

107TH CONGRESS
1ST SESSION

S. 1248

To establish a National Housing Trust Fund in the Treasury of the United States to provide for the development of decent, safe, and affordable housing for low-income families, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 25, 2001

Mr. KERRY (for himself, Mr. CHAFEE, Mr. REED, Mr. JEFFORDS, Mr. SARBANES, Mr. LEAHY, Mr. WELLSTONE, Mr. DAYTON, Mrs. FEINSTEIN, Mr. LEVIN, Mr. SCHUMER, Mr. DURBIN, Ms. STABENOW, Mrs. BOXER, Mr. KENNEDY, Mr. CORZINE, and Mr. DODD) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To establish a National Housing Trust Fund in the Treasury of the United States to provide for the development of decent, safe, and affordable housing for low-income families, 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.**

4 This Act may be cited as the “National Affordable
5 Housing Trust Fund Act of 2001”.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to fill the growing gap in the national abil-
4 ity to build affordable housing by using profits gen-
5 erated by Federal housing programs to fund addi-
6 tional housing activities, and not supplant existing
7 housing appropriations;

8 (2) to enable rental housing to be built for
9 those families with the greatest need in areas with
10 the greatest opportunities in mixed-income settings
11 and to promote homeownership for low-income fami-
12 lies; and

13 (3) to provide for approximately 1,500,000 ad-
14 ditional affordable, low-income housing units over
15 the next 10 years.

16 **SEC. 3. DEFINITIONS.**

17 (a) DEFINITIONS.—In this Act:

18 (1) ADJUSTED INCOME.—The term “adjusted
19 income” has the same meaning as in section 3(b) of
20 the United States Housing Act of 1937 (42 U.S.C.
21 1437a(b)).

22 (2) AFFORDABLE HOUSING.—The term “afford-
23 able housing” means housing for rental that bears
24 rents not greater than the lesser of—

25 (A) the existing fair market rent for com-
26 parable units in the area, as established by the

Secretary under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f); or

(B) a rent that does not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with an adjustment for the number of bedrooms in the unit, except that the Secretary may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of the findings of the Secretary that such variations are necessary because of the prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

(3) CONTINUED ASSISTANCE RENTAL SUBSIDY PROGRAM.—The term “continued assistance rental subsidy program” means a program under which—

(A) project-based assistance is provided for not more than 3 years to a family in an affordable housing unit that was developed with assistance made available under subsection (b) or (c) of section 5 in a project that partners with a public housing agency, which agency agrees to provide the assisted family with a priority for the receipt of a voucher under section 8(o) of

the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) if the family chooses to move after an initial year of occupancy and the public housing agency agrees to refer eligible voucher holders to the property when vacancies occur; and

(B) after 3 years, subject to appropriations, continued assistance is provided under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)), notwithstanding any provision to the contrary in that section, if administered to provide families with the option of continued assistance with tenant-based vouchers, if such a family chooses to move after an initial year of occupancy and the public housing agency agrees to refer eligible voucher holders to the property when vacancies occur.

(4) ELIGIBLE ACTIVITIES.—The term “eligible activities” means activities relating to the development of affordable housing, including—

(A) the construction of new housing;

(B) the acquisition of real property;

(C) site preparation and improvement, including demolition;

1 (D) substantial rehabilitation of existing
2 housing; and

3 (E) rental subsidy, in the same manner as
4 voucher assistance under section 8(o)(13) of the
5 United States Housing Act of 1937 (42 U.S.C.
6 1437f(o)(13)).

7 (5) ELIGIBLE ENTITY.—The term “eligible enti-
8 ty” includes any public or private nonprofit or for-
9 profit entity, unit of local government, regional plan-
10 ning entity, and any other entity engaged in the de-
11 velopment of affordable housing, as determined by
12 the Secretary.

