

vestment Trust Fund established under section 12748 of this title shall be reallocated in accordance with paragraph (6) of this section.

**(10) Threshold reduction**

If the amount appropriated pursuant to section 12724 of this title for any fiscal year is less than \$1,500,000,000, then this section shall be applied during that year—

(A) by substituting “\$500,000” for “\$750,000” both places it appears in paragraph (3); and

(B) by substituting “\$500,000”, “\$410,000”, and “\$335,000” for “\$750,000”, “\$625,000”, and “\$500,000”, respectively, where they appear in paragraph (9).

(Pub. L. 101–625, title II, § 216, Nov. 28, 1990, 104 Stat. 4103; Pub. L. 102–550, title II, § 202(a), Oct. 28, 1992, 106 Stat. 3751.)

**Editorial Notes**

**AMENDMENTS**

1992—Par. (3)(A). Pub. L. 102–550, § 202(a)(1), substituted “Except as provided in paragraph (10), a jurisdiction” for “A jurisdiction”.

Par. (9)(B). Pub. L. 102–550, § 202(a)(2), inserted “, except as provided in paragraph (10)” after “in any 1 year”.

Par. (10). Pub. L. 102–550, § 202(a)(3), added par. (10).

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE OF 1992 AMENDMENT**

Amendment by Pub. L. 102–550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102–550, set out as a note under section 12704 of this title.

**APPLICABILITY OF GRANT THRESHOLDS**

Pub. L. 102–550, title II, § 202(c), Oct. 28, 1992, 106 Stat. 3752, provided that: “Notwithstanding any other provision of law, the grant thresholds provided for in section 216 [42 U.S.C. 12746], as amended by this section, and the grant thresholds provided for in section 217(b) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12747(b)], as amended by this section, shall apply.”

**§ 12747. Allocation of resources**

**(a) In general**

**(1) States and units of general local government**

After reserving amounts under paragraph (3) for the insular areas, the Secretary shall allocate funds approved in an appropriation Act to carry out this subchapter by formula as provided in subsection (b). Of the funds made available under the preceding sentence, the Secretary shall initially allocate 60 percent among units of general local government and 40 percent among States.

**(2) Repealed. Pub. L. 104–330, title V, § 505(a)(1)(B), Oct. 26, 1996, 110 Stat. 4044**

**(3)<sup>1</sup> Insular areas**

For each fiscal year, of any amounts approved in appropriation Acts to carry out this subchapter, the Secretary shall reserve for

grants to the insular areas the greater of (A) \$750,000, or (B) 0.2 percent of the amounts appropriated under such Acts. The Secretary shall provide for the distribution of amounts reserved under this paragraph among the insular areas pursuant to specific criteria for such distribution, which shall be contained in a regulation issued by the Secretary.

**(b) Formula allocation**

**(1) In general**

**(A) Basic formula**

The Secretary shall establish in<sup>2</sup> regulation an allocation formula that reflects each jurisdiction’s share of total need among eligible jurisdiction<sup>3</sup> for an increased supply of affordable housing for very low-income and low-income families of different size, as identified by objective measures of inadequate housing supply, substandard housing, the number of low-income families in housing likely to be in need of rehabilitation, the costs of producing housing, poverty, and the relative fiscal incapacity of the jurisdiction to carry out housing activities eligible under section 12742 of this title without Federal assistance. Allocation among units of general local government shall take into account the housing needs of metropolitan cities, urban counties, and approved consortia of units of general local government.

**(B) Source of data**

The data to be used for formula allocation of funds within a fiscal year shall be data obtained from a standard source that are available to the Secretary 90 days prior to the beginning of that fiscal year.

**(C) Use of basic formula**

The basic formula established under subparagraph (A) shall be used for all formula allocations and reallocations provided for in this part.

**(D) Weights**

When allocation is made among States, the Secretary shall apply the formula in subparagraph (A) giving 20 percent weight to measures of need for the whole State and 80 percent weight to measures of need among units of general local government that are not receiving an allocation under section 12746(1) of this title.

