

111TH CONGRESS
1ST SESSION

H. R. 4099

To establish incentives to increase the energy efficiency of federally assisted housing.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 2009

Ms. KILROY (for herself, Mr. BLUMENAUER, Mr. AL GREEN of Texas, Ms. HIRONO, Mr. ISRAEL, Mr. MOORE of Kansas, Mr. PERRIELLO, Mr. TONKO, Mr. WU, and Mr. SESTAK) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To establish incentives to increase the energy efficiency of federally assisted housing.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Energy Efficiency
5 Modernization Act of 2009”.

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 The Congress finds that—

8 (1) federally assisted housing programs provide
9 robust opportunities for energy efficiency improve-

1 ments and up-front investments in such improve-
2 ments would provide significant long-term cost sav-
3 ings for taxpayers, provide stimulus to the economy
4 through creation of capital projects and jobs, estab-
5 lish best practices for the industry and be consistent
6 with the mandate of the Department of Housing and
7 Urban Development (HUD);

8 (2) the Government Accountability Office re-
9 ported in an October 2008 study that HUD pays an
10 estimated \$5 billion annually for energy costs for ap-
11 proximately 6 million dwelling units of assisted hous-
12 ing, representing almost 17 percent of the Nation's
13 housing stock;

14 (3) according to the Harvard University Grad-
15 uate School of Design, more than 80 percent of fed-
16 erally assisted housing stock is between 15 years to
17 30 years old;

18 (4) existing rules and regulations do not ade-
19 quately incentivize owners of HUD-assisted property
20 to maximize efforts to make energy efficiency im-
21 provements to such properties; and

22 (5) increasing the energy efficiency of federally
23 assisted housing by 25 percent to 40 percent would
24 create near-term savings for HUD of roughly \$1 bil-
25 lion to \$1.5 billion annually, resulting in substantial

1 long-term cost savings for the Federal Government
2 and for taxpayers.

3 **SEC. 3. GREEN DIVIDEND PROGRAM FOR FEDERALLY AS-**
4 **SISTED RENTAL HOUSING.**

5 (a) **AUTHORITY.**—The Secretary shall establish a
6 program under this section to provide green dividends to
7 owners of covered federally assisted housing projects who
8 undertake utility cost-saving measures that result in util-
9 ity cost savings for such housing.

10 (b) **GREEN DIVIDENDS.**—

11 (1) **IN GENERAL.**—A green dividend under this
12 section with respect to a covered federally assisted
13 housing project shall be an annual distribution, to
14 the owner of the project, of an amount of the sur-
15 plus project funds that is equal to the sum of—

16 (A) 50 percent of the annual utility cost
17 savings resulting from the utility cost-saving
18 measures conducted for the project; and

19 (B) any reasonable costs, as determined by
20 the Secretary pursuant to subsection (d)(4), in-
21 curred by the owner in carrying out the utility
22 cost-saving measures, including financing costs
23 incurred by the owner or a third party, in com-
24 pliance with guidelines established pursuant to
25 subsection (d)(3).

1 (2) ADDITIONAL TO STANDARD DISTRIBUTION.—Notwithstanding any other law or regulation
2 relating to a limitation on distributions for a covered
3 federally assisted housing project, a green dividend
4 under this section shall be in addition to the stand-
5 ard distribution that the owner of the project is au-
6 thorized to receive from the project pursuant to the
7 regulations of the Secretary.

9 (c) STANDARDS FOR MEASUREMENT AND MONI-
10 TORING.—In carrying out the program under this section,
11 the Secretary shall establish and utilize the following
12 standardized methods:

13 (1) Methods that an owner of a covered feder-
14 ally assisted housing project may use to accurately
15 measure the baseline utility use of the project before
16 undertaking the utility cost-saving measures for the
17 project.

18 (2) Methods that an owner of a covered feder-
19 ally assisted housing project may use to effectively
20 monitor reductions in the utility use of the project
21 resulting from the completed utility cost-saving
22 measures for the project.

