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H.R.3221

Housing and Economic Recovery Act of 2008 (Engrossed Amendment as Agreed to by Senate)

SEC. 1338. HOUSING TRUST FUND.

(a) Establishment and Purpose- The Secretary of Housing and Urban Development (in this section referred to as the `Secretary') shall establish and manage a Housing Trust Fund, which shall be funded with amounts allocated by the enterprises under section 1337 and any amounts as are or may be appropriated, transferred, or credited to such Housing Trust Fund under any other provisions of law. The purpose of the Housing Trust Fund under this section is to provide grants to States for use--

(1) to increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families; and

(2) to increase homeownership for extremely low- and very low-income families.

(b) Allocations for HOPE Bond Payments-

(1) IN GENERAL- Notwithstanding subsection (c), to help address the mortgage crisis, of the amounts allocated pursuant to clauses (i) and (ii) of section 1337(a)(1)(B) and clauses (i) and (ii) of section 1337(a)(2)(B) in excess of amounts described in section 1337(e)--

(A) 100 percent of such excess shall be used to reimburse the Treasury for payments made pursuant to section 257(w)(1)(C) of the National

Housing Act in calendar year 2009;

` (B) 50 percent of such excess shall be used to reimburse the Treasury for such payments in calendar year 2010; and

` (C) 25 percent of such excess shall be used to reimburse the Treasury for such payments in calendar year 2011.

` (2) EXCESS FUNDS- At the termination of the HOPE for Homeowners Program established under section 257 of the National Housing Act, if amounts used to reimburse the Treasury under paragraph (1) exceed the total net cost to the Government of the HOPE for Homeowners Program, such amounts shall be used for their original purpose, as described in paragraphs (1)(B) and (2)(B) of section 1337(a).

` (3) TREASURY FUND- The amounts referred to in subparagraphs (A) through (C) of paragraph (1) shall be deposited into a fund established in the Treasury of the United States by the Secretary of the Treasury for such purpose.

` (c) Allocation for Housing Trust Fund in Fiscal Year 2010 and Subsequent Years-

` (1) IN GENERAL- Except as provided in subsection (b), the Secretary shall distribute the amounts allocated for the Housing Trust Fund under this section to provide affordable housing as described in this subsection.

` (2) PERMISSIBLE DESIGNEES- A State receiving grant amounts under this subsection may designate a State housing finance agency, housing and community development entity, tribally designated housing entity (as such term is defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1997 (25 U.S.C. 4103)), or any other qualified instrumentality of the State to receive such grant amounts.

` (3) DISTRIBUTION TO STATES BY NEEDS-BASED FORMULA-

` (A) IN GENERAL- The Secretary shall, by regulation, establish a formula within 12 months of the date of enactment of the Federal Housing Finance Regulatory Reform Act of 2008, to distribute amounts made available under this subsection to each State to provide affordable housing to extremely low- and very low-income households.

` (B) BASIS FOR FORMULA- The formula required under subparagraph (A) shall include the following:

` (i) The ratio of the shortage of standard rental units both affordable and available to extremely low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to extremely low-income renter households in all the States.

^ (ii) The ratio of the shortage of standard rental units both affordable and available to very low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to very low-income renter households in all the States.

^ (iii) The ratio of extremely low-income renter households in the State living with either (I) incomplete kitchen or plumbing facilities, (II) more than 1 person per room, or (III) paying more than 50 percent of income for housing costs, to the aggregate number of extremely low-income renter households living with either (IV) incomplete kitchen or plumbing facilities, (V) more than 1 person per room, or (VI) paying more than 50 percent of income for housing costs in all the States.

^ (iv) The ratio of very low-income renter households in the State paying more than 50 percent of income on rent relative to the aggregate number of very low-income renter households paying more than 50 percent of income on rent in all the States.

^ (v) The resulting sum calculated from the factors described in clauses (i) through (iv) shall be multiplied by the relative cost of construction in the State. For purposes of this subclause, the term ^ cost of construction'--

^ (I) means the cost of construction or building rehabilitation in the State relative to the national cost of construction or building rehabilitation; and

^ (II) shall be calculated such that values higher than 1.0 indicate that the State's construction costs are higher than the national average, a value of 1.0 indicates that the State's construction costs are exactly the same as the national average, and values lower than 1.0 indicate that the State's cost of construction are lower than the national average.

^ (C) PRIORITY- The formula required under subparagraph (A) shall give priority emphasis and consideration to the factor described in subparagraph (B)(i).

^ (4) ALLOCATION OF GRANT AMOUNTS-

^ (A) NOTICE- Not later than 60 days after the date that the Secretary determines the formula amounts described in paragraph (3), the Secretary shall caused to be published in the Federal Register a notice that such amounts shall be so available.

