

108TH CONGRESS  
2D SESSION

# S. 2692

To authorize the Secretary of the Department of Housing and Urban Development to make grants to States for affordable housing for low-income persons, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 20, 2004

Mr. JEFFORDS (for himself, Mr. SARBANES, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To authorize the Secretary of the Department of Housing and Urban Development to make grants to States for affordable housing for low-income persons, and for other purposes.

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 AND TABLE OF CONTENTS.**

4 This Act may be cited as the “Affordable Housing  
5 Preservation Act of 2004”.

6 **SEC. 2. MATCHING GRANT PROGRAM FOR AFFORDABLE**  
7 **HOUSING PRESERVATION.**

8 (a) FINDINGS AND PURPOSES.—

1 (1) FINDINGS.—Congress finds that—

2 (A) the availability of low-income housing  
3 rental units has declined nationwide in the last  
4 several years;

5 (B) as rents for low-income housing in-  
6 crease and the development of new units of af-  
7 fordable housing decreases, there are fewer pri-  
8 vately owned, federally assisted affordable hous-  
9 ing units available to low-income individuals in  
10 need;

11 (C) the demand for affordable housing far  
12 exceeds the supply of affordable housing, as evi-  
13 denced by recent studies;

14 (D) the efforts of nonprofit organizations  
15 have significantly preserved and expanded ac-  
16 cess to low-income housing;

17 (E) a substantial number of existing feder-  
18 ally assisted or federally insured multifamily  
19 properties are at risk of being lost from the af-  
20 fordable housing inventory of the Nation  
21 through market rate conversion, deterioration,  
22 or demolition;

23 (F) it is in the interest of the Nation to  
24 encourage transfer of control of such properties  
25 to competent national, regional, and local non-

1 profit entities and intermediaries, the missions  
2 of which involve maintaining the affordability of  
3 such properties;

4 (G) such transfers may be inhibited by a  
5 shortage of such entities that are appropriately  
6 capitalized; and

7 (H) the Nation would be well served by  
8 providing assistance to such entities to aid in  
9 accomplishing this purpose.

10 (2) PURPOSES.—The purposes of this section  
11 are—

12 (A) to continue the partnerships among  
13 the Federal Government, State and local gov-  
14 ernments, nonprofit organizations, and the pri-  
15 vate sector in operating and assisting housing  
16 that is affordable to low-income persons and  
17 families;

18 (B) to promote the preservation of afford-  
19 able housing units by providing matching  
20 grants to States and localities that have devel-  
21 oped and funded programs for the preservation  
22 of privately owned housing that is affordable to  
23 low-income families and persons; and

24 (C) to minimize the involuntary displace-  
25 ment of tenants who are currently residing in

1           such housing, many of whom are elderly or dis-  
2           abled persons and families with children.

3           (b) DEFINITIONS.—In this section:

4           (1) CAPITAL EXPENDITURES.—The term “cap-  
5           ital expenditures” includes expenditures for acqui-  
6           sition and rehabilitation.

7           (2) CONSORTIUM.—The term “consortium”  
8           means a group of geographically contiguous localities  
9           that jointly submit an application under subsection  
10          (d).

11          (3) ELIGIBLE AFFORDABLE HOUSING.—The  
12          term “eligible affordable housing” means housing  
13          that—

14                (A) consists of more than 4 dwelling units;

15                (B) is insured or assisted under a program  
16                of the Department of Housing and Urban De-  
17                velopment or the Department of Agriculture  
18                under which the property is subject to limita-  
19                tions on tenant rents, rent contributions, or in-  
20                comes; and

21                (C) is at risk, as determined by the Sec-  
22                retary, of termination of any of the limitations  
23                referred to in subparagraph (B).

24          (4) ELIGIBLE ENTITIES.—The term “eligible  
25          entities” means any entity that meets the require-

1       ments of subsection (e)(6) and the rules issued  
2       under that subsection.

