

117TH CONGRESS
1ST SESSION

S. 2920

To provide downpayment assistance to first-generation homebuyers to address multigenerational inequities in access to homeownership and to narrow and ultimately close the racial homeownership gap in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 2021

Mr. WARNOCK (for himself, Mr. BROWN, Mr. Kaine, Mr. Van Hollen, Ms. Warren, and Mr. Warner) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To provide downpayment assistance to first-generation homebuyers to address multigenerational inequities in access to homeownership and to narrow and ultimately close the racial homeownership gap in the United States, 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 “Downpayment Toward
5 Equity Act of 2021”.

1 **SEC. 2. FIRST-GENERATION DOWNPAYMENT ASSISTANCE**
2 **DOWNPAYMENT PROGRAM.**

3 (a) ESTABLISHMENT.—The Secretary of Housing
4 and Urban Development shall carry out a program under
5 this Act to provide grants to States and eligible entities
6 to provide financial assistance under this Act to first-gen-
7 eration homebuyers to assist them with acquiring owner-
8 occupied primary residences.

9 (b) ALLOCATION.—After reserving amounts as re-
10 quired under sections 6(d) and 8(b), any remaining
11 amounts made available to carry out this Act shall be allo-
12 cated as follows:

13 (1) STATES.—Seventy-five percent of such
14 amounts shall be allocated among States in accord-
15 ance with a formula established by the Secretary,
16 which shall take into consideration—

17 (A) adult population size (excluding exist-
18 ing homeowners);

19 (B) median area home prices; and

20 (C) racial disparities in homeownership
21 rates.

22 (2) ELIGIBLE ENTITIES.—Twenty-five percent
23 of such amounts shall be made available only to eli-
24 gible entities on a competitive basis.

25 (c) ASSISTANCE.—Amounts from a grant under this
26 Act shall be used only to provide assistance—

1 (1) on behalf of a qualified homebuyer; and

2 (2) for—

3 (A) costs in connection with the acquisi-
4 tion, involving an eligible mortgage loan, of an
5 eligible home, including downpayment costs,
6 closing costs, and costs to reduce the rates of
7 interest on eligible mortgage loans;

8 (B) subsidies to make shared equity homes
9 affordable to eligible homebuyers by discounting
10 the price for which the home will be sold and
11 to preserve the home's affordability for subse-
12 quent eligible buyers; and

13 (C) pre-occupancy home modifications re-
14 quired to accommodate qualified homebuyers or
15 members of their household with disabilities.

16 (d) AMOUNT.—A grant of assistance under this
17 Act—

18 (1) may be provided on behalf of any qualified
19 homebuyer only once; and

20 (2) may not exceed \$20,000, or \$25,000 in the
21 case of a qualified homebuyer who is a socially and
22 economically disadvantaged individual, except that
23 the Secretary may increase such maximum limita-
24 tion amounts in the case of qualified homebuyers ac-
25 quiring residences located in high-cost areas, as de-

1 terminated based on median home prices or prices of
2 residences under a shared equity homeownership
3 program.

4 (e) LAYERING OF ASSISTANCE.—Assistance from
5 grant amounts under this Act may be provided on behalf
6 of a qualified homebuyer who is receiving assistance from
7 other sources, including other State, Federal, local, pri-
8 vate, public, and nonprofit sources, for acquisition of an
9 eligible home.

10 (f) STATE ADMINISTRATION.—

11 (1) IN GENERAL.—The Secretary shall require
12 that each State receiving grant amounts under this
13 Act administer the program to provide assistance
14 with such amounts through the State housing fi-
15 nance agency for the State or such other housing
16 agency of the State as the Secretary finds appro-
17 priate, except that any such agency may, at the op-
18 tion of the agency, contract with a nonprofit entity,
19 including a housing counseling agency approved by
20 the Secretary, to administer such assistance.

21 (2) AFFIRMATIVELY FURTHERING FAIR HOUS-
22 ING.—For a State to be eligible for a grant under
23 this Act, the State shall be in compliance with the
24 Secretary's regulations implementing the require-
25 ment under section 808(e)(5) of the Fair Housing

1 Act (42 U.S.C. 3608(e)(5)) to affirmatively further
2 fair housing.

3 (3) PROHIBITION OF PRIORITY.—In selecting
4 qualified homebuyers for assistance with grant
5 amounts under this Act, a State or eligible entity
6 may not provide any priority or preference for home-
7 buyers who are acquiring eligible homes with a mort-
8 gage loan made, insured, guaranteed, or otherwise
9 assisted by the State housing finance agency for the
10 State, any other housing agency of the State, or an
11 eligible entity when applicable.