^ (B) GRANT AMOUNT- In each fiscal year other than fiscal year 2009, the

Secretary shall make a grant to each State in an amount that is equal to the formula amount determined under paragraph (3) for that State.

` (C) MINIMUM STATE ALLOCATIONS- If the formula amount determined under paragraph (3) 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 made to all other States.

` (5) ALLOCATION PLANS REQUIRED-

` (A) IN GENERAL- For each year that a State or State designated entity receives a grant under this subsection, the State or State designated entity shall establish an allocation plan. Such plan shall--

` (i) set forth a plan for the distribution of grant amounts received by the State or State designated entity for such year;

` (ii) be based on priority housing needs, as determined by the State or State designated entity in accordance with the regulations established under subsection (g)(2)(C);

` (iii) comply with paragraph (6); and

` (iv) include performance goals that comply with the requirements established by the Secretary pursuant to subsection (g)(2).

` (B) ESTABLISHMENT- In establishing an allocation plan under this paragraph, a State or State designated entity shall--

` (i) notify the public of the establishment of the plan;

` (ii) provide an opportunity for public comments regarding the plan;

*` (iii) consider any public comments received regarding the plan;
and*

` (iv) make the completed plan available to the public.

` (C) CONTENTS- An allocation plan of a State or State designated entity under this paragraph shall set forth the requirements for eligible recipients under paragraph (8) to apply for such grant amounts, including a requirement that each such application include--

` (i) a description of the eligible activities to be conducted using such assistance; and

` (ii) a certification by the eligible recipient applying for such assistance that any housing units assisted with such assistance will comply with the requirements under this section.

` (6) SELECTION OF ACTIVITIES FUNDED USING HOUSING TRUST FUND GRANT AMOUNTS- Grant amounts received by a State or State designated entity under this subsection may be used, or committed for use, only for activities that--

` (A) are eligible under paragraph (7) for such use;

` (B) comply with the applicable allocation plan of the State or State designated entity under paragraph (5); and

` (C) are selected for funding by the State or State designated entity in accordance with the process and criteria for such selection established pursuant to subsection (g)(2)(C).

` (7) ELIGIBLE ACTIVITIES- Grant amounts allocated to a State or State designated entity under this subsection shall be eligible for use, or for commitment for use, only for assistance for--

` (A) the production, preservation, and rehabilitation of rental housing, including housing under the programs identified in section 1335(a)(2)(B) and for operating costs, except that not less than 75 percent of such grant amounts shall be used for the benefit only of extremely low-income families and not more than 25 percent for the benefit only of very low-income families; and

` (B) the production, preservation, and rehabilitation of housing for homeownership, including such forms as down payment assistance, closing cost assistance, and assistance for interest rate buy-downs, that--

` (i) is available for purchase only for use as a principal residence by families that qualify both as--

` (I) extremely low- and very low-income families at the times described in subparagraphs (A) through (C) of section 215(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745(b)(2)); and

` (II) first-time homebuyers, as such term is defined in section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704), except that any reference in such section to assistance under title II of such Act shall for purposes of this subsection be considered to refer to assistance from affordable housing fund grant amounts;

` (ii) has an initial purchase price that meets the requirements of

section 215(b)(1) of the Cranston-Gonzalez National Affordable Housing Act;

` (iii) is subject to the same resale restrictions established under section 215(b)(3) of the Cranston-Gonzalez National Affordable Housing Act and applicable to the participating jurisdiction that is the State in which such housing is located; and

` (iv) is made available for purchase only by, or in the case of assistance under this subsection, is made available only to homebuyers who have, before purchase completed a program of independent financial education and counseling from an eligible organization that meets the requirements of section 132 of the Federal Housing Finance Regulatory Reform Act of 2008.

` (8) ELIGIBLE RECIPIENTS- Grant amounts allocated to a State or State designated entity under this subsection may be provided only to a recipient that is an organization, agency, or other entity (including a for-profit entity or a nonprofit entity) that--

` (A) has demonstrated experience and capacity to conduct an eligible activity under paragraph (7), as evidenced by its ability to--

` (i) own, construct or rehabilitate, manage, and operate an affordable multifamily rental housing development;

` (ii) design, construct or rehabilitate, and market affordable housing for homeownership; or

` (iii) provide forms of assistance, such as down payments, closing costs, or interest rate buy-downs for purchasers;

` (B) demonstrates the ability and financial capacity to undertake, comply, and manage the eligible activity;

` (C) demonstrates its familiarity with the requirements of any other Federal, State, or local housing program that will be used in conjunction with such grant amounts to ensure compliance with all applicable requirements and regulations of such programs; and

` (D) makes such assurances to the State or State designated entity as the Secretary shall, by regulation, require to ensure that the recipient will comply with the requirements of this subsection during the entire period that begins upon selection of the recipient to receive such grant amounts and ending upon the conclusion of all activities under paragraph (8) that are engaged in by the recipient and funded with such grant amounts.