**(E) Adjustments**

In developing the basic formula in subparagraph (A), the Secretary shall (i) avoid the allocation of an excessively large share of amounts made available under this part to any one State or unit of general local government, and (ii) take into account the need for a geographic distribution of amounts made available under this part that appropriately reflects the housing need in each region of the Nation.

**(F) Consultation**

The Secretary shall develop the formula in subparagraph (A) in ongoing consultation

<sup>1</sup> See 1992 Amendment note below.

<sup>2</sup> So in original. Probably should be “by”.

<sup>3</sup> So in original. Probably should be “jurisdictions”.

with (i) the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs of the Senate, (ii) the Subcommittee on Housing and Community Development of the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and (iii) organizations representing States and units of general local government. Not less than 60 days prior to publishing a formula for comment, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a copy of the formula the Secretary intends to propose.

## **(2) Minimum State allocation**

### **(A) In general**

If the formula, when applied to funds approved under this section in appropriations Acts for a fiscal year, would allocate less than \$3,000,000 to any State, the allocation for such State shall be \$3,000,000, and the increase shall be deducted pro rata from the allocations of other States.

### **(B) Increased minimum allocation**

If no unit of general local government within a State receives an allocation under paragraph (3), the State's allocation shall be increased by \$500,000. Priority for use of such increased allocation shall go to the provision of affordable housing within the boundaries of metropolitan cities, urban counties, and approved consortia within the State, based on the need for such funds. The increased allocation to a State under the preceding sentence shall be derived by a pro rata deduction from the allocations to units of general local government in all States, except that such pro rata deduction shall not reduce the allocation of any unit of general local government below \$500,000.

## **(3) Minimum local allocation**

The Secretary shall allocate funds available for formula allocation to units of general local government that, as of the end of the previous fiscal year, qualified as metropolitan cities, urban counties, and consortia approved by the Secretary in accordance with section 12746(2) of this title so that, when all such funds are initially allocated by formula, jurisdictions that are allocated an amount of \$500,000 or more, and participating jurisdictions (other than consortia that fail to renew the membership of all of their member jurisdictions) that are allocated an amount less than \$500,000, shall receive an allocation. Prior to announcing initial allocations, the Secretary shall successively recalculate the allocations to jurisdictions under this subsection so that the maximum number of such jurisdictions can receive initial allocations, except as provided in paragraph (4).

## **(4) Threshold reduction**

If the amount appropriated pursuant to section 12724 of this title for any fiscal year is less than \$1,500,000,000, then this section shall be applied during that year by substituting

“\$335,000” for “\$500,000” where it appears in paragraph (3).

## **(c) Criteria for direct reallocation**

The Secretary shall establish objective criteria for making direct reallocations to any participating jurisdiction and other eligible entities. A jurisdiction shall be eligible for a direct reallocation under this subsection only if the jurisdiction, in a form acceptable to the Secretary, submits an application that demonstrates to the satisfaction of the Secretary that the jurisdiction is engaged, or has made good faith efforts to engage, in cooperative efforts between the State and appropriate participating jurisdictions within the State to develop, coordinate, and implement housing strategies under this subchapter. The Secretary shall by regulation establish objective selection criteria for such direct reallocations, which criteria shall take into account—

(1) the applicant's demonstrated commitment to expand the supply of affordable rental housing, including units developed by public housing agencies, as indicated by the additional number of units of affordable housing made available through production or rehabilitation within the previous 2 years, making adjustment for regional variations in construction and rehabilitation costs and giving special consideration to the number of additional units made available under this subchapter through production or rehabilitation, including units developed by public housing agencies, in relation to the amounts made available under this program;

(2) the applicant's actions that—

(A) direct funds made available under this part to benefit very low-income families, with a range of incomes, in amounts that exceed the income targeting requirements of section 12744 of this title, with extra consideration given for activities that expand the supply of affordable housing for very low-income families whose incomes do not exceed 30 percent of the median family income for the area, as determined by the Secretary;

(B) apply the tenant selection preference categories applicable under section 1437f of this title to the selection of tenants for housing assisted under this part;

(C) provide matching resources in excess of funds required under section 12750 of this title; and

(D) stimulate a high degree of investment and participation in development by the private sector, including nonprofit organizations; and

(3) the degree to which the applicant is pursuing policies that—

(A) make existing housing more affordable;

(B) remove or ameliorate any negative effects that public policies identified by the applicant pursuant to section 12705(b)(4) of this title may have on the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction;

(C) preserve the affordability of privately owned housing that is vulnerable to conversion, demolition, disinvestment, or abandonment;

(D) increase the supply of housing that is affordable to very low-income and low-income persons, particularly in areas that are accessible to expanding job opportunities; and

(E) remedy the effects of discrimination and improve housing opportunities for disadvantaged minorities.