12 (g) REALLOCATION OF STATE AMOUNTS.—The Sec-
13 retary shall reallocate any grant funds under this Act allo-
14 cated for a fiscal year that remain unused at the end of
15 such fiscal year among States and eligible entities that
16 demonstrate to the Secretary the capacity to expend such
17 amounts and that are satisfactorily meeting the goals of
18 the program under this Act, as determined by the Sec-
19 retary.

20 (h) UNIFORMITY AND PROGRAM STANDARDIZA-
21 TION.—The Secretary shall establish a uniform set of re-
22 quirements to which each State and eligible entity receiv-
23 ing grant amounts under this Act shall comply.

1 **SEC. 3. QUALIFIED HOMEBUYERS.**

2 (a) REQUIREMENTS.—Assistance from grant
3 amounts under this Act may be provided only on behalf
4 of a homebuyer who meets all of the following require-
5 ments:

6 (1) INCOME.—The household of the homebuyer
7 has an income that does not exceed—

8 (A) 120 percent of median income for the
9 area (as determined by the Secretary) within
10 which—

11 (i) the eligible home to be acquired
12 using such assistance is located; or

13 (ii) the place of residence of the home-
14 buyer is located; or

15 (B) in the case of a homebuyer acquiring
16 an eligible home that is located in a high-cost
17 area, as determined by the Secretary, 180 per-
18 cent of the median income for the area within
19 which the eligible home to be acquired using
20 such assistance is located.

21 (2) FIRST-TIME HOMEBUYER.—The homebuyer,
22 as self-attested by the homebuyer, is a first-time
23 homebuyer, as such term is defined in section 92.2
24 of the Secretary's regulations (24 C.F.R. 92.2), ex-
25 cept that for purposes of this subsection the ref-
26 erence in such section 92.2 to the American Dream

1 Downpayment Initiative shall be considered to refer
2 to the program under this Act.

3 (3) FIRST-GENERATION HOMEBUYER.—The
4 homebuyer is, as self-attested by the homebuyer—

5 (A) an individual—

6 (i) whose parents or legal guardians
7 do not have any present residential owner-
8 ship interest in any State; and

9 (ii) whose spouse, or domestic part-
10 ner, and each member of whose household
11 has not, during the 3-year period ending
12 upon acquisition of the eligible home to be
13 acquired using such assistance, had any
14 present ownership interest in a principal
15 residence in any State; or

16 (B) an individual who has at any time
17 been placed in foster care.

18 (b) RELIANCE ON BORROWER ATTESTATIONS.—No
19 creditor shall be subject to liability, including monetary
20 penalties or requirements to indemnify a Federal agency
21 or repurchase a loan that has been sold or securitized, for
22 the provision of downpayment assistance under this Act
23 to a borrower who does not meet the eligibility require-
24 ments if the creditor does so in good faith reliance on bor-

1 rower attestations of eligibility required by this Act or reg-
2 ulation.

3 **SEC. 4. ELIGIBLE HOMES.**

4 (a) IN GENERAL.—Assistance from grant amounts
5 under this Act may be provided only in connection with
6 the acquisition by a qualified homebuyer of a residential
7 property that—

8 (1) consists of 1 to 4 dwelling units; and

9 (2) will be occupied by the qualified homebuyer,
10 in accordance with such assurances and commit-
11 ments as the Secretary shall require, as the primary
12 residence of the homebuyer, subject to section 3.

13 (b) REPAYMENT OF ASSISTANCE.—

14 (1) REQUIREMENT.—The Secretary shall re-
15 quire that, if a homebuyer on behalf of whom assist-
16 ance is provided from grant amounts under this Act
17 fails or ceases to occupy the property acquired using
18 such assistance as the primary residence of the
19 homebuyer, except in the case of assistance provided
20 in connection with the purchase of a primary resi-
21 dence through a shared equity homeownership pro-
22 gram, the homebuyer shall repay to the Secretary—

23 (A) 100 percent of the amount of such as-
24 sistance, if such failure to occupy commences

1 before the expiration of the 12-month period be-
2 ginning on the date of acquisition;

3 (B) 80 percent of the amount of such as-
4 sistance, if such failure to occupy commences
5 after the expiration of the 12-month period be-
6 ginning on such date of acquisition but before
7 the expiration of the 24-month period beginning
8 on such date of acquisition;

9 (C) 60 percent of the amount of such as-
10 sistance, if such failure to occupy commences
11 after the expiration of the 24-month period be-
12 ginning on such date of acquisition but before
13 the expiration of the 36-month period beginning
14 on such date of acquisition;

15 (D) 40 percent of the amount of such as-
16 sistance, if such failure to occupy commences
17 after the expiration of the 36-month period be-
18 ginning on such date of acquisition but before
19 the expiration of the 48-month period beginning
20 on such date of acquisition; and

21 (E) 20 percent of the amount of such as-
22 sistance, if such failure to occupy commences
23 after the expiration of the 48-month period be-
24 ginning on such date of acquisition but before

1 the expiration of the 60-month period beginning
2 on such date of acquisition.

