

108TH CONGRESS
2D SESSION

S. 2692

To authorize the Secretary of the Department of Housing and Urban Development to make grants to States for affordable housing for low-income persons, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2004

Mr. JEFFORDS (for himself, Mr. SARBANES, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To authorize the Secretary of the Department of Housing and Urban Development to make grants to States for affordable housing for low-income persons, and for other purposes.

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

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 This Act may be cited as the “Affordable Housing
5 Preservation Act of 2004”.

6 **SEC. 2. MATCHING GRANT PROGRAM FOR AFFORDABLE**
7 **HOUSING PRESERVATION.**

8 (a) FINDINGS AND PURPOSES.—

1 (1) FINDINGS.—Congress finds that—

2 (A) the availability of low-income housing
3 rental units has declined nationwide in the last
4 several years;

5 (B) as rents for low-income housing in-
6 crease and the development of new units of af-
7 fordable housing decreases, there are fewer pri-
8 vately owned, federally assisted affordable hous-
9 ing units available to low-income individuals in
10 need;

11 (C) the demand for affordable housing far
12 exceeds the supply of affordable housing, as evi-
13 denced by recent studies;

14 (D) the efforts of nonprofit organizations
15 have significantly preserved and expanded ac-
16 cess to low-income housing;

17 (E) a substantial number of existing feder-
18 ally assisted or federally insured multifamily
19 properties are at risk of being lost from the af-
20 fordable housing inventory of the Nation
21 through market rate conversion, deterioration,
22 or demolition;

23 (F) it is in the interest of the Nation to
24 encourage transfer of control of such properties
25 to competent national, regional, and local non-

1 profit entities and intermediaries, the missions
2 of which involve maintaining the affordability of
3 such properties;

4 (G) such transfers may be inhibited by a
5 shortage of such entities that are appropriately
6 capitalized; and

7 (H) the Nation would be well served by
8 providing assistance to such entities to aid in
9 accomplishing this purpose.

10 (2) PURPOSES.—The purposes of this section
11 are—

12 (A) to continue the partnerships among
13 the Federal Government, State and local gov-
14 ernments, nonprofit organizations, and the pri-
15 vate sector in operating and assisting housing
16 that is affordable to low-income persons and
17 families;

18 (B) to promote the preservation of afford-
19 able housing units by providing matching
20 grants to States and localities that have devel-
21 oped and funded programs for the preservation
22 of privately owned housing that is affordable to
23 low-income families and persons; and

24 (C) to minimize the involuntary displace-
25 ment of tenants who are currently residing in

1 such housing, many of whom are elderly or dis-
2 abled persons and families with children.

3 (b) DEFINITIONS.—In this section:

4 (1) CAPITAL EXPENDITURES.—The term “cap-
5 ital expenditures” includes expenditures for acqui-
6 sition and rehabilitation.

7 (2) CONSORTIUM.—The term “consortium”
8 means a group of geographically contiguous localities
9 that jointly submit an application under subsection
10 (d).

11 (3) ELIGIBLE AFFORDABLE HOUSING.—The
12 term “eligible affordable housing” means housing
13 that—

14 (A) consists of more than 4 dwelling units;

15 (B) is insured or assisted under a program
16 of the Department of Housing and Urban De-
17 velopment or the Department of Agriculture
18 under which the property is subject to limita-
19 tions on tenant rents, rent contributions, or in-
20 comes; and

21 (C) is at risk, as determined by the Sec-
22 retary, of termination of any of the limitations
23 referred to in subparagraph (B).

24 (4) ELIGIBLE ENTITIES.—The term “eligible
25 entities” means any entity that meets the require-

1 ments of subsection (e)(6) and the rules issued
2 under that subsection.

3 (5) LOCALITY.—The term “locality” means a
4 city, town, township, county, parish, village, or other
5 general purpose political subdivision of a State, or a
6 consortium thereof.

7 (6) LOW-INCOME AFFORDABILITY RESTRIC-
8 TION.—The term “low-income affordability restric-
9 tion” means, with respect to a housing project, any
10 limitation imposed by law, regulation, or regulatory
11 agreement on rents for tenants of the project, rent
12 contributions for tenants of the project, or income-
13 eligibility for occupancy in the project.

14 (7) LOW-INCOME FAMILIES; VERY LOW-INCOME
15 FAMILIES.—The terms “low-income families” and
16 “very low-income families” have the meanings given
17 such terms in section 3(b) of the United States
18 Housing Act of 1937 (42 U.S.C. 1437a(b)).

19 (8) PROJECT-BASED ASSISTANCE.—The term
20 “project-based assistance” has the same meaning as
21 in section 16(c) of the United States Housing Act
22 of 1937 (42 U.S.C. 1437n(c)), except that the term
23 includes assistance under any successor programs to
24 the programs referred to in that section.

