

housing projects that are underfunded. Once identified, the Chief Housing Officer shall prioritize for payments under subparagraph (A) those MHPI housing projects most in need of funding to rectify such underfunding.

“(3) ALTERNATIVE AUTHORITY IN EVENT OF LACK OF UNDERFUNDED PROJECTS.—

“(A) IN GENERAL.—Subject to subparagraph (B), if the Chief Housing Officer determines that no MHPI housing projects for a military department require additional funding under paragraph (2) for a month, the Secretary of the military department concerned, in consultation with the Chief Housing Officer, may allocate the funds otherwise available to the Secretary under such paragraph for that month to support improvements designed to enhance the quality of life of members of the uniformed services and their families who reside in MHPI housing.

“(B) CONDITIONS.—Before the Secretary of a military department may allocate funds as authorized by subparagraph (A), the Chief Housing Officer shall certify to the Committees on Armed Services of the Senate and the House of Representatives that there are no MHPI housing projects for the military department require additional funding under paragraph (2). The certification shall include sufficient details to show why no projects are determined to need the additional funds.

“(4) BRIEFING REQUIRED.—Not later than March 1, 2020, and each year thereafter, the Secretary of Defense shall provide a briefing to the Committee on Armed Services of the Senate and the House of Representatives detailing the expenditure of funds under paragraphs (2) and (3), the MHPI housing projects receiving funds under such paragraphs, and any other information the Secretary considers relevant.

“(b) PLAN FOR MHPI HOUSING.—Not later than December 1, 2018, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a long-range plan to develop measures to consistently address the future sustainment, recapitalization, and financial condition of MHPI housing. The plan shall include—

“(1) efforts to mitigate the losses incurred by MHPI housing projects because of the reductions to BAH under section 603 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; [which amended] 37 U.S.C. 403(b)(3)(B)); and

“(2) a full assessment of the effects of such reductions (in relation to calculations of market rates for rent and utilities) on the financial condition of MHPI housing.

“(c) REPORTING.—The Secretary shall direct the Assistant Secretary of Defense for Energy, Installations, and Environment to take the following steps regarding reports under section 2884(c) of title 10, United States Code:

“(1) Provide additional contextual information on MHPI housing to identify any differences in the calculation of debt coverage ratios and any effect of such differences on their comparability.

“(2) Immediately resume issuing such reports on the financial condition of MHPI housing.

“(3) Revise Department of Defense guidance on MHPI housing—

“(A) to ensure that relevant financial data (such as debt coverage ratios) in such reports are consistent and comparable in terms of the time periods of the data collected;

“(B) to include a requirement that the secretary of each military department includes measures of future sustainment into each assessments of MHPI housing projects; and

“(C) to require the secretary of each military department to define risk tolerance regarding the future sustainability of MHPI housing projects.

“(4) Report financial information on future sustainment of each MHPI housing project in such reports.

“(5) Provide Department of Defense guidance to the secretaries of the military departments to—

“(A) assess the significance of the specific risks to individual MHPI housing projects from the reduction in BAH; and

“(B) identify methods to mitigate such risks based on their significance.

“(6) Not later than December 1, 2018, finalize Department of Defense guidance that clearly defines—

“(A) the circumstances in which the military departments shall provide notification of housing project changes to the congressional defense committees; and

“(B) which types of such changes require prior notification to or prior approval from the congressional defense committees.

“(d) DEFINITIONS.—In this section:

“(1) The term ‘BAH’ means the basic allowance for housing under section 403 of title 37, United States Code.

“(2) The term ‘covered housing’ means a unit of MHPI housing that is leased to a member of a uniformed service who resides in such unit.

“(3) The term ‘MHPI housing’ means housing procured, acquired, constructed, or for which any phase or portion of a project agreement was first finalized and signed, under the alternative authority of subchapter IV of chapter 169 of title 10, United States Code (known as the Military Housing Privatization Initiative), on or before September 30, 2014.”

[Pub. L. 116-92, div. B, title XXX, §3036(b), Dec. 20, 2019, 133 Stat. 1939, provided that: “The amendment made by this section [amending section 606 of Pub. L. 115-232, set out above] shall take effect on the date of the enactment of this Act [Dec. 20, 2019] and shall apply with respect to months beginning after that date.”]

§ 2872. General authority

In addition to any other authority provided under this chapter for the acquisition or construction of military family housing or military unaccompanied housing, the Secretary concerned may exercise any authority or any combination of authorities provided under this subchapter in order to provide for the acquisition or construction by eligible entities of the following:

(1) Family housing units on or near military installations within the United States and its territories and possessions.

(2) Military unaccompanied housing units on or near such military installations.

(Added Pub. L. 104-106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 545; amended Pub. L. 106-65, div. B, title XXVIII, §2803(b), Oct. 5, 1999, 113 Stat. 849.)

AMENDMENTS

1999—Pub. L. 106-65 substituted “eligible entities” for “private persons” in introductory provisions.

§ 2872a. Utilities and services

(a) AUTHORITY TO FURNISH.—The Secretary concerned may furnish utilities and services referred to in subsection (b) in connection with any military housing acquired or constructed pursuant to the exercise of any authority or combination of authorities under this subchapter if the military housing is located on a military installation.