3 (2) LIMITATION.—Notwithstanding paragraph
4 (1), if a homebuyer on behalf of whom assistance is
5 provided from grant amounts under this Act experi-
6 ences an unforeseen hardship, such as death or mili-
7 tary deployment, or sells the property acquired with
8 such assistance before the expiration of the 60-
9 month period beginning on such date of acquisition
10 and the capital gains from such sale are less than
11 the amount the homebuyer is required to repay the
12 Secretary under paragraph (1), the homebuyer shall
13 not be liable to the Secretary for repayment of the
14 amount of such shortage.

15 (c) COMMUNITY LAND TRUSTS AND SHARED EQUITY
16 HOMEOWNERSHIP PROGRAMS.—If assistance from grant
17 amounts under this Act are provided in connection with
18 an eligible home made available through a community land
19 trust or shared equity homeownership program, such as-
20 sistance shall remain in the community land trust or
21 shared equity property upon transfer of the property to
22 keep the home affordable to the next eligible community
23 land trust or shared equity homebuyer.

1 **SEC. 5. ELIGIBLE MORTGAGE LOANS.**

2 Assistance from grant amounts under this Act may
3 be provided only in connection with the acquisition of an
4 eligible home involving a residential mortgage loan that—

5 (1) meets the underwriting requirements and
6 dollar amount limitations for acquisition by the Fed-
7 eral National Mortgage Association or the Federal
8 Home Loan Mortgage Corporation;

9 (2) is made, insured, or guaranteed under title
10 II of the National Housing Act (12 U.S.C. 1707 et
11 seq.) or title V of the Housing Act of 1949 (42
12 U.S.C. 1471 et seq.);

13 (3) is a qualified mortgage, as such term is de-
14 fined in section 129C(b)(2) of the Truth in Lending
15 Act (15 U.S.C. 1639c(b)(2));

16 (4) is made, insured, or guaranteed under chap-
17 ter 37 of title 38, United States Code; or

18 (5) is guaranteed under section 184 of the
19 Housing and Community Development Act of 1992
20 (12 U.S.C. 1715z–13a).

21 **SEC. 6. HOUSING COUNSELING REQUIREMENT.**

22 (a) IN GENERAL.—Except as provided pursuant to
23 section 3, assistance with grant amounts under this Act
24 may not be provided on behalf of a qualified homebuyer
25 unless such homebuyer has completed a program of coun-
26 seling with respect to the responsibilities and financial

1 management involved in homeownership before entering
2 into a sales purchase agreement or loan application, except
3 as provided under subsection (c), as the Secretary shall
4 require, provided through a counseling agency approved
5 by the Secretary. Such program may be delivered virtually,
6 by telephone, or by any other method the Secretary deter-
7 mines acceptable and shall include providing information
8 on fair housing rights and on the availability of post-pur-
9 chase housing counseling opportunities and instruction on
10 how to file a fair housing complaint.

11 (b) ALTERNATIVE REQUIREMENT.—The Secretary
12 shall provide that if a qualified homebuyer is unable to
13 complete the requirement under subsection (a) within 30
14 days due to housing counseling agency capacity issues, a
15 State or eligible entity may allow such qualified home-
16 buyer to complete alternative homebuyer education to ful-
17 fill the requirement under subsection (a), including home-
18 buyer education that is provided through an online plat-
19 form, and such qualified homebuyer shall be made aware
20 of the availability of post-purchase housing counseling op-
21 portunities.

22 (c) REFERRAL UPON MORTGAGE DENIAL.—The Sec-
23 retary shall require that any qualified homebuyer who has
24 completed a counseling program referred to in subsection
25 (a) or alternative requirement pursuant to subsection (b),

1 who receives a commitment for assistance with grant
2 amounts under this Act, and who applies for an eligible
3 mortgage loan for acquisition of an eligible home and is
4 denied such mortgage loan, shall be referred to a coun-
5 seling agency described in subsection (a) for counseling
6 relating to such denial and for re-qualification. An eligible
7 homebuyer may be re-qualified at least one additional time
8 in a calendar year, or more as determined by the Sec-
9 retary.