23 (3) Methods that an owner of a covered feder-
24 ally assisted housing project may use to track, and
25 that the Secretary may use to verify, utility cost sav-

1 ings resulting from the utility cost-saving measures
2 for the project that account for the effect of changes
3 in utility costs and such other factors that the Sec-
4 retary considers necessary or appropriate.

5 (d) OTHER REQUIREMENTS.—

6 (1) APPLICATION AND SELECTION.—The Sec-
7 retary shall establish requirements for owners of
8 covered federally assisted housing projects to apply
9 for participation in the program under this section
10 and shall select among such applications based upon
11 selection criteria, which the Secretary shall establish.

12 (2) COST-EFFECTIVENESS.—The Secretary
13 shall establish guidelines to ensure that any utility
14 cost-saving measures undertaken pursuant to the
15 program under this section are cost-effective in rela-
16 tion to the utility cost savings resulting from the
17 measures and the green dividend provided under this
18 section to the owner.

19 (3) ENERGY PERFORMANCE CONTRACTS.—The
20 Secretary shall establish guidelines for the use of en-
21 ergy performance contracting in carrying out utility
22 cost-saving measures pursuant to the program under
23 this section.

24 (4) FINANCING COSTS.—The Secretary shall es-
25 tablish guidelines for the financing of the reasonable

1 costs incurred by an owner of a covered federally as-
2 sisted housing project in carrying out utility cost-
3 saving measures under the program under this sec-
4 tion, and whether such costs, whether financed by
5 the limited dividend owner or a third party, shall be
6 repayable from project funds.

7 (5) REPORTING.—

8 (A) TO SECRETARY.—The Secretary shall
9 require each owner of a covered federally as-
10 sisted housing project for which a green divi-
11 dend is provided pursuant to the program
12 under this section to submit to the Secretary
13 such reports regarding the project, the utility
14 cost-saving measures undertaken for the
15 project, and the utility cost savings of the
16 project in accordance with such requirements as
17 the Secretary shall establish.

18 (B) TO CONGRESS.—The Secretary shall
19 submit reports to the Congress describing the
20 implementation and operation of the program
21 under this section, as follows:

22 (i) INITIAL REPORT.—The Secretary
23 shall submit reports describing the initial
24 implementation and operation of the pro-
25 gram not later than the expiration of the

1 180-day period beginning upon the date of
2 the enactment of this Act.

3 (ii) ANNUAL REPORTS.—Not later
4 than the expiration of the 12-month period
5 that begins upon the expiration of the pe-
6 riod specified clause (i), and upon the expi-
7 ration of each successive 12-month period
8 thereafter, the Secretary shall submit a re-
9 port describing the ongoing operation of
10 the program.

11 (e) PREEMPTION OF CONFLICTING STATE LAWS
12 LIMITING DISTRIBUTIONS.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), no State or political subdivision of a
15 State may establish, continue in effect, or enforce
16 any law, regulation, or administrative requirement
17 that limits or restricts, to an amount that is less
18 than the sum of the amounts provided for under
19 paragraphs (1) and (2) of subsection (b), the
20 amount of surplus project funds accruing after the
21 date of the enactment of this section that may be
22 distributed from any covered federally assisted hous-
23 ing project.

1 (2) EXCEPTION AND WAIVER.—Paragraph (1)
2 shall not apply to any law or regulation to the extent
3 such law or regulation applies to—

4 (A) a State-financed covered federally as-
5 sisted housing project; or

6 (B) a covered federally assisted housing
7 project for which the owner has elected to waive
8 the applicability of paragraph (1).

9 (f) DEFINITIONS.—For purposes of this section, the
10 following definitions shall apply:

11 (1) COVERED FEDERALLY ASSISTED HOUSING
12 PROJECT.—The term “covered federally assisted
13 housing project” means any multifamily rental hous-
14 ing project that—

15 (A) is provided any rental assistance,
16 mortgage insurance, subsidy, or other financial
17 assistance by the Secretary; and

18 (B) that is subject to a limitation on dis-
19 tributions, to the owner, of project funds under
20 section 200.106(a), 236.1(e), 880.205(b),
21 881.205(b), or 883.306(b) of title 24 of the
22 Code of Federal Regulations, or any other stat-
23 ute or regulation applicable to the project.