13 (6) ELIGIBLE INTERMEDIARY.—The term “eli-
14 gible intermediary” means—

15 (A) a nonprofit community development
16 corporation;

17 (B) a community development financial in-
18 stitution (as defined in section 103 of the Com-
19 munity Development Banking and Financial In-
20 stitutions Act of 1994 (12 U.S.C. 4702));

21 (C) a State or local trust fund;

22 (D) any entity eligible for assistance under
23 section 4 of the HUD Demonstration Act of
24 1993 (42 U.S.C. 9816 note);

1 (E) a national, regional, or statewide non-
2 profit organization; and

3 (F) any other appropriate nonprofit entity,
4 as determined by the Secretary.

5 (7) EXTREMELY LOW-INCOME FAMILIES.—The
6 term “extremely low-income families” means very
7 low-income families (as defined in section 3(b) of the
8 United States Housing Act of 1937 (42 U.S.C.
9 1437a(b)) whose incomes do not exceed 30 percent
10 of the median family income for the area, as deter-
11 mined by the Secretary with adjustments for smaller
12 and larger families, except that the Secretary may
13 establish income ceilings higher or lower than 30
14 percent of the median for the area on the basis of
15 the findings of the Secretary that such variations
16 are necessary because of unusually high or low fam-
17 ily incomes.

18 (8) LOW-INCOME FAMILIES.—The term “low-in-
19 come families” has the same meaning as in section
20 3(b) of the United States Housing Act of 1937 (42
21 U.S.C. 1437a(b)).

22 (9) SECRETARY.—The term “Secretary” means
23 the Secretary of Housing and Urban Development.

1 (10) STATE.—The term “State” has the same
 2 meaning as in section 3(b) of the United States
 3 Housing Act of 1937 (42 U.S.C. 1437a(b)).

4 **SEC. 4. NATIONAL HOUSING TRUST FUND.**

5 (a) ESTABLISHMENT OF TRUST FUND.—There is es-
 6 tablished in the Treasury of the United States a trust fund
 7 to be known as the “National Affordable Housing Trust
 8 Fund” (referred to in this Act as the “Trust Fund”) for
 9 the purpose of promoting the development of affordable
 10 housing.

11 (b) DEPOSITS TO THE TRUST FUND.—For fiscal
 12 year 2002, and each fiscal year thereafter, there is appro-
 13 priated to the Trust Fund an amount equal to the sum
 14 of—

15 (1) any revenue generated by the Mutual Mort-
 16 gage Insurance Fund of the Federal Housing Ad-
 17 ministration in excess of the amount necessary for
 18 the Mutual Mortgage Insurance Fund to maintain a
 19 capital ratio of 3 percent for the preceding fiscal
 20 year; and

21 (2) any revenue generated by the Government
 22 National Mortgage Association in excess of the
 23 amount necessary to pay the administrative costs
 24 and expenses necessary to ensure the safety and
 25 soundness of the Government National Mortgage As-

1 society for the preceding fiscal year, as determined
2 by the Secretary.

3 (c) EXPENDITURES FROM THE TRUST FUND.—For
4 fiscal year 2002, and each fiscal year thereafter, amounts
5 appropriated to the Trust Fund shall be available to the
6 Secretary of Housing and Urban Development for use in
7 accordance with section 5.

8 **SEC. 5. ADMINISTRATION OF NATIONAL AFFORDABLE**
9 **HOUSING TRUST FUND.**

10 (a) ALLOCATION TO STATES AND ELIGIBLE INTER-
11 MEDIARIES.—For fiscal year 2002, and each fiscal year
12 thereafter, of the total amount made available to the Sec-
13 retary from the Trust Fund under section 4(c), the Sec-
14 retary shall allocate—

15 (1) 75 percent to award grants to States in ac-
16 cordance with subsection (b) of this section; and

17 (2) 25 percent to award grants to eligible inter-
18 mediaries in accordance with subsection (c) of this
19 section.