3           (5) LOCALITY.—The term “locality” means a  
4       city, town, township, county, parish, village, or other  
5       general purpose political subdivision of a State, or a  
6       consortium thereof.

7           (6) LOW-INCOME AFFORDABILITY RESTRIC-  
8       TION.—The term “low-income affordability restric-  
9       tion” means, with respect to a housing project, any  
10      limitation imposed by law, regulation, or regulatory  
11      agreement on rents for tenants of the project, rent  
12      contributions for tenants of the project, or income-  
13      eligibility for occupancy in the project.

14          (7) LOW-INCOME FAMILIES; VERY LOW-INCOME  
15      FAMILIES.—The terms “low-income families” and  
16      “very low-income families” have the meanings given  
17      such terms in section 3(b) of the United States  
18      Housing Act of 1937 (42 U.S.C. 1437a(b)).

19          (8) PROJECT-BASED ASSISTANCE.—The term  
20      “project-based assistance” has the same meaning as  
21      in section 16(c) of the United States Housing Act  
22      of 1937 (42 U.S.C. 1437n(c)), except that the term  
23      includes assistance under any successor programs to  
24      the programs referred to in that section.

1           (9) QUALIFIED LIMITED LIABILITY COMPANY.—

2           The term “qualified limited liability company”  
3           means a limited liability company with respect to  
4           which a credit is allowed under section 42 of the In-  
5           ternal Revenue Code of 1986 with respect to the  
6           company’s qualified basis (as defined in section 42  
7           (c)(1) of such Code), in a qualified low-income build-  
8           ing (as defined in section 42(c)(2) of such Code) for  
9           which grant funds received under this section shall  
10          be used.

11          (10) QUALIFIED PARTNERSHIP.—The term

12          “qualified partnership” means a limited partnership  
13          with respect to which a credit is allowed under sec-  
14          tion 42 of the Internal Revenue Code of 1986 with  
15          respect to the partnership’s qualified basis (as de-  
16          fined in section 42(c)(1) of such Code) in a qualified  
17          low-income building (as defined in section 42(c)(2)  
18          of such Code) for which grant funds received under  
19          this section shall be used.

20          (11) SECRETARY.—The term “Secretary”

21          means the Secretary of the Department of Housing  
22          and Urban Development.

23          (12) STATE.—The term “State” means each of

24          the several States of the United States and the Dis-  
25          trict of Columbia.

1           (c) AUTHORITY TO MAKE GRANTS.—The Secretary  
2 shall, to the extent that amounts are made available in  
3 advance under subsection (k), award grants under this  
4 section to States and localities for low-income housing  
5 preservation and promotion.

6           (d) APPLICATIONS.—

7               (1) IN GENERAL.—Any State or locality that  
8 seeks a grant under this section shall submit an ap-  
9 plication (through appropriate State and local agen-  
10 cies) to the Secretary.

11              (2) CONTENTS.—Each application submitted  
12 pursuant to paragraph (1) shall contain any infor-  
13 mation and certifications necessary for the Secretary  
14 to determine who is eligible to receive a grant under  
15 this section.

16           (e) USE OF GRANTS.—

17               (1) ELIGIBLE USES.—

18                   (A) IN GENERAL.—Grants awarded under  
19 this section may be used by States and local-  
20 ities only for the purposes of providing assist-  
21 ance—

22                           (i) for acquisition, rehabilitation, cap-  
23 ital expenditures, and related development  
24 costs for a housing project that meets the

1 requirements of paragraph (2), (3), (4), or  
2 (5); or

3 (ii) to eligible entities under para-  
4 graph (6) for—

5 (I) operational, working capital,  
6 and organizational expenses; and

7 (II) predevelopment activities to  
8 acquire eligible affordable housing for  
9 the purpose of ensuring that the hous-  
10 ing will remain affordable, as the Sec-  
11 retary considers appropriate, for low-  
12 income or very low-income families.