10 (d) FUNDING.—Of any amounts appropriated to
11 carry out this Act, the Secretary shall use not less than
12 5 percent for costs of providing counseling referred to in
13 subsection (a).

14 **SEC. 7. ADMINISTRATIVE COSTS.**

15 Of any grant amounts under this Act received by a
16 State or eligible entity, the State or eligible entity may
17 use not more than 5 percent for administrative costs of
18 and training for carrying out the program of the State
19 or eligible entity to provide assistance with such grant
20 amounts.

21 **SEC. 8. REPORTS.**

22 (a) IN GENERAL.—For each fiscal year during which
23 the Secretary makes grants under this Act, the Secretary
24 shall submit to the Congress, and make publicly available
25 online in an easily accessible location on the website of

1 the Department of Housing and Urban Development, a
2 report that shall include—

3 (1) demographic information regarding appli-
4 cants for and recipients of assistance provided pur-
5 suant to this Act, including race, ethnicity, and gen-
6 der;

7 (2) information regarding the types and amount
8 of assistance provided, including downpayment as-
9 sistance, assistance with closing costs, and assist-
10 ance to reduce mortgage loan interest rates; and

11 (3) information regarding properties acquired
12 using such assistance, including location, property
13 value, property type, and first mortgage type and in-
14 vestor.

15 All data shall be disaggregated by zip code or census tract
16 level, whichever is most feasible, and demographic infor-
17 mation, including race, ethnicity, and gender, and any
18 other data points the Secretary deems appropriate espe-
19 cially to observe equitable outcomes to ensure the program
20 is affirmatively furthering fair housing.

21 (b) CAPACITY BUILDING.—Of any amounts appro-
22 priated to carry out this Act, the Secretary shall use not
23 more than 1 percent to assist States and eligible entities
24 to develop capacity to meet the reporting requirements
25 under subsection (a). The Secretary shall encourage

1 States and eligible entities to consult with community-
2 based and nonprofit organizations that have as their mis-
3 sion to advance fair housing and fair lending.

4 (c) PRIVACY REQUIREMENTS.—

5 (1) IN GENERAL.—Each State and eligible enti-
6 ty that receives a grant under this Act shall estab-
7 lish data privacy and security requirements for the
8 information described in subsection (a) that—

9 (A) include appropriate measures to ensure
10 that the privacy of the individuals and house-
11 holds is protected;

12 (B) provide that the information, including
13 any personally identifiable information, is col-
14 lected and used only for the purpose of submit-
15 ting reports under subsection (a); and

16 (C) provide confidentiality protections for
17 data collected about any individuals who are
18 survivors of intimate partner violence, sexual
19 assault, or stalking.

20 (2) STATISTICAL RESEARCH.—

21 (A) IN GENERAL.—The Secretary—

22 (i) may provide full and unredacted
23 information provided under subsection (a),
24 including personally identifiable informa-

tion, for statistical research purposes in accordance with existing law; and

(ii) may collect and make available for statistical research, at the census tract level, information collected under paragraph (1).

(B) APPLICATION OF PRIVACY REQUIREMENTS.—A recipient of information under subparagraph (A) shall establish for such information the data privacy and security requirements described in paragraph (1).

SEC. 9. COMPELLING INTEREST STUDY.

The Secretary and the Attorney General shall survey and compile evidence to determine whether or not there is a sufficient history of discrimination in housing and the appropriate remedy to redress such historic discrimination. The Secretary shall make conclusions and recommendations based on the evidence and provide States and eligible entities granted awards under this Act an opportunity to modify their programs for assistance under this Act according to such recommendations.

SEC. 10. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

1 (1) AFFIRMATIVELY FURTHER FAIR HOUS-
 2 ING.—The term “affirmatively further fair housing”
 3 has the same meaning as defined by the Secretary
 4 to implement section 808(e)(5) of the Fair Housing
 5 Act (42 U.S.C. 3608(e)(5)).

6 (2) COMMUNITY LAND TRUST.—The term
 7 “community land trust” means a nonprofit organiza-
 8 tion or State or local governments or instrumental-
 9 ities that—

10 (A) use a ground lease or deed covenant
 11 with an affordability period of at least 30 years
 12 or more to—

13 (i) make homeownership units afford-
 14 able to households; and

15 (ii) stipulate a preemptive option to
 16 purchase the affordable homeownership
 17 units so that the affordability of the units
 18 is preserved for successive income-eligible
 19 households; and

20 (B) monitor properties to ensure afford-
 21 ability is preserved.

