

2001—Pub. L. 107–107, div. B, title XXVIII, §2804(b), Dec. 28, 2001, 115 Stat. 1306, added item 2883a.

2000—Pub. L. 106–398, §1 [div. B, title XXVIII, §2805(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–415, added item 2872a.

1999—Pub. L. 106–65, div. B, title XXVIII, §2803(h)(2), Oct. 5, 1999, 113 Stat. 849, added item 2875 and struck out former item 2875 “Investments in nongovernmental entities”.

§ 2871. Definitions

In this subchapter and subchapter V of this chapter:

(1) The term “ancillary supporting facilities” means facilities related to housing units, including facilities to provide or support elementary or secondary education, child care centers, day care centers, child development centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.

(2) The term “child development center” includes a facility, and the utilities to support such facility, the function of which is to support the daily care of children aged six weeks old through five years old for full-day, part-day, and hourly service.

(3) The term “construction” means the construction of housing units and ancillary supporting facilities or the improvement or rehabilitation of existing units or ancillary supporting facilities.

(4) The term “contract” includes any contract, lease, or other agreement entered into under the authority of this subchapter. The fact that an agreement between an eligible entity and the Secretary concerned is designated as an agreement rather than a contract shall not be construed to exclude the agreement from the term “contract” for purposes of this subchapter and subchapter V.

(5) The term “eligible entity” means any private person, corporation, firm, partnership, company, State or local government, or housing authority of a State or local government that is prepared to enter into a contract as a partner with the Secretary concerned for the construction of housing units and ancillary supporting facilities.

(6) The term “Fund” means the Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund established under section 2883(a) of this title.

(7) The term “housing document” means a document developed by the Secretary of Defense under section 2890 of this title and known as the Military Housing Privatization Initiative Tenant Bill of Rights or the Military Housing Privatization Initiative Tenant Responsibilities.

(8) The term “housing unit” means a unit of family housing or military unaccompanied housing acquired or constructed under this subchapter.

(9) The term “incentive fees” means any amounts payable to a landlord for meeting or exceeding performance metrics as specified in a contract with the Department of Defense.

(10) The term “landlord” means an eligible entity that enters into, or has entered into, a

contract as a partner with the Secretary concerned for the acquisition or construction of a housing unit under this subchapter. The term includes any agent of the eligible entity or any subsequent lessor who owns, manages, or is otherwise responsible for a housing unit. The term does not include an entity of the Federal Government.

(11) The term “military unaccompanied housing” means military housing intended to be occupied by members of the armed forces serving a tour of duty unaccompanied by dependents and transient housing intended to be occupied by members of the armed forces on temporary duty.

(12) The term “tenant” means a member of the armed forces, including a reserve component thereof in an active status, or a dependent of a member of the armed forces who resides at a housing unit, is a party to a lease for a housing unit, or is authorized to act on behalf of the member under this subchapter and subchapter V of this chapter in the event of the assignment or deployment of a member.

(13) The term “United States” includes the Commonwealth of Puerto Rico.

(Added Pub. L. 104–106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 544; amended Pub. L. 105–261, div. B, title XXVIII, §2803, Oct. 17, 1998, 112 Stat. 2202; Pub. L. 106–65, div. B, title XXVIII, §2803(a), Oct. 5, 1999, 113 Stat. 848; Pub. L. 107–314, div. B, title XXVIII, §2803(b), Dec. 2, 2002, 116 Stat. 2705; Pub. L. 108–136, div. A, title X, §1043(c)(6), Nov. 24, 2003, 117 Stat. 1612; Pub. L. 109–163, div. B, title XXVIII, §2805(b), Jan. 6, 2006, 119 Stat. 3507; Pub. L. 110–417, div. B, title XXVIII, §2805(c), Oct. 14, 2008, 122 Stat. 4723; Pub. L. 116–92, div. B, title XXX, §§3001(b)–3011(a), Dec. 20, 2019, 133 Stat. 1916, 1917.)

Editorial Notes

AMENDMENTS

2019—Pub. L. 116–92, §3011(a), inserted “and subchapter V of this chapter” after “this subchapter” in introductory provisions.

Pars. (1), (3). Pub. L. 116–92, §3001(c), struck out “military” before “housing units”.