13 (B) USE AGREEMENT.—A project receiving  
14 assistance under this paragraph shall be subject  
15 to an agreement (binding on any subsequent  
16 owner of such project) that ensures that the  
17 project will continue to operate, for a period of  
18 not less than 50 years after the date on which  
19 any assistance is made available under this  
20 paragraph, in a manner that will provide rental  
21 housing on terms at least as advantageous to  
22 existing and future tenants as the terms re-  
23 quired by any program under which the project,  
24 if offered, was eligible for assistance, subject to  
25 available appropriations.

1           (C) SERVICE OF UNDER-SERVED AND  
2 RURAL AREAS.—States receiving funds under  
3 this section shall ensure that, to the maximum  
4 extent practicable, that projects in under-served  
5 and rural areas in that State receive assistance.

6           (2) PROJECTS WITH HUD-INSURED MORT-  
7 GAGES.—A project meets the requirements of this  
8 paragraph if the project is financed by a loan or  
9 mortgage that is—

10           (A) insured or held by the Secretary under  
11 section 221(d)(3) of the National Housing Act  
12 (12 U.S.C. 1715l(d)(3)) and receiving loan  
13 management assistance under section 8 of the  
14 United States Housing Act of 1937 (42 U.S.C.  
15 1437f) due to a conversion from section 101 of  
16 the Housing and Urban Development Act of  
17 1965 (12 U.S.C. 1701s);

18           (B) insured or held by the Secretary and  
19 bears interest at a rate determined under the  
20 proviso of section 221(d)(5) of the National  
21 Housing Act (12 U.S.C. 1715l(d)(5)); or

22           (C) insured, assisted, or held by the Sec-  
23 retary or a State or State agency under section  
24 236 of the National Housing Act (12 U.S.C.  
25 1715z-1).

1           (3) PROJECTS WITH SECTION 8 PROJECT-BASED  
2 ASSISTANCE.—A project meets the requirements of  
3 this paragraph if the project is subject to a contract  
4 for project-based assistance.

5           (4) PROJECTS PURCHASED BY RESIDENTS.—A  
6 project meets the requirements of this paragraph  
7 if—

8                   (A) the project is or was eligible low-in-  
9 come housing (as defined in section 229 of the  
10 Low-Income Housing Preservation and Resi-  
11 dent Homeownership Act of 1990 (12 U.S.C.  
12 4119)) or is or was a project assisted under  
13 section 613(b) of the Cranston-Gonzalez Na-  
14 tional Affordable Housing Act (12 U.S.C.  
15 4125);

16                   (B) the project has been purchased by a  
17 resident council or resident-approved nonprofit  
18 organization for the housing, or is approved by  
19 the Secretary for such purchase, for conversion  
20 to homeownership housing under a resident  
21 homeownership program meeting the require-  
22 ments of section 226 of the Low-Income Hous-  
23 ing Preservation and Resident Homeownership  
24 Act of 1990 (12 U.S.C. 4116); and

1 (C) the owner of the project has entered  
2 into binding commitments (applicable to any  
3 subsequent owner) to extend—

4 (i) project-based assistance for not  
5 less than 15 years (beginning on the date  
6 on which assistance is made available for  
7 the project by the State or locality under  
8 this section); and

9 (ii) any low-income affordability re-  
10 strictions applicable to the project in con-  
11 nection with that assistance.

12 (5) RURAL RENTAL ASSISTANCE PROJECTS.—A  
13 project meets the requirements of this paragraph  
14 if—

15 (A) the project is a rural rental housing  
16 project financed under section 515 of the Hous-  
17 ing Act of 1949 (42 U.S.C. 1485), or a farm  
18 labor housing development financed under sec-  
19 tion 514 of the United States Housing Act of  
20 1949 (42 U.S.C. 1484); and

21 (B) the restriction on the use of the  
22 project (as required under section 502 of the  
23 Housing Act of 1949 (42 U.S.C. 1472)) will ex-  
24 pire not later than 12 months after the date on  
25 which assistance is made available for the

1 project by the State or locality under this sub-  
2 section.