(b) COVERED UTILITIES AND SERVICES.—The utilities and services that may be furnished under subsection (a) are the following:

- (1) Electric power.
- (2) Steam.
- (3) Compressed air.

- (4) Water.
- (5) Sewage and garbage disposal.
- (6) Natural gas.
- (7) Pest control.
- (8) Snow and ice removal.
- (9) Mechanical refrigeration.
- (10) Telecommunications service.
- (11) Firefighting and fire protection services.
- (12) Police protection services.
- (13) Street sweeping.
- (14) Tree trimming and removal.

(c) REIMBURSEMENT.—(1) The Secretary concerned shall be reimbursed for any utilities or services furnished under subsection (a).

(2) The amount of any cash payment received under paragraph (1) as reimbursement for the cost of furnishing utilities or services shall—

(A) in the case of a cost paid using funds appropriated or otherwise made available before October 1, 2014, be credited to the appropriation or working capital account from which the cost of furnishing utilities or services concerned was paid; or

(B) in the case of a cost paid using funds appropriated or otherwise made available on or after October 1, 2014, be credited to the appropriation or working capital account currently available for the purpose of furnishing utilities or services under subsection (a).

(3) Amounts credited under paragraph (2) to an appropriation or account shall be merged with funds in such appropriation or account, and shall be available to the same extent, and subject to the same terms and conditions, as such funds.

(Added Pub. L. 106-398, § 1 [div. B, title XXVIII, § 2805(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-414; amended Pub. L. 107-314, div. B, title XXVIII, § 2802(a), Dec. 2, 2002, 116 Stat. 2703; Pub. L. 113-66, div. B, title XXVIII, § 2804, Dec. 26, 2013, 127 Stat. 1007; Pub. L. 116-92, div. B, title XXX, § 3032, Dec. 20, 2019, 133 Stat. 1936.)

AMENDMENTS

2019—Subsec. (b)(13), (14). Pub. L. 116-92 added pars. (13) and (14).

2013—Subsec. (c)(2), (3). Pub. L. 113-66 substituted “under paragraph (1) as reimbursement for the cost of furnishing utilities or services shall—” for “under paragraph (1) shall be credited to the appropriation or working capital account from which the cost of furnishing the utilities or services concerned was paid.”, added subpars. (A) and (B), designated second sentence of par. (2) as par. (3), and substituted “Amounts credited under paragraph (2)” for “Amounts so credited”.

2002—Subsec. (b)(11), (12). Pub. L. 107-314 added pars. (11) and (12).

§ 2872b. Treatment of breach of contract

(a) RESPONSE TO MATERIAL BREACH.—In the case of a material breach of contract under this subchapter by a party to the contract, the Secretary concerned shall use the authorities available to the Secretary, including withholding amounts to be paid under the contract, to encourage the party to cure the breach.

(b) RESCINDING OF CONTRACT.—If a material breach of the contract is not cured in a timely manner, as determined by the Secretary concerned, the Secretary may—

- (1) rescind the contract pursuant to the terms of the contract; and

(2) prohibit the offending party from entering into a new contract or undertaking expansions of other existing contracts, or both, with the Secretary under this subchapter.

(Added Pub. L. 116-92, div. B, title XXX, § 3033(a), Dec. 20, 2019, 133 Stat. 1936.)

§ 2873. Direct loans and loan guarantees

(a) DIRECT LOANS.—(1) Subject to subsection (c), the Secretary concerned may make direct loans to an eligible entity in order to provide funds to the eligible entity for the acquisition or construction of housing units that the Secretary determines are suitable for use as military family housing or as military unaccompanied housing.

(2) The Secretary concerned shall establish such terms and conditions with respect to loans made under this subsection as the Secretary considers appropriate to protect the interests of the United States, including the period and frequency for repayment of such loans and the obligations of the obligors on such loans upon default.

(b) LOAN GUARANTEES.—(1) Subject to subsection (c), the Secretary concerned may guarantee a loan made to an eligible entity if the proceeds of the loan are to be used by the eligible entity to acquire, or construct housing units that the Secretary determines are suitable for use as military family housing or as military unaccompanied housing.

(2) The amount of a guarantee on a loan that may be provided under paragraph (1) may not exceed the amount equal to the lesser of—

- (A) the amount equal to 80 percent of the value of the project; or
- (B) the amount of the outstanding principal of the loan.

(3) The Secretary concerned shall establish such terms and conditions with respect to guarantees of loans under this subsection as the Secretary considers appropriate to protect the interests of the United States, including the rights and obligations of obligors of such loans and the rights and obligations of the United States with respect to such guarantees.

(c) LIMITATION ON DIRECT LOAN AND GUARANTEE AUTHORITY.—Direct loans and loan guarantees may be made under this section only to the extent that appropriations of budget authority to cover their cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5))) are made in advance, or authority is otherwise provided in appropriation Acts. If such appropriation or other authority is provided, there may be established a financing account (as defined in section 502(7) of such Act (2 U.S.C. 661a(7))), which shall be available for the disbursement of direct loans or payment of claims for payment on loan guarantees under this section and for all other cash flows to and from the Government as a result of direct loans and guarantees made under this section.

(Added Pub. L. 104-106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 545; amended Pub. L. 106-65, div. B, title XXVIII, § 2803(c), Oct. 5, 1999, 113 Stat. 849.)