#### (d) Reallocations

##### (1) In general

The Secretary shall make any reallocations periodically throughout each fiscal year so as to ensure that all funds to be reallocated are made available to eligible jurisdictions as soon as possible, consistent with orderly program administration. Jurisdictions eligible for such reallocations shall include participating jurisdictions and jurisdictions meeting the requirements of paragraphs (3), (4), and (5) of section 12746 of this title.

##### (2) Commitments

The Secretary shall establish procedures according to which participating jurisdictions may make commitments to invest funds made available under this section. Such procedures shall provide for appropriate stages of commitment of funds to a project from initial reservation through binding commitment. Notwithstanding any other provision of this subchapter, funds that the Secretary determines are needed to fulfill binding commitments shall not be available for reallocation.

##### (3) Limitation

Unless otherwise specified in this part, any reallocation of funds from a State shall be made only among all participating States, and any reallocation of funds from units of general local government shall be made only among all participating units of general local government.

(Pub. L. 101-625, title II, § 217, Nov. 28, 1990, 104 Stat. 4105; Pub. L. 102-229, title I, Dec. 12, 1991, 105 Stat. 1709; Pub. L. 102-230, § 1, Dec. 12, 1991, 105 Stat. 1720; Pub. L. 102-273, § 1, Apr. 21, 1992, 106 Stat. 113; Pub. L. 102-389, title II, Oct. 6, 1992, 106 Stat. 1581; Pub. L. 102-550, title II, §§ 202(b), 203(b), 211(a)(2), Oct. 28, 1992, 106 Stat. 3751, 3752, 3756; Pub. L. 104-330, title V, § 505(a)(1), Oct. 26, 1996, 110 Stat. 4044; Pub. L. 105-65, title II, § 214, Oct. 27, 1997, 111 Stat. 1366.)

#### Editorial Notes

##### AMENDMENTS

1997—Subsec. (b)(3). Pub. L. 105-65, in first sentence, substituted “jurisdictions that are allocated an amount of \$500,000 or more, and participating jurisdictions (other than consortia that fail to renew the membership of all of their member jurisdictions) that are allocated an amount less than \$500,000, shall receive an allocation” for “only those jurisdictions that are allocated an amount of \$500,000 or greater shall receive an allocation”.

1996—Subsec. (a)(1). Pub. L. 104-330, § 505(a)(1)(A), struck out “reserving amounts under paragraph (2) for Indian tribes and after” after “After”.

Subsec. (a)(2). Pub. L. 104-330, § 505(a)(1)(B), struck out heading and text of par. (2). Text read as follows: “For each fiscal year, of the amount approved in an appropriations Act to carry out this subchapter, the Sec-

retary shall reserve for grants to Indian tribes 1 percent of the amount appropriated under such section. The Secretary shall provide for distribution of amounts under this paragraph to Indian tribes on the basis of a competition conducted pursuant to specific criteria for the selection of Indian tribes to receive such amounts. The criteria shall be contained in a regulation promulgated by the Secretary after notice and public comment.”

1992—Subsec. (a)(1). Pub. L. 102-550, § 211(a)(2)(A), added first sentence and struck out former first sentence which read as follows: “After reserving amounts for Indian tribes as required by paragraph (2) of this subsection and after reserving amounts for the insular areas under paragraph (3), the Secretary shall allocate funds approved in an appropriations Act to carry out this subchapter by formula as provided in subsection (b) of this section.”

Pub. L. 102-389 made identical amendment to those made by Pub. L. 102-229 and Pub. L. 102-230, § 1(1). See 1991 Amendment note below.