1 (9) QUALIFIED LIMITED LIABILITY COMPANY.—

2 The term “qualified limited liability company”
 3 means a limited liability company with respect to
 4 which a credit is allowed under section 42 of the In-
 5 ternal Revenue Code of 1986 with respect to the
 6 company’s qualified basis (as defined in section 42
 7 (c)(1) of such Code), in a qualified low-income build-
 8 ing (as defined in section 42(c)(2) of such Code) for
 9 which grant funds received under this section shall
 10 be used.

11 (10) QUALIFIED PARTNERSHIP.—The term
 12 “qualified partnership” means a limited partnership
 13 with respect to which a credit is allowed under sec-
 14 tion 42 of the Internal Revenue Code of 1986 with
 15 respect to the partnership’s qualified basis (as de-
 16 fined in section 42(c)(1) of such Code) in a qualified
 17 low-income building (as defined in section 42(c)(2)
 18 of such Code) for which grant funds received under
 19 this section shall be used.

20 (11) SECRETARY.—The term “Secretary”
 21 means the Secretary of the Department of Housing
 22 and Urban Development.

23 (12) STATE.—The term “State” means each of
 24 the several States of the United States and the Dis-
 25 trict of Columbia.

1 (c) AUTHORITY TO MAKE GRANTS.—The Secretary
 2 shall, to the extent that amounts are made available in
 3 advance under subsection (k), award grants under this
 4 section to States and localities for low-income housing
 5 preservation and promotion.

6 (d) APPLICATIONS.—

7 (1) IN GENERAL.—Any State or locality that
 8 seeks a grant under this section shall submit an ap-
 9 plication (through appropriate State and local agen-
 10 cies) to the Secretary.

11 (2) CONTENTS.—Each application submitted
 12 pursuant to paragraph (1) shall contain any infor-
 13 mation and certifications necessary for the Secretary
 14 to determine who is eligible to receive a grant under
 15 this section.

16 (e) USE OF GRANTS.—

17 (1) ELIGIBLE USES.—

18 (A) IN GENERAL.—Grants awarded under
 19 this section may be used by States and local-
 20 ities only for the purposes of providing assist-
 21 ance—

22 (i) for acquisition, rehabilitation, cap-
 23 ital expenditures, and related development
 24 costs for a housing project that meets the

requirements of paragraph (2), (3), (4), or
(5); or

(ii) to eligible entities under paragraph (6) for—

(I) operational, working capital,
and organizational expenses; and

(II) predevelopment activities to
acquire eligible affordable housing for
the purpose of ensuring that the housing
will remain affordable, as the Secretary
considers appropriate, for low-income
or very low-income families.

(B) USE AGREEMENT.—A project receiving
assistance under this paragraph shall be subject
to an agreement (binding on any subsequent
owner of such project) that ensures that the
project will continue to operate, for a period of
not less than 50 years after the date on which
any assistance is made available under this
paragraph, in a manner that will provide rental
housing on terms at least as advantageous to
existing and future tenants as the terms required
by any program under which the project,
if offered, was eligible for assistance, subject to
available appropriations.

1 (C) SERVICE OF UNDER-SERVED AND
2 RURAL AREAS.—States receiving funds under
3 this section shall ensure that, to the maximum
4 extent practicable, that projects in under-served
5 and rural areas in that State receive assistance.

6 (2) PROJECTS WITH HUD-INSURED MORT-
7 GAGES.—A project meets the requirements of this
8 paragraph if the project is financed by a loan or
9 mortgage that is—

10 (A) insured or held by the Secretary under
11 section 221(d)(3) of the National Housing Act
12 (12 U.S.C. 1715l(d)(3)) and receiving loan
13 management assistance under section 8 of the
14 United States Housing Act of 1937 (42 U.S.C.
15 1437f) due to a conversion from section 101 of
16 the Housing and Urban Development Act of
17 1965 (12 U.S.C. 1701s);

18 (B) insured or held by the Secretary and
19 bears interest at a rate determined under the
20 proviso of section 221(d)(5) of the National
21 Housing Act (12 U.S.C. 1715l(d)(5)); or

22 (C) insured, assisted, or held by the Sec-
23 retary or a State or State agency under section
24 236 of the National Housing Act (12 U.S.C.
25 1715z–1).

1 (3) PROJECTS WITH SECTION 8 PROJECT-BASED
2 ASSISTANCE.—A project meets the requirements of
3 this paragraph if the project is subject to a contract
4 for project-based assistance.