Par. (4). Pub. L. 116–92, §3001(b)(1), inserted at end “The fact that an agreement between an eligible entity and the Secretary concerned is designated as an agreement rather than a contract shall not be construed to exclude the agreement from the term ‘contract’ for purposes of this subchapter and subchapter V.”

Par. (5). Pub. L. 116–92, §3001(c), struck out “military” before “housing units”.

Pars. (7) to (10). Pub. L. 116–92, §3001(b)(3), added pars. (7) to (10). Former pars. (7) and (8) redesignated (11) and (13), respectively.

Par. (11). Pub. L. 116–92, §3001(b)(2), redesignated par. (7) as (11).

Par. (12). Pub. L. 116–92, §3001(b)(4), added par. (12).

Par. (13). Pub. L. 116–92, §3001(b)(2), redesignated par. (8) as (13).

2008—Par. (5). Pub. L. 110–417 inserted before period at end “that is prepared to enter into a contract as a partner with the Secretary concerned for the construction of military housing units and ancillary supporting facilities”.

2006—Par. (1). Pub. L. 109–163, §2805(b)(1), inserted “child development centers,” after “day care centers.”

Par. (2). Pub. L. 109–163, §2805(b)(2), added par. (2).

2003—Par. (2). Pub. L. 108–136 struck out par. (2) which read as follows: “The term ‘base closure law’ means the following:

“(A) Section 2687 of this title.

“(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

“(C) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).”
2002—Par. (7). Pub. L. 107-314 inserted “and transient housing intended to be occupied by members of the armed forces on temporary duty” before period at end.
1999—Pars. (5) to (8). Pub. L. 106-65 added par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.

1998—Par. (1). Pub. L. 105-261 inserted “facilities to provide or support elementary or secondary education,” after “including”.

Statutory Notes and Related Subsidiaries

COMMAND OVERSIGHT OF MILITARY PRIVATIZED HOUSING AS ELEMENT OF PERFORMANCE EVALUATIONS

Pub. L. 117-81, div. A, title V, §525, Dec. 27, 2021, 135 Stat. 1688, provided that:

“(a) EVALUATIONS IN GENERAL.—Each Secretary of a military department shall ensure that the performance evaluations of any individual described in subsection (b) under the jurisdiction of such Secretary provides for an assessment of the extent to which such individual has or has not exercised effective oversight and leadership in the following:

“(1) Improving conditions of privatized housing under subchapter IV of chapter 169 of title 10, United States Code.

“(2) Addressing concerns with respect to such housing of members of the Armed Forces and their families who reside in such housing on an installation of the military department concerned.

“(b) COVERED INDIVIDUALS.—The individuals described in this subsection are as follows:

“(1) The commander of an installation of a military department at which on-installation housing is managed by a landlord of privatized housing under subchapter IV of chapter 169 of title 10, United States Code.

“(2) Each officer or senior enlisted member of the Armed Forces at an installation described in paragraph (1) whose duties include facilities or housing management at such installation.

“(3) Any other officer or enlisted member of the Armed Forces (whether or not at an installation described in paragraph (1)) as specified by the Secretary of the military department concerned for purposes of this section.”

PROMULGATION OF GUIDANCE TO FACILITATE RETURN OF MILITARY FAMILIES DISPLACED FROM PRIVATIZED MILITARY HOUSING

Pub. L. 116-283, div. B, title XXVIII, §2816, Jan. 1, 2021, 134 Stat. 4328, provided that:

“(a) GUIDANCE REQUIRED.—The Secretary of Defense shall promulgate guidance for commanders of military installations and installation housing management offices to assist such commanders and offices in facilitating and managing the relocation and return of tenants of privatized military housing when tenants are displaced from such housing—

“(1) as a result of an environmental hazard or other damage adversely affecting the habitability of the privatized military housing; or

“(2) during remediation or repair activities in response to the hazard or damages.

“(b) FINANCIAL IMPACT OF DISPLACEMENT.—As part of the promulgation of the guidance, the Secretary of Defense shall consider—

“(1) the extent to which displaced tenants of privatized military housing under the circumstances described in subsection (a) incur relocation, per diem, or similar expenses as a direct result of such displacement that are not covered by a landlord, insurance, or claims process; and

“(2) the feasibility of providing reimbursement for uncovered expenses.