3 (6) ELIGIBLE ENTITIES.—

4 (A) IN GENERAL.—The Secretary shall es-  
5 tablish, by regulation, standards for eligible en-  
6 tities under this subsection.

7 (B) REQUIREMENTS.—An eligible entity  
8 shall—

9 (i) be a nonprofit organization (as de-  
10 fined in section 104 of the Cranston-Gon-  
11 zalez National Affordable Housing Act (42  
12 U.S.C. 12704)), or a qualified limited li-  
13 ability company or a qualified partnership  
14 whose managing member or general part-  
15 ner, respectively, is—

16 (I) a nonprofit organization; or

17 (II) a for-profit entity that is  
18 wholly owned by an eligible non-profit  
19 organization;

20 (ii) have among its purposes, main-  
21 taining the affordability to low-income or  
22 very low-income families of multifamily  
23 properties that are at risk of loss from the  
24 inventory of housing that is affordable to  
25 low-income or very low-income families; and

1 (iii) demonstrate to the Secretary—

2 (I) the need for the types of as-  
3 sistance described under paragraph  
4 (1)(A)(ii);

5 (II) experience in providing as-  
6 sistance described under that para-  
7 graph; and

8 (III) its ability to provide the as-  
9 sistance described under that para-  
10 graph.

11 (7) FUNDING REQUIREMENTS.—

12 (A) OPERATING SUPPORT.—Each State  
13 and locality awarded a grant under this section  
14 shall transfer at least 5 percent, but no more  
15 than 10 percent, of such grant to eligible enti-  
16 ties for the purposes described under paragraph  
17 (1)(A)(ii)(I).

18 (B) NONPROFIT PURCHASES.—Each State  
19 and locality awarded a grant under this section  
20 shall transfer at least 15 percent of such grant  
21 to eligible entities for the purposes described  
22 under paragraph (1)(A)(ii)(II).

23 (8) RETURN OF UNUSED FUNDS.—If any  
24 amount of a grant awarded to a State or locality  
25 under this section has not been obligated 3 years

1 after the grant is awarded, such amount shall be re-  
2 turned to the Secretary to be redistributed in ac-  
3 cordance with this section the following fiscal year.

4 (9) ADMINISTRATIVE COSTS.—A State or local-  
5 ity that is awarded a grant under this section may  
6 use no more than 10 percent of such grant for costs  
7 associated with the administration of the grant.

8 (f) AMOUNT OF STATE AND LOCAL GRANTS.—

9 (1) IN GENERAL.—Subject to paragraph (3)  
10 and subsection (g), in each fiscal year, the Secretary  
11 shall award to each State and locality approved for  
12 a grant under this section a grant in an amount  
13 based upon the proportion of the need for assistance  
14 of that State or locality under this section (as deter-  
15 mined by the Secretary in accordance with para-  
16 graph (2)) to the aggregate need among all States  
17 and localities approved for assistance under this sec-  
18 tion for that fiscal year.

19 (2) DETERMINATION OF NEED.—In deter-  
20 mining the proportion of the need of a State or lo-  
21 cality under paragraph (1), the Secretary shall con-  
22 sider—

23 (A) the number of units in projects in the  
24 State or locality that are eligible for assistance  
25 under subsection (e)(1)(A)(i) that are, due to

1 market conditions or other factors, at risk for  
2 prepayment, opt-out, or otherwise at risk of  
3 being lost to the inventory of affordable hous-  
4 ing; and

5 (B) the difficulty that residents of projects  
6 in the State or locality that are eligible for as-  
7 sistance under subsection (e)(1)(A)(i) would  
8 face in finding adequate, available, decent, com-  
9 parable, and affordable housing in neighbor-  
10 hoods of comparable quality in the local market,  
11 if those projects were not assisted by the State  
12 or locality under subsection (e)(1)(A)(i).

13 (3) LIMITATIONS.—

14 (A) MANDATORY ALLOCATION.—In any  
15 fiscal year, of the total amount appropriated  
16 under subsection (k)—

17 (i) 40 percent shall be allocated for  
18 grants to States; and

19 (ii) 60 percent shall be allocated for  
20 grants to localities.