20 (b) GRANTS TO STATES.—

21 (1) IN GENERAL.—Subject to paragraph (2) of
22 this subsection, from the amount made available for
23 each fiscal year under subsection (a)(1), the Sec-
24 retary shall award grants to States, in accordance
25 with an allocation formula established by the Sec-

retary, that is based on the pro rata share of each State of the total need among all States for an increased supply of affordable housing, as determined on the basis of—

(A) the number and percentage of families in the State that live in substandard housing;

(B) the number and percentage of families in the State that pay more than 50 percent of their annual income for housing costs;

(C) the number and percentage of persons living at or below the poverty level in the State;

(D) the cost of developing or carrying out substantial rehabilitation of housing in the State;

(E) the age of the multifamily housing stock in the State; and

(F) such other factors as the Secretary determines to be appropriate.

(2) GRANT AMOUNT.—

(A) IN GENERAL.—The amount of a grant award to a State under this subsection shall be equal to the lesser of—

(i) 4 times the amount of assistance provided by the State from non-Federal sources; and

1 (ii) the allocation determined in ac-
 2 cordance with paragraph (1).

3 (B) NON-FEDERAL SOURCES.—For pur-
 4 poses of this section, non-Federal sources shall
 5 include—

6 (i) 50 percent of the funds allocable to
 7 tax credits allocated under section 42 of
 8 the Internal Revenue Code of 1986;

9 (ii) 50 percent of the revenue from
 10 mortgage revenue bonds issued under sec-
 11 tion 143 of the Internal Revenue Code of
 12 1986;

13 (iii) 50 percent of the proceeds from
 14 the sale of tax exempt bonds;

15 (iv) funds provided under part A of
 16 title IV of the Social Security Act (42
 17 U.S.C. 601 et seq.); and

18 (v) such other sources as the Sec-
 19 retary determines to be appropriate.

20 (3) AWARD OF STATE ALLOCATION TO CERTAIN
 21 ENTITIES.—

22 (A) IN GENERAL.—If the amount provided
 23 by a State from non-Federal sources is less
 24 than 25 percent of the amount that would be
 25 awarded to the State under this subsection

1 based on the allocation formula described in
2 paragraph (1), not later than 60 days after the
3 date on which the Secretary determines that the
4 State is not eligible for the full allocation deter-
5 mined under paragraph (1), the Secretary shall
6 issue a notice regarding the availability of the
7 funds for which the State is ineligible.

8 (B) APPLICATIONS.—Not later than 9
9 months after the date of publication of a notice
10 of funding availability under subparagraph (A),
11 a nonprofit or public entity (or a consortium
12 thereof, which may include units of local gov-
13 ernment working together on a regional basis)
14 may submit to the Secretary an application for
15 the available assistance or a portion of the
16 available assistance, which application shall
17 include—

18 (i) a certification that the applicant
19 will provide assistance in an amount equal
20 to 25 percent of the amount of assistance
21 made available to the applicant under this
22 paragraph; and

23 (ii) an allocation plan that meets the
24 requirements of paragraph (4)(B) for use
25 or distribution in the State of any assist-

1 ance made available to the applicant under
 2 this paragraph and the assistance provided
 3 by the applicant for purposes of clause (i).

4 (C) AWARD OF ASSISTANCE.—The Sec-
 5 retary shall award the amount that is not
 6 awarded to a State by operation of paragraph
 7 (2) to 1 or more applicants that meet the re-
 8 quirements of subparagraph (B) of this para-
 9 graph and that are selected by the Secretary
 10 based on selection criteria, which shall be estab-
 11 lished by the Secretary by regulation.

12 (4) DISTRIBUTION TO ELIGIBLE ENTITIES.—

13 (A) IN GENERAL.—Of the amount that a
 14 State receives under a grant award under this
 15 subsection and the assistance provided by the
 16 State from non-Federal sources for purposes of
 17 paragraph (2)(A) to eligible entities for the pur-
 18 pose of assisting those entities in carrying out
 19 eligible activities in the State, each State shall
 20 distribute—

21 (i) not less than 75 percent to eligible
 22 entities for eligible activities relating to the
 23 development of affordable housing for rent-
 24 al by extremely low-income families in the
 25 State; and

(ii) any amount remaining after a distribution under clause (i) to eligible entities for eligible activities in a census tract described in subsection (c)(3)(B)(ii)(II) relating to the development of affordable housing for rental by low-income families in the State, or for homeownership assistance for low-income families in the State.