Subsec. (a)(3). Pub. L. 102-550, § 211(a)(2)(D), and Pub. L. 102-389 both added new pars. (3) related to insular areas. The text reflects the par. (3) added by Pub. L. 102-550. The par. (3) added by Pub. L. 102-389 read as follows: “For each fiscal year, of any amounts approved in appropriations Acts to carry out this subchapter, the Secretary shall reserve for grants to the insular areas the greater of (A) \$750,000, or (B) 0.2 percent of the amounts appropriated under such Acts. The Secretary shall provide for the distribution of amounts reserved under this paragraph among the insular areas pursuant to specific criteria for such distribution. The criteria shall be contained in a regulation promulgated by the Secretary after notice and public comment.”

Pub. L. 102-550, § 211(a)(2)(C), struck out par. (3), as added by Pub. L. 102-230, § 1(2), which read as follows:

“(A) IN GENERAL.—For each fiscal year, of any amount approved in an appropriations Act to carry out this subchapter, the Secretary shall reserve for grants to the insular areas an amount that reflects—

“(i) their share of the total population of eligible jurisdictions; and

“(ii) any adjustments that the Secretary determines are reasonable in light of available data that are related to factors set forth in subsection (b)(1)(B) of this section.

“(B) SPECIFIC CRITERIA.—The Secretary shall provide for the distribution of amounts reserved under this paragraph among the insular areas in accordance with specific criteria to be set forth in a regulation promulgated by the Secretary after notice and public comment.

“(C) TRANSITIONAL PROVISIONS.—For fiscal year 1992, the reservation for insular areas specified in subparagraph (A) shall be made from any funds which become available for reallocation in accordance with the provisions of section 12746(6)(A) of this title.”

Pub. L. 102-550, § 211(a)(2)(B), struck out par. (3), as added by Pub. L. 102-229, which read as follows: “For each fiscal year, of any amounts approved in appropriations Acts to carry out this subchapter, the Secretary shall reserve for grants to the insular areas the greater of (A) \$750,000, or (B) 0.5 percent of the amounts appropriated under such Acts. The Secretary shall provide for the distribution of amounts reserved under this paragraph among the insular areas pursuant to specific criteria for such distribution. The criteria shall be contained in a regulation promulgated by the Secretary after notice and public comment.”

Subsec. (b)(1)(A). Pub. L. 102-550, § 203(b)(1), (6), redesignated subpar. (B) as (A) and struck out former subpar. (A) which provided for a formula for allocation of funds for production of affordable rental housing through new construction or substantial rehabilitation.

Pub. L. 102-273 added cl. (iii) reading as follows: “Notwithstanding clauses (i) and (ii), any jurisdiction receiving amounts made available under such clause may, at the discretion of the jurisdiction, use such amounts for other eligible uses in accordance with sec-

tion 12742 of this title if the jurisdiction determines that such use will better meet the housing needs within the jurisdiction. This clause shall be effective only with respect to funds provided under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Public Law 102-139; 105 Stat. 744), which suspends the requirement of contributions by participating jurisdictions, and shall become ineffective if such requirement is reimposed.”

Subsec. (b)(1)(B), (C). Pub. L. 102-550, § 203(b)(6), redesignated subpars. (C) and (D) as (B) and (C), respectively. Former subpar. (B) redesignated (A).

Subsec. (b)(1)(D). Pub. L. 102-550, § 203(b)(6), redesignated subpar. (E) as (D). Former subpar. (D) redesignated (C).

Pub. L. 102-550, § 203(b)(2), substituted “The basic formula established under subparagraph (A)” for “Except as provided in subparagraph (A), the basic formula established under subparagraph (B)”.

Subsec. (b)(1)(E). Pub. L. 102-550, § 203(b)(6), redesignated subpar. (F) as (E). Former subpar. (E) redesignated (D).

Pub. L. 102-550, § 203(b)(3), substituted “formula in subparagraph (A)” for “formulas in subparagraph (B)”.

Subsec. (b)(1)(F). Pub. L. 102-550, § 203(b)(6), redesignated subpar. (G) as (F). Former subpar. (F) redesignated (E).

