

**10 U.S.C.A. CHAPTER 169--MILITARY CONSTRUCTION AND
MILITARY FAMILY HOUSING
SUBCHAPTER IV--ALTERNATIVE AUTHORITY FOR ACQUISITION
AND IMPROVEMENT OF MILITARY HOUSING**

Sec. 2871. Definitions

In this subchapter:

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

(2) 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).

(3) The term "construction" means the construction of military 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.

(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.

(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 "military unaccompanied housing" means military housing intended to be occupied by members of the armed forces serving a tour of duty unaccompanied by dependents.

(8) The term "United States" includes the Commonwealth of Puerto Rico.

Sec. 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.

Sec. 2873. Direct loans and loan guarantees

(a) Direct loans.

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

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

(b) Loan guarantees.

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

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

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

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

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

Sec. 2874. Leasing of housing to be constructed

(a) Build and lease authorized.--The Secretary concerned may enter into contracts for the lease of military family housing units or military unaccompanied housing units to be constructed under this subchapter.

(b) Lease terms.--A contract under this section may be for any period that the Secretary concerned determines appropriate and may provide for the owner of the leased property to operate and maintain the property.

Sec. 2875. Investments

(a) Investments authorized.--The Secretary concerned may make investments in an eligible entity carrying out projects for the acquisition or construction of housing units suitable for use as military family housing or as military unaccompanied housing.

(b) Forms of investment.--An investment under this section may take the form of an acquisition of a limited partnership interest by the United States, a purchase of stock or other equity instruments by the United States, a purchase of bonds or other debt instruments by the United States, or any combination of such forms of investment.

(c) Limitation on value of investment.

(1) The cash amount of an investment under this section in an eligible entity may not exceed an amount equal to 33 1/3 percent of the capital cost (as determined by the Secretary concerned) of the project or projects that the eligible entity proposes to carry out under this section with the investment.

(2) If the Secretary concerned conveys land or facilities an eligible entity as all or part of an investment in the eligible entity under this section, the total value of the investment by the Secretary under this section may not exceed an amount equal to 45 percent of the capital cost (as determined by the Secretary) of the project or projects that the entity proposes to carry out under this section with the investment.

(3) In this subsection, the term 'capital cost', with respect to a project for the acquisition or construction of housing, means the total amount of the costs included in the basis of the housing for Federal income tax purposes.

(d) Collateral incentive agreements.--The Secretary concerned shall enter into collateral incentive agreements with eligible entities in which the Secretary makes an investment under this section to ensure that a suitable preference will be afforded members of the armed forces and their dependents in the lease or purchase, as the case may be, of a reasonable number of the housing units covered by the investment.

(e) Congressional notification required.--Amounts in the Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund may be used to make a cash investment under this section in an eligible entity only after the end of the 30-day period beginning on the date the Secretary of Defense submits written notice of, and justification for, the investment to the appropriate committees of Congress.

Sec. 2876. Rental guarantees

The Secretary concerned may enter into agreements with eligible entities that acquire or construct military family housing units or military unaccompanied housing units under this subchapter in order to assure--

(1) the occupancy of such units at levels specified in the agreements; or

(2) rental income derived from rental of such units at levels specified in the agreements.

Sec. 2877. Differential lease payments

Pursuant to an agreement entered into by the Secretary concerned and a lessor of military family housing or military unaccompanied housing to members of the armed forces, the Secretary may pay the lessor an amount in addition to the rental payments for the housing made by the members as the Secretary determines appropriate to encourage the lessor to make the housing available to members of the armed forces as military family housing or as military unaccompanied housing.

Sec. 2878. Conveyance or lease of existing property and facilities

(a) Conveyance or lease authorized.--The Secretary concerned may convey or lease property or facilities (including ancillary supporting facilities) to eligible entities for purposes of using the proceeds of such conveyance or lease to carry out activities under this subchapter.

(b) Inapplicability to property at installation approved for closure.--The authority of this section does not apply to property or facilities located on or near a military installation approved for closure under a base closure law.

(c) Terms and conditions.