5 (4) PROJECTS PURCHASED BY RESIDENTS.—A
6 project meets the requirements of this paragraph
7 if—

8 (A) the project is or was eligible low-in-
9 come housing (as defined in section 229 of the
10 Low-Income Housing Preservation and Resi-
11 dent Homeownership Act of 1990 (12 U.S.C.
12 4119)) or is or was a project assisted under
13 section 613(b) of the Cranston-Gonzalez Na-
14 tional Affordable Housing Act (12 U.S.C.
15 4125);

16 (B) the project has been purchased by a
17 resident council or resident-approved nonprofit
18 organization for the housing, or is approved by
19 the Secretary for such purchase, for conversion
20 to homeownership housing under a resident
21 homeownership program meeting the require-
22 ments of section 226 of the Low-Income Hous-
23 ing Preservation and Resident Homeownership
24 Act of 1990 (12 U.S.C. 4116); and

1 (C) the owner of the project has entered
2 into binding commitments (applicable to any
3 subsequent owner) to extend—

4 (i) project-based assistance for not
5 less than 15 years (beginning on the date
6 on which assistance is made available for
7 the project by the State or locality under
8 this section); and

9 (ii) any low-income affordability re-
10 strictions applicable to the project in con-
11 nection with that assistance.

12 (5) RURAL RENTAL ASSISTANCE PROJECTS.—A
13 project meets the requirements of this paragraph
14 if—

15 (A) the project is a rural rental housing
16 project financed under section 515 of the Hous-
17 ing Act of 1949 (42 U.S.C. 1485), or a farm
18 labor housing development financed under sec-
19 tion 514 of the United States Housing Act of
20 1949 (42 U.S.C. 1484); and

21 (B) the restriction on the use of the
22 project (as required under section 502 of the
23 Housing Act of 1949 (42 U.S.C. 1472)) will ex-
24 pire not later than 12 months after the date on
25 which assistance is made available for the

1 project by the State or locality under this sub-
2 section.

3 (6) ELIGIBLE ENTITIES.—

4 (A) IN GENERAL.—The Secretary shall es-
5 tablish, by regulation, standards for eligible en-
6 tities under this subsection.

7 (B) REQUIREMENTS.—An eligible entity
8 shall—

9 (i) be a nonprofit organization (as de-
10 fined in section 104 of the Cranston-Gon-
11 zalez National Affordable Housing Act (42
12 U.S.C. 12704)), or a qualified limited li-
13 ability company or a qualified partnership
14 whose managing member or general part-
15 ner, respectively, is—

16 (I) a nonprofit organization; or

17 (II) a for-profit entity that is
18 wholly owned by an eligible non-profit
19 organization;

20 (ii) have among its purposes, main-
21 taining the affordability to low-income or
22 very low-income families of multifamily
23 properties that are at risk of loss from the
24 inventory of housing that is affordable to
25 low-income or very low-income families; and

1 (iii) demonstrate to the Secretary—

2 (I) the need for the types of as-
3 sistance described under paragraph
4 (1)(A)(ii);

5 (II) experience in providing as-
6 sistance described under that para-
7 graph; and

8 (III) its ability to provide the as-
9 sistance described under that para-
10 graph.

11 (7) FUNDING REQUIREMENTS.—

12 (A) OPERATING SUPPORT.—Each State
13 and locality awarded a grant under this section
14 shall transfer at least 5 percent, but no more
15 than 10 percent, of such grant to eligible enti-
16 ties for the purposes described under paragraph
17 (1)(A)(ii)(I).

18 (B) NONPROFIT PURCHASES.—Each State
19 and locality awarded a grant under this section
20 shall transfer at least 15 percent of such grant
21 to eligible entities for the purposes described
22 under paragraph (1)(A)(ii)(II).

23 (8) RETURN OF UNUSED FUNDS.—If any
24 amount of a grant awarded to a State or locality
25 under this section has not been obligated 3 years

1 after the grant is awarded, such amount shall be re-
 2 turned to the Secretary to be redistributed in ac-
 3 cordance with this section the following fiscal year.

4 (9) ADMINISTRATIVE COSTS.—A State or local-
 5 ity that is awarded a grant under this section may
 6 use no more than 10 percent of such grant for costs
 7 associated with the administration of the grant.

8 (f) AMOUNT OF STATE AND LOCAL GRANTS.—

9 (1) IN GENERAL.—Subject to paragraph (3)
 10 and subsection (g), in each fiscal year, the Secretary
 11 shall award to each State and locality approved for
 12 a grant under this section a grant in an amount
 13 based upon the proportion of the need for assistance
 14 of that State or locality under this section (as deter-
 15 mined by the Secretary in accordance with para-
 16 graph (2)) to the aggregate need among all States
 17 and localities approved for assistance under this sec-
 18 tion for that fiscal year.