“(c) CONSULTATION.—The Secretary of Defense shall promulgate the guidance in consultation with the Secretaries of the military departments, the Chief Housing Officer, landlords, and other interested persons.

“(d) IMPLEMENTATION.—The Secretaries of the military departments shall be responsible for implementation of the guidance at military installations under the jurisdiction of the Secretary concerned, while recognizing that the guidance cannot anticipate every situation in which tenants of privatized military housing must be displaced from such housing under the circumstances described in subsection (a).

“(e) DEFINITIONS.—In this section, the terms ‘landlord’, ‘privatized military housing’, and ‘tenant’ have the meanings given those terms in section 3001(a) of the Military Construction Authorization Act for Fiscal Year 2020 (division B of Public Law 116-92; 133 Stat. 1916; 10 U.S.C. 2821 note).”

UNIFORM CODE OF BASIC STANDARDS FOR PRIVATIZED MILITARY HOUSING AND PLAN TO CONDUCT INSPECTIONS AND ASSESSMENTS

Pub. L. 116-283, div. B, title XXVIII, §2818, Jan. 1, 2021, 134 Stat. 4329, provided that:

“(a) UNIFORM CODE OF BASIC STANDARDS FOR MILITARY HOUSING.—The Secretary of Defense shall expand the uniform code of basic housing standards for safety, comfort, and habitability for privatized military housing established pursuant to section 3051(a) of the Military Construction Authorization Act for Fiscal Year 2020 (division B of Public Law 116-92; 133 Stat. 1941; 10 U.S.C. 2871 note) [set out below] to include Government-owned and Government-controlled military family housing located inside or outside the United States and occupied by members of the Armed Forces.

“(b) INSPECTION AND ASSESSMENT PLAN.—The Secretary of Defense shall expand the Department of Defense housing inspection and assessment plan prepared pursuant to section 3051(b) of the Military Construction Authorization Act for Fiscal Year 2020 (division B of Public Law 116-92; 133 Stat. 1941; 10 U.S.C. 2871 note) [set out below] to include Government-owned and Government-controlled military family housing located inside or outside the United States and occupied by members of the Armed Forces and commence inspections and assessments of such military family housing pursuant to the plan.”

Pub. L. 116-92, div. B, title XXX, §3051, Dec. 20, 2019, 133 Stat. 1941, provided that:

“(a) UNIFORM CODE.—Not later than February 1, 2021, the Secretary of Defense shall establish and implement a uniform code of basic housing standards for safety, comfort, and habitability for privatized military housing, which shall meet or exceed requirements informed by a nationally recognized, consensus-based, model property maintenance code.

“(b) INSPECTION AND ASSESSMENT PLAN.—Not later than February 1, 2020, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a Department of Defense plan to contract with qualified home inspectors to conduct a thorough inspection and assessment of the structural integrity and habitability of each unit of privatized military housing. The plan shall include the implementation plan for the uniform code to be established under subsection (a).

“(c) IMPLEMENTATION OF INSPECTIONS AND ASSESSMENTS.—

“(1) IMPLEMENTATION.—Not later than February 1, 2021, the Secretary of the military department concerned shall commence conducting inspections and assessments of units of privatized military housing pursuant to the plan submitted under subsection (b) to identify issues and ensure compliance with applicable housing codes, including the uniform code established under subsection (a).

“(2) REPORT.—Not later than March 1, 2021, the Secretary of Defense shall submit to the congressional

defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the findings of the inspections and assessments conducted under paragraph (1).

“(d) QUALIFIED HOME INSPECTORS DESCRIBED.—For purposes of this section, a qualified home inspector must possess the appropriate credentials for the work the inspector will perform, as defined by the respective State in which the work will be performed. A qualified home inspector may not be an employee or in a fiduciary relationship with—

“(1) the Federal Government; or

“(2) an individual or entity who owns or manages privatized military housing.”

[For definition of “privatized military housing” as used in section 3051 of Pub. L. 116–92, set out above, see section 3001(a) of Pub. L. 116–92, set out as a note under section 2821 of this title.]

