

(B) recapture the investment provided under this subchapter in order to assist other persons in accordance with the requirements of this subchapter, except where there are no net proceeds or where the net proceeds are insufficient to repay the full amount of the assistance; and

(4) if newly constructed, meets the energy efficiency standards promulgated by the Secretary in accordance with section 12709 of this title.

(Pub. L. 101-625, title II, §215, Nov. 28, 1990, 104 Stat. 4101; Pub. L. 102-550, title II, §§208, 209, Oct. 28, 1992, 106 Stat. 3754; Pub. L. 103-233, title II, §203, Apr. 11, 1994, 108 Stat. 364; Pub. L. 105-276, title V, §599B(b), Oct. 21, 1998, 112 Stat. 2660; Pub. L. 106-569, title IX, §904, Dec. 27, 2000, 114 Stat. 3027.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(1)(E), (3), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

AMENDMENTS

2000—Subsec. (a)(6). Pub. L. 106-569 added par. (6).

1998—Subsec. (b)(2). Pub. L. 105-276 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “is the principal residence of an owner whose family qualifies as a low-income family at the time of purchase;”.

1994—Subsec. (b)(3). Pub. L. 103-233, §203(a), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: “is made available for initial purchase only to first-time homebuyers;”.

Subsec. (b)(3)(B). Pub. L. 103-233, §203(b), substituted “subchapter” for “subsection” after “requirements of this”.

Subsec. (b)(4), (5). Pub. L. 103-233, §203(a)(2), redesignated pars. (4) and (5) as (3) and (4), respectively.

1992—Subsec. (a)(1)(A). Pub. L. 102-550, §208(a)(1), substituted “number of bedrooms in the unit” for “smaller and larger families”.

Subsec. (a)(1)(E). Pub. L. 102-550, §208(b), inserted before semicolon “, except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if such action (i) recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability in the case of foreclosure or transfer in lieu of foreclosure, and (ii) is not for the purpose of avoiding low income affordability restrictions, as determined by the Secretary”.

Subsec. (a)(3). Pub. L. 102-550, §208(a)(2), (3), substituted “the lesser of the amount payable by the tenant under State or local law or” for “not less than” in second sentence and inserted at end “The preceding sentence shall not apply with respect to funds made available under this Act for units that have been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of title 26.”

Subsec. (b)(4). Pub. L. 102-550, §209, added par. (4) and struck out former par. (4) which read as follows: “is made available for subsequent purchase only—

“(A) to persons who meet the qualifications specified under paragraph (2), and

“(B) at a price consistent with guidelines that are established by the participating jurisdiction and determined by the Secretary to be appropriate—

“(i) to provide the owner with a fair return on investment, including any improvements, and

“(ii) to ensure that the housing will remain affordable to a reasonable range of low income homebuyers; and”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-276 made on, and applicable beginning upon, Oct. 21, 1998, see section 599B(c) of Pub. L. 105-276, set out as a note under section 12744 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

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.

§ 12746. Participation by States and local governments

The Secretary shall designate a State or unit of general local government to be a participating jurisdiction when it complies with procedures that the Secretary shall establish by regulation, which procedures shall only provide for the following:

(1) Allocation

Not later than 20 days after funds to carry out this part become available (or, during the first year after November 28, 1990, not later than 20 days after (A) funds to carry out this part are provided in an appropriations Act, or (B) regulations to implement this part are promulgated, whichever is later), the Secretary shall allocate funds in accordance with section 12747 of this title and promptly notify each jurisdiction receiving a formula allocation of its allocation amount. If a jurisdiction is not already a participating jurisdiction, the Secretary shall inform the jurisdiction in writing how the jurisdiction may become a participating jurisdiction.

(2) Consortia

A consortium of geographically contiguous units of general local government shall be deemed to be a unit of general local government for purposes of this subchapter if the Secretary determines that the consortium—

(A) has sufficient authority and administrative capability to carry out the purposes of this subchapter on behalf of its member jurisdictions, and

(B) will, according to a written certification by the State (or States, if the consortium includes jurisdictions in more than one State), direct its activities to alleviation of housing problems within the State or States.

(3) Eligibility

(A) Except as provided in paragraph (10), a jurisdiction receiving a formula allocation under section 12747 of this title shall be eligible to become a participating jurisdiction if its formula allocation is \$750,000 or greater, or if the Secretary finds that—

(i) the jurisdiction has a local housing authority and has demonstrated a capacity to carry out provisions of this part, and

(ii) the State has authorized the Secretary to transfer to the jurisdiction a portion of the State's allocation that is equal to or greater than the difference between the jurisdiction's formula allocation and \$750,000, or the State or jurisdiction has made available from the State's or jurisdiction's own sources an equal amount for use by the jurisdiction in conformance with the provisions of this part.