(1) The conveyance or lease of property or facilities under this section shall be for such consideration and upon such terms and conditions as the Secretary concerned considers appropriate for the purposes of this subchapter and to protect the interests of the United States.

(2) As part or all of the consideration for a conveyance or lease under this section, the purchaser or lessor (as the case may be) shall enter into an agreement with the Secretary to ensure that a suitable preference will be afforded members of the armed forces and their dependents in the lease or sublease of a reasonable number of the housing units covered by the conveyance or lease, as the case may be, or in the lease of other suitable housing units made available by the purchaser or lessee.

(d) Inapplicability of certain property management laws.--The conveyance or lease of property or facilities under this section shall not be subject to the following provisions of law:

(1) Section 2667 of this title.

(2) The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

(3) Section 321 of the Act of June 30, 1932 (commonly known as the Economy Act) (40 U.S.C. 303b).

(4) Section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411).

Sec. 2879. Interim leases

Pending completion of a project to acquire or construct military family housing units or military unaccompanied housing units under this subchapter, the Secretary concerned may provide for the interim lease of such units of the project as are complete. The term of a lease under this section may not extend beyond the date of the completion of the project concerned.

Sec. 2880. Unit size and type

(a) Conformity with similar housing units in locale.--The Secretary concerned shall ensure that the room patterns and floor areas of military family housing units and military unaccompanied housing units acquired or constructed under this subchapter are generally

comparable to the room patterns and floor areas of similar housing units in the locality concerned.

(b) Inapplicability of limitations on space by pay grade.

(1) Section 2826 of this title shall not apply to military family housing units acquired or constructed under this subchapter.

(2) The regulations prescribed under section 2856 of this title shall not apply to any military unaccompanied housing unit acquired or constructed under this subchapter unless the unit is located on a military installation.

Sec. 2881. Ancillary supporting facilities

(a) Authority to acquire or construct.--Any project for the acquisition or construction of military family housing units or military unaccompanied housing units under this subchapter may include the acquisition or construction of ancillary supporting facilities for the housing units concerned.

(b) Restriction.--A project referred to in subsection (a) may not include the acquisition or construction of an ancillary supporting facility if, as determined by the Secretary concerned, the facility is to be used for providing merchandise or services in direct competition with--

(1) the Army and Air Force Exchange Service;

(2) the Navy Exchange Service Command;

(3) a Marine Corps exchange;

(4) the Defense Commissary Agency; or

(5) any nonappropriated fund activity of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

Sec. 2882. Assignment of members of the armed forces to housing units

(a) In general.--The Secretary concerned may assign members of the armed forces to housing units acquired or constructed under this subchapter.

(b) Effect of certain assignments on entitlement to housing allowances.

(1) Except as provided in paragraph (2), housing referred to in subsection (a) shall be considered as quarters of the United States or a housing facility under the jurisdiction of a uniformed service for purposes of section 403 of title 37.

(2) A member of the armed forces who is assigned in accordance with subsection (a) to a housing unit not owned or leased by the United States shall be entitled to a basic allowance for housing under section 403 of title 37.

(c) Lease payments through pay allotments.--The Secretary concerned may require members of the armed forces who lease housing in housing units acquired or constructed under this subchapter to make lease payments for such housing pursuant to allotments of the pay of such members under section 701 of title 37.

2883. Department of Defense Housing Funds

(a) Establishment.--There are hereby established on the books of the Treasury the following accounts:

(1) The Department of Defense Family Housing Improvement Fund.

(2) The Department of Defense Military Unaccompanied Housing Improvement Fund.

(b) Commingling of funds prohibited.

(1) The Secretary of Defense shall administer each Fund separately.

(2) Amounts in the Department of Defense Family Housing Improvement Fund may be used only to carry out activities under this subchapter with respect to military family housing.

(3) Amounts in the Department of Defense Military Unaccompanied Housing Improvement Fund may be used only to carry out activities under this subchapter with respect to military unaccompanied housing.

(c) Credits to funds.