22 (3) ELIGIBLE ENTITY.—The term “eligible enti-
 23 ty” means—

24 (A) a minority depository institution, as
 25 such term is defined in section 308 of the Fi-

1 nancial Institutions Reform, Recovery, and En-
2 forcement Act of 1989 (12 U.S.C. 1463 note);

3 (B) a community development financial in-
4 stitution, as such term is defined in section 103
5 of the Riegle Community Development and
6 Regulatory Improvement Act of 1994 (12
7 U.S.C. 4702), that is certified by the Secretary
8 of the Treasury and targets services to minority
9 and low-income populations and provides serv-
10 ices in neighborhoods having high concentra-
11 tions of minority and low-income populations;
12 and

13 (C) any other nonprofit, mission-driven en-
14 tity that the Secretary finds targets services to
15 minority and low-income populations and pro-
16 vides services in neighborhoods having high con-
17 centrations of minority and low-income popu-
18 lations.

19 (4) ELIGIBLE HOME.—The term “eligible
20 home” means a residential dwelling, including a unit
21 in a condominium or cooperative project or a manu-
22 factured housing unit, that meets the requirements
23 of section 4.

1 (5) ELIGIBLE MORTGAGE LOAN.—The term “el-
 2 igible mortgage loan” means a residential mortgage
 3 loan that meets the requirements of section 5.

4 (6) QUALIFIED HOMEBUYER.—The term
 5 “qualified homebuyer” means a homebuyer who
 6 meets the requirements of section 3, and includes
 7 homebuyers consisting of multiple individuals, co-
 8 purchasers, and multi-member households.

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

11 (8) SHARED EQUITY HOMEOWNERSHIP PRO-
 12 GRAM.—

13 (A) IN GENERAL.—The term “shared eq-
 14 uity homeownership program” means affordable
 15 homeownership preservation through a resale
 16 restriction program administered by a commu-
 17 nity land trust, other nonprofit organization, or
 18 State or local government or instrumentalities.

19 (B) AFFORDABILITY REQUIREMENTS.—
 20 Any such program under subparagraph (A)
 21 shall—

22 (i) provide affordable homeownership
 23 opportunities to households; and

24 (ii) utilize a ground lease, deed re-
 25 striction, subordinate loan, or similar legal

mechanism that includes provisions ensuring that the program shall—

(I) maintain the homeownership

unit as affordable for subsequent very

low-, low-, or moderate-income families

for an affordability term of at

least 30 years after recordation;

(II) apply a resale formula that

limits the homeowner's proceeds upon

resale; and

(III) provide the program administrator

or such administrator's assignee

a preemptive option to purchase

the homeownership unit from

the homeowner at resale.

(9) SOCIALLY AND ECONOMICALLY DISADVANTAGED

INDIVIDUAL.—The term “socially and economically

disadvantaged individual” means an individual

who meets the following requirements:

(A) SOCIAL DISADVANTAGE.—

(i) IN GENERAL.—The individual is a

member of a socially disadvantaged group,

whose members have historically been subjected

to racial or ethnic discrimination

within the United States because of their

identity as members of such group without regard to their individual qualities.

(ii) PRESUMPTION; REBUTTAL.—An individual identifying as Black, Hispanic, Native American, or Asian American, or any combination thereof, shall be presumed to be socially disadvantaged for purposes of clause (i). Such presumption may be rebutted by such individual with credible evidence to the contrary.

(iii) BURDEN OF PROOF.—An individual who does not identify as described in clause (ii) shall be required to establish individual social disadvantage for purposes of clause (i) by a preponderance of the evidence.

(iv) RULES.—The Secretary may issue regulations as necessary to establish procedures for complying with this subparagraph.

(B) ECONOMIC DISADVANTAGE.—The individual has an income that meets the requirements under section 3(a).

(10) STATE.—The term “State” means any State of the United States, the District of Columbia,

1 the Commonwealth of Puerto Rico, the United
2 States Virgin Islands, Guam, the Commonwealth of
3 the Northern Mariana Islands, American Samoa,
4 and the tribal government of any Indian tribe, as
5 such term is defined in section 4 of the Native
6 American Housing Assistance and Self-Determina-
7 tion Act of 1996 (25 U.S.C. 4103).

8 **SEC. 11. REGULATIONS.**

9 The Secretary shall issue any regulations necessary
10 to implement this Act.

11 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

12 There is authorized to be appropriated for grants
13 under this Act \$100,000,000,000, and any amounts ap-
14 propriated pursuant to this section shall remain available
15 until expended.

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