(B) ALLOCATION PLAN.—Each State shall have, after giving notice to the public, an opportunity for public comment and consideration of public comments received, and shall establish an allocation plan for the distribution of assistance under this paragraph, which shall be submitted to the Secretary and shall be made available to the public by the State, and which shall include—

(i) application requirements for eligible entities seeking to receive assistance under this paragraph, including a requirement that each application include—

(I) a certification by the applicant that any housing developed with assistance under this paragraph will remain affordable for extremely low-

1 income families or low-income fami-
2 lies, as applicable, for not less than 40
3 years;

4 (II) a certification by the appli-
5 cant that the tenant contribution to-
6 wards rent for a family residing in a
7 unit developed with assistance under
8 this paragraph will not exceed 30 per-
9 cent of the adjusted income of that
10 family; and

11 (III) a certification by the appli-
12 cant that the owner of a project in
13 which any housing developed with as-
14 sistance under this paragraph is lo-
15 cated will make a percentage of units
16 in the project available to families as-
17 sisted under the voucher program
18 under section 8(o) of the United
19 States Housing Act of 1937 (42
20 U.S.C. 1437f(o)), either by means of
21 a contract with a public housing agen-
22 cy under paragraph (13) of that sec-
23 tion or on the same basis as other
24 families eligible for the housing (ex-
25 cept that only the expected share of

1 rent of the voucher holder shall be
2 considered, and the screening criteria
3 of the owner shall not have a dis-
4 parate impact on the voucher holder),
5 which percentage shall not be less
6 than the percentage of the total cost
7 of developing or rehabilitating the
8 project that is funded with assistance
9 under this paragraph, or 25 percent
10 of the total units in the project,
11 whichever is lower; and

12 (ii) factors for consideration in select-
13 ing among applicants that meet the appli-
14 cation requirements, which shall give pref-
15 erence to applicants based on—

16 (I) the amount of assistance for
17 the eligible activities leveraged by the
18 applicant from private and other non-
19 Federal sources, including assistance
20 made available under section 8 of the
21 United States Housing Act of 1937
22 (42 U.S.C. 1437f) that is devoted to
23 the project in which the housing to be
24 developed with assistance under this
25 paragraph is located;

1 (II) the extent of local assistance
2 that will be provided in carrying out
3 the eligible activities, including—

4 (aa) financial assistance;
5 and

6 (bb) the extent to which the
7 applicant has worked with the
8 unit of local government in which
9 the housing will be located to ad-
10 dress issues of siting and exclu-
11 sionary zoning or other policies
12 that are barriers to affordable
13 housing;

14 (III) the degree to which the de-
15 velopment in which the housing will
16 be located is mixed-income;

17 (IV) whether the housing will be
18 located in a census tract in which the
19 poverty rate is less than 20 percent;

20 (V) whether the housing will be
21 located in a community undergoing
22 revitalization;

23 (VI) the accessibility of jobs, in-
24 cluding lower skilled jobs, to the
25 project;

(VII) the extent to which the applicant demonstrates the ability to maintain units as affordable for extremely low-income or low-income families, as applicable, through the use of assistance made available under this paragraph, assistance leveraged from non-Federal sources, assistance made available under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), State or local assistance, programs to increase tenant income, cross-subsidization, and any other resources; and

(VIII) whether the development will house families that need not fewer than 3 bedrooms or provide accessible units for the disabled, unless the allocation plan indicates that the State does not have a significant need for those types of units.

(C) FORMS OF ASSISTANCE.—

(i) IN GENERAL.—Assistance distributed under this paragraph may be in the form of capital grants, non-interest bearing

1 or low-interest loans or advances, deferred
 2 payment loans, guarantees, and any other
 3 form of assistance approved by the Sec-
 4 retary.

5 (ii) REPAYMENTS.—If a State awards
 6 assistance under this paragraph in the
 7 form of a loan or other mechanism by
 8 which funds are later repaid to the State,
 9 any repayments received by the State shall
 10 be distributed by the State in accordance
 11 with the allocation plan described in sub-
 12 paragraph (B) in the following fiscal year.