RADON TESTING OF PRIVATIZED MILITARY HOUSING

Pub. L. 116–92, div. B, title XXX, §3061, Dec. 20, 2019, 133 Stat. 1946, provided that:

“(a) REPORT.—Not later than March 1, 2020, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report identifying the installations of the Department of Defense that have privatized military housing that should be monitored for levels of radon at or above the action level.

“(b) TESTING PROCEDURES AND STANDARDS.—The Secretaries of the military departments shall ensure that landlords providing privatized military housing at installations identified under subsection (a) establish testing procedures that are consistent with then current national consensus standards and are in compliance with applicable Federal, State, and local radon regulations in order to ensure radon levels are below recommended levels established by the Environmental Protection Agency, whether through—

“(1) regular testing of privatized military housing by persons who possess certification pursuant to the proficiency program operated under section 305(a)(2) of the Toxic Substances Control Act (15 U.S.C. 2665(a)(2)); or

“(2) the installation of monitoring equipment in privatized military housing.

“(c) NOTIFICATION REGARDING NEED FOR MITIGATION.—If, as a result of testing described in subsection (b), a unit of privatized military housing needs radon mitigation to ensure radon levels are below recommended levels, the landlord providing the housing unit shall submit to the Secretary of the military department concerned, not later than seven days after the determination of the need for radon mitigation, the mitigation plan for the housing unit.”

[For definitions of “landlord” and “privatized military housing” as used in section 3061 of Pub. L. 116–92, set out above, see section 3001(a) of Pub. L. 116–92, set out as a note under section 2821 of this title.]

MILITARY HOUSING PRIVATIZATION INITIATIVE

Pub. L. 115–232, div. A, title VI, §606, Aug. 13, 2018, 132 Stat. 1795, as amended by Pub. L. 116–92, div. B, title XXX, §§3036(a), 3037, Dec. 20, 2019, 133 Stat. 1938, 1939; Pub. L. 116–283, div. B, title XXVIII, §2811(i), Jan. 1, 2021, 134 Stat. 4326; Pub. L. 117–81, div. B, title XXVIII, §2811, Dec. 27, 2021, 135 Stat. 2191, provided that:

“(a) USE OF FUNDS IN CONNECTION WITH MHPI.—

“(1) PAYMENTS TO LESSORS GENERALLY.—

“(A) PAYMENT AUTHORITY.—Each month beginning with the first month after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020 [Dec. 20, 2019], each Secretary of a military department shall use funds, in an amount determined under subparagraph (B), to make monthly payments to lessors of covered housing in the manner provided by this subsection, as in

effect on the day before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020.

“(B) CALCULATION OF MONTHLY PAYMENTS.—For purposes of making payments under subparagraph (A) for a month, the Secretary of the military department concerned shall determine the amount equal to 50 percent of the aggregate of the amounts calculated under section 403(b)(3)(A)(ii) of title 37, United States Code, for covered housing under the jurisdiction of the Secretary for that month.

“(2) ADDITIONAL PAYMENTS TO LESSORS RESPONSIBLE FOR UNDERFUNDED PROJECTS.—

“(A) PAYMENT AUTHORITY.—Each month beginning with the first month after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, each Secretary of a military department shall use funds, in an amount determined under subparagraph (B), to make additional monthly payments, under such terms and in such amounts as determined by the Secretary, to one of [sic] more lessors responsible for underfunded MHPI housing projects identified pursuant to subparagraph (C) under the jurisdiction of the Secretary for the purposes of future sustainment, recapitalization, and financial sustainability of the projects.

“(B) CALCULATION OF MONTHLY PAYMENTS.—For purposes of making payments under subparagraph (A) for a month, the Secretary of the military department concerned shall determine the amount equal to 50 percent of the aggregate of the amounts calculated under section 403(b)(3)(A)(ii) of title 37, United States Code, for covered housing under the jurisdiction of the Secretary for that month.

“(C) IDENTIFICATION OF UNDERFUNDED PROJECTS.—The Chief Housing Officer of the Department of Defense, in conjunction with the Secretaries of the military departments, shall assess MHPI housing projects for the purpose of identifying all MHPI 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 that 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.)

Editorial Notes

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