19 (2) DETERMINATION OF NEED.—In deter-
 20 mining the proportion of the need of a State or lo-
 21 cality under paragraph (1), the Secretary shall con-
 22 sider—

23 (A) the number of units in projects in the
 24 State or locality that are eligible for assistance
 25 under subsection (e)(1)(A)(i) that are, due to

1 market conditions or other factors, at risk for
 2 prepayment, opt-out, or otherwise at risk of
 3 being lost to the inventory of affordable hous-
 4 ing; and

5 (B) the difficulty that residents of projects
 6 in the State or locality that are eligible for as-
 7 sistance under subsection (e)(1)(A)(i) would
 8 face in finding adequate, available, decent, com-
 9 parable, and affordable housing in neighbor-
 10 hoods of comparable quality in the local market,
 11 if those projects were not assisted by the State
 12 or locality under subsection (e)(1)(A)(i).

13 (3) LIMITATIONS.—

14 (A) MANDATORY ALLOCATION.—In any
 15 fiscal year, of the total amount appropriated
 16 under subsection (k)—

17 (i) 40 percent shall be allocated for
 18 grants to States; and

19 (ii) 60 percent shall be allocated for
 20 grants to localities.

21 (B) MINIMUM GRANT AMOUNT.—Notwith-
 22 standing subsection (g), a State receiving a
 23 grant under this section shall receive no less
 24 than .4 percent of the total amount appro-
 25 priated under subsection (k) in any fiscal year.

1 (g) MATCHING REQUIREMENT.—

2 (1) IN GENERAL.—Except as provided under
3 paragraph (2), a grant under this section to a State
4 or locality for any fiscal year may not exceed an
5 amount that is twice the amount that the State or
6 locality certifies, as the Secretary shall require, that
7 the State or locality will contribute for such fiscal
8 year, or has contributed since January 1, 2003,
9 from non-Federal sources for the purposes described
10 in subsection (e)(1).

11 (2) LIMITATIONS.—Paragraph (1) shall not
12 apply to any amounts to be used by a State or local-
13 ity for—

14 (A) administrative costs under subsection
15 (e)(9); and

16 (B) operating support and working capital
17 of nonprofit organizations under subsection
18 (e)(7)(A).

19 (3) TREATMENT OF PREVIOUS CONTRIBU-
20 TIONS.—Any portion of amounts contributed after
21 January 1, 2003, that are counted for the purpose
22 of meeting the requirement under paragraph (1) for
23 a fiscal year may not be counted for that purpose
24 for any subsequent fiscal year.

1 (4) TAX CREDITS AND PRIVATE ACTIVITY
 2 BONDS.—Fifty percent of the annual amount of tax
 3 credits allocated to the project under section 42 of
 4 the Internal Revenue Code of 1986, or proceeds
 5 from private activity bonds issued for qualified resi-
 6 dential rental projects under section 142 of that
 7 Code, shall be considered funds from non-Federal
 8 sources for purposes of paragraph (1).

9 (h) TREATMENT OF SUBSIDY LAYERING REQUIRE-
 10 MENTS.—Neither subsection (g) nor any other provision
 11 of this section may be construed to prevent the use of tax
 12 credits allocated under section 42 of the Internal Revenue
 13 Code of 1986, in connection with housing assisted with
 14 amounts from a grant awarded under this section, to the
 15 extent that such use is in accordance with section 102(d)
 16 of the Department of Housing and Urban Development
 17 Reform Act of 1989 (42 U.S.C. 3545(d)) and section 911
 18 of the Housing and Community Development Act of 1992
 19 (42 U.S.C. 3545 note).

20 (i) REPORTS.—

21 (1) REPORTS TO SECRETARY.—Not later than
 22 90 days after the last day of each fiscal year, each
 23 State and locality that receives a grant under this
 24 section during that fiscal year shall submit to the
 25 Secretary a report on the housing projects and eligi-

1 ble entities assisted with amounts made available
 2 under the grant.

3 (2) REPORTS TO CONGRESS.—Based on the re-
 4 ports submitted under paragraph (1), the Secretary
 5 shall annually submit to Congress a report on the
 6 grants awarded under this section during the pre-
 7 ceding fiscal year and the housing projects assisted
 8 and eligible entities with amounts made available
 9 under those grants.

10 (j) REGULATIONS.—Not later than 6 months after
 11 the date of enactment of this Act, the Secretary shall issue
 12 regulations to carry out this section.

13 (k) AUTHORIZATION OF APPROPRIATIONS.—There
 14 are authorized to be appropriated for grants under this
 15 section such sums as may be necessary for each of fiscal
 16 years 2005, 2006, 2007, 2008, and 2009.

17 **SEC. 3. PRESERVATION PROJECTS.**

18 Section 524(e)(1) of the Multifamily Assisted Hous-
 19 ing Reform and Affordability Act of 1997 (42 U.S.C.
 20 1437f note) is amended by striking “amounts are specifi-
 21 cally” and inserting “sufficient amounts are”.