13 (D) COORDINATION WITH OTHER ASSIST-
 14 ANCE.—In distributing assistance under this
 15 paragraph, each State shall, to the maximum
 16 extent practicable, coordinate the distribution
 17 with the provision of other affordable housing
 18 assistance by the State, including—

19 (i) housing credit dollar amounts allo-
 20 cated by the State under section 42(h) of
 21 the Internal Revenue Code of 1986;

22 (ii) assistance made available under
 23 the HOME Investment Partnerships Act
 24 or the community development block grant
 25 program; and

1 (iii) private activity bonds.

2 (c) NATIONAL COMPETITION.—

3 (1) IN GENERAL.—From the amount made
4 available for each fiscal year under subsection
5 (a)(2), the Secretary shall award grants on a com-
6 petitive basis to eligible intermediaries, which shall
7 be used in accordance with paragraph (3) of this
8 subsection.

9 (2) APPLICATION REQUIREMENTS AND SELEC-
10 TION CRITERIA.—The Secretary, by regulation, shall
11 establish application requirements and selection cri-
12 teria for the award of competitive grants to eligible
13 intermediaries under this subsection, which criteria
14 shall include—

15 (A) the ability of the eligible intermediary
16 to meet the housing needs of low-income fami-
17 lies on a national or regional scope;

18 (B) the capacity of the eligible inter-
19 mediary to use the grant award in accordance
20 with paragraph (3), based on the past perform-
21 ance and management of the applicant; and

22 (C) the extent to which the eligible inter-
23 mediary has leveraged funding from private and
24 other non-Federal sources for the eligible activi-
25 ties.

1 (3) USE OF GRANT AWARD.—

2 (A) IN GENERAL.—Except as provided in
3 subparagraph (B), each eligible intermediary
4 that receives a grant award under this sub-
5 section shall ensure that, of the amount made
6 available under the grant—

7 (i) 75 percent shall be used for eligi-
8 ble activities relating to the development of
9 affordable housing for rental by extremely
10 low-income families; and

11 (ii) 25 percent shall be used for eligi-
12 ble activities relating to the development of
13 affordable housing for rental by low-income
14 families, or for homeownership assistance
15 for low-income families.

16 (B) EXCEPTION.—

17 (i) IN GENERAL.—If the amount
18 made available under this subsection is
19 used for a project described in clause (ii),
20 subject to the requirements of subpara-
21 graph (A)(i), an eligible intermediary may
22 use the grant amount for eligible activities
23 relating to the development of housing for
24 rental by families whose incomes are less
25 than 60 percent of the area median in-

1 come, and for homeownership activities for
2 families whose incomes are less than 80
3 percent of the area median income.

4 (ii) PROJECT CONTRIBUTING TO A
5 CONCERTED COMMUNITY REVITALIZATION
6 PLAN.—A project is described in this
7 clause if—

8 (I) it is located in a community
9 undergoing concerted revitalization
10 and is contributing to a community
11 revitalization plan; and

12 (II) it is located in a census tract
13 in which—

14 (aa) the median household
15 income is less than 60 percent of
16 the area median income; or

17 (bb) the rate of poverty is
18 greater than 20 percent.

19 (C) PLAN OF USE.—Each eligible inter-
20 mediary that receives a grant award under this
21 subsection shall establish a plan for the use or
22 distribution of the amount made available under
23 the grant, which shall be submitted to the Sec-
24 retary, and which shall include information re-
25 lating to the manner in which the eligible inter-

mediary will either use or distribute that amount, including—

(i) a certification that assistance made available under this subsection will be used to supplement assistance leveraged from private and other non-Federal sources, including assistance made available under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) that is devoted to the project in which the housing to be developed is located;

(ii) a certification that local assistance will be provided in carrying out the eligible activities, which may include—

(I) financial assistance; and

(II) a good faith effort to work with the unit of local government in which the housing will be located to address issues of siting and exclusionary zoning or other policies that are barriers to affordable housing;