(1) There shall be credited to the Department of Defense Family Housing Improvement Fund the following:

(A) Amounts authorized for and appropriated to that Fund.

(B) Subject to subsection (f), any amounts that the Secretary of Defense transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department of Defense for the acquisition or construction of military family housing.

(C) Proceeds from the conveyance or lease of property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military family housing.

(D) Income derived from any activities under this subchapter with respect to military family housing, including interest on loans made under section 2873 of

this title, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.

(E) Any amounts that the Secretary of the Navy transfers to that Fund pursuant to section 2814(i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section.

(2) There shall be credited to the Department of Defense Military Unaccompanied Housing Improvement Fund the following:

(A) Amounts authorized for and appropriated to that Fund.

(B) Subject to subsection (f), any amounts that the Secretary of Defense transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department of Defense for the acquisition or construction of military unaccompanied housing.

(C) Proceeds from the conveyance or lease of property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military unaccompanied housing.

(D) Income derived from any activities under this subchapter with respect to military unaccompanied housing, including interest on loans made under section 2873 of this title, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.

(E) Any amounts that the Secretary of the Navy transfers to that Fund pursuant to section 2814(i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section.

(d) Use of amounts in funds.

(1) In such amounts as provided in appropriation Acts and except as provided in subsection (e), the Secretary of Defense may use amounts in the Department of Defense Family Housing Improvement Fund to carry out activities under this subchapter with respect to military family housing, including activities required in connection with the planning, execution, and administration of contracts entered into under the authority of this subchapter. The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.

(2) In such amounts as provided in appropriation Acts and except as provided in subsection (e), the Secretary of Defense may use amounts in the Department of Defense Military Unaccompanied Housing Improvement Fund to carry out activities under this subchapter with respect to military unaccompanied housing, including activities required in connection with the planning, execution, and administration of contracts entered into under the authority of this subchapter. The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.

(3) Amounts made available under this subsection shall remain available until expended. The Secretary of Defense may transfer amounts made available under this subsection to the Secretaries of the military departments to permit such Secretaries to carry out the activities for which such amounts may be used.

(e) Limitation on obligations.--The Secretary may not incur an obligation under a contract or other agreement entered into under this subchapter in excess of the unobligated balance, at the time the contract is entered into, of the Fund required to be used to satisfy the obligation.

(f) Notification required for transfers.--A transfer of appropriated amounts to a Fund under paragraph (1)(B) or (2)(B) of subsection (c) may be made only after the end of the 30-day period beginning on the date the Secretary of Defense submits written notice of, and justification for, the transfer to the appropriate committees of Congress.

(g) Limitation on amount of budget authority.--The total value in budget authority of all contracts and investments undertaken using the authorities provided in this subchapter shall not exceed--

(1) \$850,000,000 for the acquisition or construction of military family housing;
and

(2) \$150,000,000 for the acquisition or construction of military unaccompanied housing.

2884. Reports

(a) Project reports.

(1) The Secretary of Defense shall transmit to the appropriate committees of Congress a report describing--

(A) each contract for the acquisition or construction of family housing units or unaccompanied housing units that the Secretary proposes to solicit under this subchapter; and

(B) each conveyance or lease proposed under section 2878 of this title.

(2) The report shall describe the proposed contract, conveyance, or lease and the intended method of participation of the United States in the contract, conveyance, or lease and provide a justification of such method of participation. The report shall be submitted not later than 30 days before the date on which the Secretary issues the contract solicitation or offers the conveyance or lease.

(b) Annual reports.--The Secretary of Defense shall include each year in the materials that the Secretary submits to Congress in support of the budget submitted by the President pursuant to section 1105 of title 31 the following:

(1) A report on the expenditures and receipts during the preceding fiscal year covering the Funds established under section 2883 of this title.

(2) A methodology for evaluating the extent and effectiveness of the use of the authorities under this subchapter during such preceding fiscal year.

(3) A description of the objectives of the Department of Defense for providing military family housing and military unaccompanied housing for members of the armed forces.

2885. Expiration of authority

The authority to enter into a contract under this subchapter shall expire on February 10, 2001.