24 (2) SECRETARY.—The term “Secretary” means
25 the Secretary of Housing and Urban Development.

1 (3) SURPLUS PROJECT FUNDS.—The term
2 “surplus project funds” means, with respect to a
3 covered federally assisted housing project, the net
4 revenue of the project after all project expenses have
5 been paid, or funds have been set aside for the pay-
6 ment thereof, and any reserve requirements applica-
7 ble to the project have been met.

8 (4) UTILITY COST SAVINGS.—The term “utility
9 cost savings” means, with respect to utility cost-sav-
10 ing measures undertaken for a covered federally as-
11 sisted housing project, the difference between—

12 (A) the energy or water costs that would
13 have been incurred for the project if such utility
14 cost-saving measures were not completed; and

15 (B) the actual energy or water costs for
16 the project after completion of the utility cost-
17 saving measures.

18 (5) UTILITY COST-SAVING MEASURES.—The
19 term “utility cost-saving measures” means, with re-
20 spect to a covered federally assisted housing project,
21 any rehabilitation, renovation, retrofit, improvement,
22 or alteration for the project that incorporates any
23 technology, equipment, fixture, or material, or pro-
24 motes any practice, designed to reduce the energy or
25 water consumption of the project.

1 (g) REGULATIONS.—Not later than the expiration of
2 the 180-day period beginning on the date of the enactment
3 of this Act, the Secretary shall issue any regulations nec-
4 essary to carry out this section.

5 **SEC. 4. USE OF RESIDUAL RECEIPTS AND RESERVE FOR**
6 **REPLACEMENTS FUNDS FOR GREEN RETRO-**
7 **FITS OF FEDERALLY ASSISTED RENTAL**
8 **HOUSING.**

9 (a) AUTHORITY.—The Secretary shall carry out a
10 program under this section to make loans funded from re-
11 sidual receipts to owners of federally assisted housing
12 projects for undertaking green retrofit measures for such
13 housing and to encourage the broader use of reserve for
14 replacements funds to pay for the costs of green retrofit
15 measures for such housing.

16 (b) GREEN RETROFIT MEASURES.—For purposes of
17 this section, a green retrofit measure with respect to a
18 federally assisted housing project shall be any measure for
19 rehabilitation, renovation, retrofit, improvement, or alter-
20 ation for the project that—

21 (1) is designed to reduce utility consumption,
22 including water, gas, and electricity, or increase en-
23 ergy efficiency, for the project;

24 (2) provides a renewable energy system for the
25 project that generates energy from a naturally re-

1 plenished energy source or sources, such as sunlight,
2 wind, rain, tides, which shall include hydroelectricity,
3 biomass, cogeneration, and new renewable tech-
4 nologies that have yet to be developed; or

5 (3) is designed to improve indoor air quality or
6 occupant health and safety, which shall include
7 measures reducing the potential for mold and other
8 allergens, measures improving fresh air ventilation,
9 and installation of carbon monoxide sensors not re-
10 quired by local codes.

11 (c) TERMS OF LOANS FUNDED FROM RESIDUAL RE-
12 CEIPTS AND WITHDRAWALS FROM RESERVE FOR RE-
13 PLACEMENTS FUNDS FOR GREEN RETROFIT MEAS-
14 URES.—Loans under this section and withdrawals from
15 reserve for replacements funds under this section shall be
16 subject to such terms and conditions as the Secretary shall
17 establish, which shall include the following:

18 (1) USE.—Any loan amounts received, or with-
19 drawals from reserve for replacements funds, may be
20 used only for green retrofit measures set forth in the
21 application approved by the Secretary pursuant to
22 subsection (d)(1).

23 (2) AMOUNT.—The amount of any loan, or
24 withdrawal from reserve for replacements funds, for
25 any federally assisted housing project may not ex-

1 ceed the amount necessary to carry out the green
2 retrofit measures set forth in the approved applica-
3 tion.