(B) If a jurisdiction has met the requirements of subparagraph (A), the jurisdiction's formula allocation for a fiscal year shall subsequently be deemed to equal the sum of the jurisdiction's allocation under section 12747(a)(1) of this title and the amount made available to the jurisdiction under subparagraph (A)(ii).

(4) Notification

If an eligible jurisdiction notifies the Secretary in writing, not later than 30 days after receiving notification under paragraph (1), of its intention to become a participating jurisdiction, the Secretary shall reserve an amount equal to the jurisdiction's allocation (plus any reallocations for which the jurisdiction is eligible under section 12747(d)(1) of this title) pending the jurisdiction's designation as a participating jurisdiction. The Secretary shall reallocate, in accordance with paragraph (6) of this section, any funds reserved under the previous sentence if the Secretary determines that the jurisdiction will not meet the requirements for designation as a participating jurisdiction within a reasonable period of time.

(5) Submission of strategy

Not later than 90 days after providing notification under paragraph (4), an eligible jurisdiction shall submit to the Secretary a comprehensive housing affordability strategy in accordance with section 12705 of this title.

(6) Reallocation

If the Secretary determines that a jurisdiction has failed to meet the requirements of the previous 3 paragraphs or if the Secretary, after providing for amendments and resubmissions in accordance with section 12705(c)(3) of this title, disapproves the jurisdiction's comprehensive housing affordability strategy, the Secretary shall reallocate any funds reserved for the jurisdiction as follows:

(A) State

If a State has failed to meet the requirements, the Secretary shall—

(i) make any funds reserved for the State available by direct reallocation among applications submitted by units of general local government within the State or consortia that include units of general local government within the State, insofar as approvable applications meeting the selection criteria under section 12747(c) of this title are received within 12 months after the funds become available for the direct reallocation, and

(ii) reallocate the remainder by formula in accordance with section 12747(b) of this title.

(B) Local

If a unit of general local government has failed to meet the requirements and is located in a State that is a participating jurisdiction, the Secretary shall reallocate to the State any funds reserved for the locality, with preference going to the provision of affordable housing within the locality.

(C) Direct reallocation

If a unit of general local government has failed to meet the requirements and is located in a State that is not a participating jurisdiction, the Secretary shall—

(i) make any funds reserved for the locality available for use within the State by direct reallocation among units of general local government and community housing development organizations, insofar as approvable applications meeting the selection criteria under section 12747(c) of this title are received within 12 months after the funds become available for the direct reallocation with priority going to applications for affordable housing within the locality, and

(ii) reallocate the remainder in accordance with section 12747(b) of this title.

(D) Certain jurisdictions deemed to be participating jurisdictions

If a State or unit of general local government is meeting the requirements of paragraphs (3), (4), and (5), it shall be deemed to be a participating jurisdiction for purposes of reallocation under this paragraph.

(7) Designation

The Secretary shall designate an eligible jurisdiction to be a participating jurisdiction as soon as its comprehensive housing affordability strategy is approved in accordance with section 12705 of this title.

(8) Continuous designation

Once a State or unit of general local government is designated a participating jurisdiction, it shall remain a participating jurisdiction for subsequent fiscal years, except as provided in paragraph (9). The provisions of paragraphs (3) through (6) shall not apply to participating jurisdictions.

(9) Revocation

The Secretary may revoke a jurisdiction's designation as a participating jurisdiction if—

(A) the Secretary finds, after reasonable notice and opportunity for hearing, that the jurisdiction is unwilling or unable to carry out the provisions of this subchapter, or

(B) the jurisdiction's allocation falls below \$750,000 for 3 consecutive years, below \$625,000 for 2 consecutive years, or the jurisdiction does not receive a formula allocation of \$500,000 or more in any 1 year, except as provided in paragraph (10).

If a jurisdiction's designation as a participating jurisdiction is revoked, any remaining line of credit in the jurisdiction's HOME Invest-

ment 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.)

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).

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 this section. 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)¹ 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 in² regulation an allocation formula that reflects each jurisdiction’s share of total need among eligible jurisdiction³ 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 with (i) the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs of the Senate,

² So in original. Probably should be “by”.

³ So in original. Probably should be “jurisdictions”.

¹ See 1992 Amendment note below.