(iii) a certification that any housing developed with assistance under this subsection will remain affordable for extremely

low-income families or low-income families,
as applicable, for not less than 40 years;

(iv) a certification that any housing
developed by the applicant with assistance
under this subsection will be located—

(I) in a mixed-income develop-
ment in a census tract having a pov-
erty rate of not more than 20 percent,
and near employment and other op-
portunities for low-income families; or

(II) in a community undergoing
revitalization;

(v) a certification that the tenant con-
tribution towards rent for a family residing
in a unit developed with assistance under
this paragraph will not exceed 30 percent
of the adjusted income of that family; and

(vi) a certification by the applicant
that the owner of a project in which any
housing developed with assistance under
this subsection is located will make a per-
centage of units in the project available to
families assisted under the voucher pro-
gram under section 8(o) of the United
States Housing Act of 1937 (42 U.S.C.

1437f(o)), either by means of a contract with a public housing agency under paragraph (13) of that section or on the same basis as other families eligible for the housing (except that only the expected share of rent of the voucher holder shall be considered, and the screening criteria of the owner shall not have a disparate impact on the voucher holder), which percentage shall not be less than the percentage of the total cost of developing or rehabilitating the project that is funded with assistance under this subsection, or 25 percent of the total units in the project, whichever is lower.

(D) FORMS OF ASSISTANCE.—

(i) IN GENERAL.—An eligible intermediary may distribute the amount made available under a grant under this subsection in the form of capital grants, non-interest bearing or low-interest loans or advances, deferred payment loans, guarantees, and other forms of assistance.

(ii) REPAYMENTS.—If an eligible intermediary awards assistance under this

1 subsection in the form of a loan or other
2 mechanism by which funds are later repaid
3 to the eligible intermediary, any repay-
4 ments received by the eligible intermediary
5 shall be distributed by the eligible inter-
6 mediary in accordance with the plan of use
7 described in subparagraph (C) in the fol-
8 lowing fiscal year.

9 (d) TREATMENT UNDER THE INTERNAL REVENUE
10 CODE.—

11 (1) IN GENERAL.—Assistance provided under
12 this Act with respect to any building shall not be
13 taken into account under section 42(i)(2)(D) of the
14 Internal Revenue Code of 1986, if 40 percent or
15 more of the residential units in the building are oc-
16 cupied by individuals whose income is 50 percent or
17 less of the area median gross income. Section
18 42(d)(5)(C) of that Code shall not apply to any
19 building to which the preceding sentence applies.

20 (2) SPECIAL RULE FOR CERTAIN HIGH-COST
21 HOUSING AREAS.—In the case of a building located
22 in a city described in section 142(d)(6) of the Inter-
23 nal Revenue Code of 1986, paragraph (1) shall be
24 applied by substituting “25 percent” for “40 per-
25 cent”.

1 **SEC. 6. REGULATIONS.**

2 Not later than 6 months after the date of enactment
3 of this Act, the Secretary of Housing and Urban Develop-
4 ment shall promulgate regulations to carry out this Act,
5 including requirements relating to the reporting and col-
6 lection of information necessary to enforce the provisions
7 of this Act.

8 **SEC. 7. FEDERAL FINANCIAL ASSISTANCE.**

9 For the purpose of applying the prohibitions against
10 discrimination on the basis of age under the Age Discrimi-
11 nation Act of 1975 (42 U.S.C. 6101 et seq.), on the basis
12 of disability under section 504 of the Rehabilitation Act
13 of 1973 (29 U.S.C. 794), on the basis of sex under title
14 IX of the Education Amendments of 1972 (20 U.S.C.
15 1681 et seq.), or on the basis of race, color, or national
16 origin under title VI of the Civil Rights Act of 1964 (42
17 U.S.C. 2000d et seq.), programs and activities funded or
18 otherwise financially assisted in whole or in part under
19 this Act are considered to be programs and activities re-
20 ceiving Federal financial assistance, and education pro-
21 grams and activities receiving Federal financial assistance.

○