased on an area-by-area basis under such section for areas with high prevailing housing sales prices, except that for purposes of this paragraph no such increase may exceed 150 percent of the dollar amount specified in section 203(b)(2).”

Pub. L. 102-389 added subpar. (B) and struck out former subpar. (B) which read as follows: “that has an appraised value that does not exceed the applicable dollar amount set forth in the first sentence of section 203(b)(2) of the National Housing Act (which may, in the discretion of the Corporation, take into consideration any increase of such amount for high-cost areas).”

Statutory Notes and Related Subsidiaries

AFFORDABLE HOUSING ADVISORY BOARD

Pub. L. 103-204, §14(b), Dec. 17, 1993, 107 Stat. 2393, as amended by Pub. L. 105-216, §14(e), (f), July 29, 1998, 112 Stat. 910, established the Affordable Housing Advisory Board to advise the Thrift Depositor Protection Oversight Board and the Federal Deposit Insurance Corporation Board of Directors on policies and programs related to the provision of affordable housing and provided that the Advisory Board would terminate on Sept. 30, 1998.

COORDINATION AND CONSULTATION BETWEEN FEDERAL DEPOSIT INSURANCE CORPORATION AND RESOLUTION TRUST CORPORATION UNDER AFFORDABLE HOUSING PROGRAMS

Pub. L. 102-242, title II, §241(b), Dec. 19, 1991, 105 Stat. 2331, as amended by Pub. L. 102-550, title XVI, §1604(c)(1), Oct. 28, 1992, 106 Stat. 4083, provided that: “The Federal Deposit Insurance Corporation and the Resolution Trust Corporation shall consult and coordinate with each other in carrying out their respective responsibilities under the affordable housing programs under section 40 of the Federal Deposit Insurance Act [12 U.S.C. 1831q] and [former] section 21A(c) of the Federal Home Loan Bank Act [12 U.S.C. 1441a(c)]. Such corporations shall develop any procedures, and may enter into any agreements, necessary to provide for the coordinated, efficient, and effective operation of such programs.”

§ 1831r. Payments on foreign deposits prohibited

(a) In general

Notwithstanding any other provision of law, the Corporation, the Board of Governors of the Federal Reserve System, the Resolution Trust Corporation, any other agency, department, and instrumentality of the United States, and any corporation owned or controlled by the United States may not, directly or indirectly, make any payment or provide any assistance, guarantee, or transfer under this chapter or any other provision of law in connection with any insured depository institution which would have the direct or indirect effect of satisfying, in whole or in part, any claim against the institution for obligations of the institution which would constitute deposits as defined in section 1813(l) of this title but for subparagraphs (A) and (B) of section 1813(l)(5) of this title.

(b) Exception

Subsection (a) shall not apply to any payment, assistance, guarantee, or transfer made or provided by the Corporation if the Board of Directors determines in writing that such action is