` (9) LIMITATIONS ON USE-

^ (A) REQUIRED AMOUNT FOR HOMEOWNERSHIP ACTIVITIES- Of the aggregate amount allocated to a State or State designated entity under this subsection not more than 10 percent shall be used for activities under subparagraph (B) of paragraph (7).

^ (B) DEADLINE FOR COMMITMENT OR USE- Grant amounts allocated to a State or State designated entity under this subsection shall be used or committed for use within 2 years of the date that such grant amounts are made available to the State or State designated entity. The Secretary shall recapture any such amounts not so used or committed for use and reallocate such amounts under this subsection in the first year after such recapture.

^ (C) USE OF RETURNS- The Secretary shall, by regulation, provide that any return on a loan or other investment of any grant amount used by a State or State designated entity to provide a loan under this subsection shall be treated, for purposes of availability to and use by the State or State designated entity, as a grant amount authorized under this subsection.

^ (D) PROHIBITED USES- The Secretary shall, by regulation--

^ (i) set forth prohibited uses of grant amounts allocated under this subsection, which shall include use for--

^ (I) political activities;

^ (II) advocacy;

^ (III) lobbying, whether directly or through other parties;

^ (IV) counseling services;

^ (V) travel expenses; and

^ (VI) preparing or providing advice on tax returns;

^ (ii) provide that, except as provided in clause (iii), grant amounts of a State or State designated entity may not be used for administrative, outreach, or other costs of--

^ (I) the State or State designated entity; or

^ (II) any other recipient of such grant amounts; and

^ (iii) limit the amount of any grant amounts for a year that may be used by the State or State designated entity for administrative

costs of carrying out the program required under this subsection, including home ownership counseling, to a percentage of such grant amounts of the State or State designated entity for such year, which may not exceed 10 percent.

“(E) PROHIBITION OF CONSIDERATION OF USE FOR MEETING HOUSING GOALS OR DUTY TO SERVE- In determining compliance with the housing goals under this subpart and the duty to serve underserved markets under section 1335, the Director may not consider any grant amounts used under this section for eligible activities under paragraph (7). The Director shall give credit toward the achievement of such housing goals and such duty to serve underserved markets to purchases by the enterprises of mortgages for housing that receives funding from such grant amounts, but only to the extent that such purchases by the enterprises are funded other than with such grant amounts.

“(d) Reduction for Failure To Obtain Return of Misused Funds- If in any year a State or State designated entity fails to obtain reimbursement or return of the full amount required under subsection (e)(1)(B) to be reimbursed or returned to the State or State designated entity during such year--

“(1) except as provided in paragraph (2)--

“(A) the amount of the grant for the State or State designated entity for the succeeding year, as determined pursuant to this section, shall be reduced by the amount by which such amounts required to be reimbursed or returned exceed the amount actually reimbursed or returned; and

“(B) the amount of the grant for the succeeding year for each other State or State designated entity whose grant is not reduced pursuant to subparagraph (A) shall be increased by the amount determined by applying the formula established pursuant to this section to the total amount of all reductions for all State or State designated entities for such year pursuant to subparagraph (A); or

“(2) in any case in which such failure to obtain reimbursement or return occurs during a year immediately preceding a year in which grants under this section will not be made, the State or State designated entity shall pay to the Secretary for reallocation among the other grantees an amount equal to the amount of the reduction for the entity that would otherwise apply under paragraph (1)(A).

“(e) Accountability of Recipients and Grantees-

“(1) RECIPIENTS-

“(A) TRACKING OF FUNDS- The Secretary shall--

“(i) require each State or State designated entity to develop and

maintain a system to ensure that each recipient of assistance under this section uses such amounts in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and

` (ii) establish minimum requirements for agreements, between the State or State designated entity and recipients, regarding assistance under this section, which shall include--

` (I) appropriate periodic financial and project reporting, record retention, and audit requirements for the duration of the assistance to the recipient to ensure compliance with the limitations and requirements of this section and the regulations under this section; and

` (II) any other requirements that the Secretary determines are necessary to ensure appropriate administration and compliance.

` (B) MISUSE OF FUNDS-

` (i) REIMBURSEMENT REQUIREMENT- If any recipient of assistance under this section is determined, in accordance with clause (ii), to have used any such amounts in a manner that is materially in violation of this section, the regulations issued under this section, or any requirements or conditions under which such amounts were provided, the State or State designated entity shall require that, within 12 months after the determination of such misuse, the recipient shall reimburse the State or State designated entity for such misused amounts and return to the State or State designated entity any such amounts that remain unused or uncommitted for use.

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