4 (3) LOAN TERM AND INTEREST RATE.—Each
5 loan funded from residual receipts shall have a term
6 to maturity that is satisfactory to the Secretary and
7 shall bear interest at a rate that is satisfactory to
8 the Secretary.

9 (d) OTHER REQUIREMENTS.—

10 (1) APPLICATION AND SELECTION.—The Sec-
11 retary shall establish requirements for owners of fed-
12 erally assisted housing projects to apply for loans to
13 be funded from residual receipts and to apply for the
14 use of reserve for replacements funds under this sec-
15 tion and shall select among such applications based
16 upon selection criteria, which the Secretary shall es-
17 tablish.

18 (2) REPORTING.—

19 (A) TO SECRETARY.—The Secretary shall
20 require each owner of a federally assisted hous-
21 ing project for which a loan is provided under
22 this section, or for which the Secretary ap-
23 proves the use of reserve for replacements funds
24 for green retrofit measures pursuant to this
25 section, to submit to the Secretary such reports

1 regarding the green retrofit measures under-
2 taken for the project in accordance with such
3 requirements as the Secretary shall establish.

4 (B) TO CONGRESS.—The Secretary shall
5 submit reports to the Congress describing the
6 implementation and operation of the loan pro-
7 gram under this section, as follows:

8 (i) INITIAL REPORT.—The Secretary
9 shall submit a report describing the initial
10 implementation and operation of the pro-
11 gram not later than the expiration of the
12 180-day period beginning upon the date of
13 the enactment of this Act.

14 (ii) ANNUAL REPORTS.—Not later
15 than the expiration of the 12-month period
16 that begins upon the expiration of the pe-
17 riod specified clause (i), and upon the expi-
18 ration of each successive 12-month period
19 thereafter, the Secretary shall submit a re-
20 port describing the ongoing operation of
21 the program.

22 (e) DEFINITIONS.—For purposes of this section, the
23 following definitions shall apply:

24 (1) FEDERALLY ASSISTED HOUSING
25 PROJECT.—The term “federally assisted housing

1 project” means any multifamily rental housing
2 project for which any rental assistance, mortgage in-
3 surance, subsidy, or other financial assistance is pro-
4 vided by the Secretary.

5 (2) SECRETARY.—The term “Secretary” means
6 the Secretary of Housing and Urban Development.

7 (f) FUNDING.—

8 (1) PROJECT RESIDUAL RECEIPTS.—Notwith-
9 standing any other provision of law, regulation, or
10 administrative requirement to the contrary, the Sec-
11 retary may authorize the withdrawal of residual re-
12 ceipts in the residual receipts account of a federally
13 assisted housing project, in any amount that the
14 Secretary determines is not needed, and will not be
15 needed, during the term of the use restrictions appli-
16 cable to the project to ensure the project’s afford-
17 ability, for costs (as such term is defined in section
18 502 of the Federal Credit Reform Act of 1990 (2
19 U.S.C. 661a)) of a loan under this section to the
20 owner of such federally assisted housing project,
21 which loan may be for such federally assisted hous-
22 ing project or for another federally assisted housing
23 project also owned by such owner.

24 (2) RESIDUAL RECEIPTS UPON EXPIRATION OF
25 FEDERAL ASSISTANCE.—Notwithstanding any other

1 provision of law, regulation, or administrative re-
2 quirement to the contrary, any funds remaining in
3 the residual receipts account of a federally assisted
4 housing project upon the expiration or termination
5 of the Federal assistance received by such project
6 that are returned, or are required to be returned, to
7 the Secretary under any under Federal law, regula-
8 tion or administrative requirement may be used by
9 the Secretary for costs (as such term is defined in
10 section 502 of the Federal Credit Reform Act of
11 1990 (2 U.S.C. 661a)) of loans under this section to
12 any federally assisted housing project.