21 (B) MINIMUM GRANT AMOUNT.—Notwith-  
22 standing subsection (g), a State receiving a  
23 grant under this section shall receive no less  
24 than .4 percent of the total amount appro-  
25 priated under subsection (k) in any fiscal year.

1 (g) MATCHING REQUIREMENT.—

2 (1) IN GENERAL.—Except as provided under  
3 paragraph (2), a grant under this section to a State  
4 or locality for any fiscal year may not exceed an  
5 amount that is twice the amount that the State or  
6 locality certifies, as the Secretary shall require, that  
7 the State or locality will contribute for such fiscal  
8 year, or has contributed since January 1, 2003,  
9 from non-Federal sources for the purposes described  
10 in subsection (e)(1).

11 (2) LIMITATIONS.—Paragraph (1) shall not  
12 apply to any amounts to be used by a State or local-  
13 ity for—

14 (A) administrative costs under subsection  
15 (e)(9); and

16 (B) operating support and working capital  
17 of nonprofit organizations under subsection  
18 (e)(7)(A).

19 (3) TREATMENT OF PREVIOUS CONTRIBU-  
20 TIONS.—Any portion of amounts contributed after  
21 January 1, 2003, that are counted for the purpose  
22 of meeting the requirement under paragraph (1) for  
23 a fiscal year may not be counted for that purpose  
24 for any subsequent fiscal year.

1           (4) TAX CREDITS AND PRIVATE ACTIVITY  
2 BONDS.—Fifty percent of the annual amount of tax  
3 credits allocated to the project under section 42 of  
4 the Internal Revenue Code of 1986, or proceeds  
5 from private activity bonds issued for qualified resi-  
6 dential rental projects under section 142 of that  
7 Code, shall be considered funds from non-Federal  
8 sources for purposes of paragraph (1).

9           (h) TREATMENT OF SUBSIDY LAYERING REQUIRE-  
10 MENTS.—Neither subsection (g) nor any other provision  
11 of this section may be construed to prevent the use of tax  
12 credits allocated under section 42 of the Internal Revenue  
13 Code of 1986, in connection with housing assisted with  
14 amounts from a grant awarded under this section, to the  
15 extent that such use is in accordance with section 102(d)  
16 of the Department of Housing and Urban Development  
17 Reform Act of 1989 (42 U.S.C. 3545(d)) and section 911  
18 of the Housing and Community Development Act of 1992  
19 (42 U.S.C. 3545 note).

20           (i) REPORTS.—

21           (1) REPORTS TO SECRETARY.—Not later than  
22 90 days after the last day of each fiscal year, each  
23 State and locality that receives a grant under this  
24 section during that fiscal year shall submit to the  
25 Secretary a report on the housing projects and eligi-

1 ble entities assisted with amounts made available  
2 under the grant.

3 (2) REPORTS TO CONGRESS.—Based on the re-  
4 ports submitted under paragraph (1), the Secretary  
5 shall annually submit to Congress a report on the  
6 grants awarded under this section during the pre-  
7 ceding fiscal year and the housing projects assisted  
8 and eligible entities with amounts made available  
9 under those grants.

10 (j) REGULATIONS.—Not later than 6 months after  
11 the date of enactment of this Act, the Secretary shall issue  
12 regulations to carry out this section.

13 (k) AUTHORIZATION OF APPROPRIATIONS.—There  
14 are authorized to be appropriated for grants under this  
15 section such sums as may be necessary for each of fiscal  
16 years 2005, 2006, 2007, 2008, and 2009.

17 **SEC. 3. PRESERVATION PROJECTS.**

18 Section 524(e)(1) of the Multifamily Assisted Hous-  
19 ing Reform and Affordability Act of 1997 (42 U.S.C.  
20 1437f note) is amended by striking “amounts are specifi-  
21 cally” and inserting “sufficient amounts are”.

○