Pub. L. 102-550, § 203(b)(4), substituted “basic formula in subparagraph (A)” for “basic formula in subparagraph (B)” and struck out at end “If a jurisdiction receives an allocation under subparagraph (A), the Secretary shall make such adjustments in the jurisdiction’s allocation under the formula in subparagraph (B) as may be necessary to ensure that the combined effect of the formulas in subparagraphs (A) and (B) does not reduce the allocation of any jurisdiction below the allocation it would receive if allocations were made according to the formula under subparagraph (B) alone.”

Subsec. (b)(1)(G). Pub. L. 102-550, § 203(b)(6), redesignated subpar. (G) as (F).

Pub. L. 102-550, § 203(b)(5), substituted “formula in subparagraph (A)” for “formulas in subparagraphs (A) and (B)”.

Subsec. (b)(3). Pub. L. 102-550, § 202(b)(1), inserted before period at end “, except as provided in paragraph (4)”.

Subsec. (b)(4). Pub. L. 102-550, § 202(b)(2), added par. (4).

1991—Subsec. (a)(1). Pub. L. 102-229 and Pub. L. 102-230, § 1(1), amended par. (1) identically, inserting before first comma “and after reserving amounts for the insular areas under paragraph (3)”.

Subsec. (a)(3). Pub. L. 102-229 and Pub. L. 102-230, § 1(2), which were enacted on the same day, both added new pars. (3) relating to insular areas.

### Statutory Notes and Related Subsidiaries

#### CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Pub. L. 104-330, title V, § 505(b), Oct. 26, 1996, 110 Stat. 4044, provided that: “The amendments under subsection (a) [amending this section and section 12838 of this title] shall apply with respect to amounts made available for assistance under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.] for fiscal year 1998 and fiscal years thereafter.”

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 211(a)(2) of Pub. L. 102-550 applicable with respect to fiscal year 1993 and thereafter, see section 211(b) of Pub. L. 102-550, set out as a note under section 12704 of this title.

Amendment by sections 202(b) and 203(b) of Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

#### APPLICABILITY OF GRANT THRESHOLDS

Grant thresholds provided for in subsec. (b) of this section as amended by Pub. L. 102-550 to apply notwithstanding any other provision of law, see section 202(c) of Pub. L. 102-550, set out as a note under section 12746 of this title.

#### EXPEDITED ISSUANCE OF REGULATION

Pub. L. 102-550, title II, § 211(a)(3), Oct. 28, 1992, 106 Stat. 3757, provided that: “The regulation referred to in the amendment made by paragraph (2)(D) [amending this section] shall take effect not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Oct. 28, 1992]. The regulation shall not be subject to the requirements of subsections (b) and (c) of section 553 of title 5, United States Code, or section 7(o) of the Department of Housing and Urban Development Act [42 U.S.C. 3535(o)].”

### § 12748. HOME Investment Trust Funds

#### (a) Establishment

The Secretary shall establish for each participating jurisdiction a HOME Investment Trust Fund, which shall be an account (or accounts as provided in section 12749(c) of this title) for use solely to invest in affordable housing within the participating jurisdiction’s boundaries or within the boundaries of contiguous jurisdictions in joint projects which serve residents from both jurisdictions in accordance with the provisions of this part.

#### (b) Line of credit

The Secretary shall establish a line of credit in the HOME Investment Trust Fund of each participating jurisdiction, which line of credit shall include—

- (1) funds allocated or reallocated to the participating jurisdiction under section 12747 of this title, and
- (2) any payment or repayment made pursuant to section 12749 of this title.

#### (c) Reductions

A participating jurisdiction’s line of credit shall be reduced by—

- (1) funds drawn from the HOME Investment Trust Fund by the participating jurisdiction,
- (2) funds expiring under subsection (g), and
- (3) any penalties assessed by the Secretary under section 12754<sup>1</sup> of this title.

#### (d) Certification

A participating jurisdiction may draw funds from its HOME Investment Trust Fund, but not

<sup>1</sup> So in original. Probably should be section “12753”.