13 (3) PROJECT RESERVE FOR REPLACEMENTS
14 FUNDS.—Notwithstanding any other provision of
15 law, regulation, or administrative requirement to the
16 contrary, the Secretary may authorize the owner of
17 a federally assisted housing project to make with-
18 draws from the reserve for replacements fund of a
19 federally assisted housing project, in any amount
20 that the Secretary deems necessary or appropriate,
21 to fund green retrofit measures for such federally
22 assisted housing project or for another federally as-
23 sisted housing project owned by such owner.

24 (g) REGULATIONS.—Not later than the expiration of
25 the 180-day period beginning on the date of the enactment

1 of this Act, the Secretary shall issue any regulations nec-
2 essary to carry out this section.

3 **SEC. 5. STUDY ON EXEMPTION FROM BUILDING CODES TO**
4 **ALLOW DISTRIBUTIVE ENERGY GENERATION**
5 **MEASURES AND WATER EFFICIENCY MEAS-**
6 **URES.**

7 (a) STUDY.—The Comptroller General of the United
8 States shall conduct a study to analyze and determine the
9 benefits of establishing a statutory exemption under Fed-
10 eral law from compliance with provisions of State and local
11 building codes that do not affect the health or safety of
12 residents of multifamily housing assisted by the Depart-
13 ment of Housing and Urban Development to enable and
14 encourage the construction and installation in such
15 projects of distributive energy generation measures and
16 water efficiency measures.

17 (b) PROVISION OF INFORMATION TO ENERGY INFOR-
18 MATION ADMINISTRATION.—The Comptroller General
19 shall provide any information collected in conducting the
20 study under this section to the Secretary of Energy to sup-
21 plement information collected and maintained by the En-
22 ergy Information Administration of the Department of
23 Energy regarding residential energy consumption.

24 (c) REPORT.—Not later than the expiration of the 6-
25 month period beginning on the date of the enactment of

1 this Act, the Comptroller General shall submit a report
2 to the Congress and to the Secretary of Energy setting
3 forth the results and conclusions of the study under this
4 section.

5 **SEC. 6. REPORTS ON UTILITY CONSUMPTION FOR HUD-AS-**
6 **SISTED MULTIFAMILY PROJECTS.**

7 (a) IN GENERAL.—To assist the Secretary of Hous-
8 ing and Urban Development in determining how and
9 where to undertake energy and other utility efficiency
10 measures, the Secretary shall, by regulation, require each
11 owner of an assisted multifamily housing project to report
12 regularly to the Secretary regarding consumption by the
13 project of electricity, water, gas, and other utilities.

14 (b) ANNUAL REPORT BY SECRETARY.—The Sec-
15 retary shall compile the information received pursuant to
16 subsection (a) and submit a report to the Congress and
17 the Energy Information Administration annually regard-
18 ing total utility consumption by assisted multifamily hous-
19 ing projects. The report shall include all non-aggregated
20 data submitted to the Secretary pursuant to subsection
21 (a).

22 (c) ASSISTED MULTIFAMILY HOUSING PROJECT.—
23 For purposes of this section, the term “assisted multi-
24 family housing project” means any multifamily housing
25 project that is—

1 (1) provided project-based assistance under sec-
2 tion 8 of the United States Housing Act of 1937, in-
3 cluding new construction and substantial rehabilita-
4 tion projects;

5 (2) assisted under section 202 of the Housing
6 Act of 1959 (as amended by section 801 of the
7 Cranston-Gonzalez National Affordable Housing
8 Act);

9 (3) assisted under section 202 of the Housing
10 Act of 1959, as such section existed before the en-
11 actment of the Cranston-Gonzalez National Afford-
12 able Housing Act;

13 (4) assisted under section 811 of the Cranston-
14 Gonzalez National Affordable Housing Act;

15 (5) financed by a loan or mortgage insured
16 under section 221(d)(3) of the National Housing Act
17 that bears interest at a rate determined under the
18 proviso of section 221(d)(5) of such Act; or

19 (6) insured, assisted, or held by the Secretary
20 or a State or State agency under section 236 of the
21 National Housing Act.

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