

117TH CONGRESS  
1ST SESSION

# S. 769

To authorize funds to prevent housing discrimination through the use of nationwide testing, to increase funds for the Fair Housing Initiatives Program, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 16, 2021

Ms. CORTEZ MASTO (for herself, Mrs. GILLIBRAND, Mr. SANDERS, Mr. DURBIN, Mr. WYDEN, Mr. MERKLEY, Mr. BLUMENTHAL, Mr. VAN HOLLEN, Mr. MENENDEZ, Mr. KAINE, 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 funds to prevent housing discrimination through the use of nationwide testing, to increase funds for the Fair Housing Initiatives Program, 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 “Housing Fairness Act  
5 of 2021”.

1 **SEC. 2. DEFINITION.**

2 In this Act, the term “Secretary” means the Sec-  
3 retary of Housing and Urban Development.

4 **SEC. 3. TESTING FOR DISCRIMINATION.**

5 (a) ELIGIBLE ACTIVITY UNDER FHIP.—

6 (1) IN GENERAL.—Section 561(a) of the Hous-  
7 ing and Community Development Act of 1987 (42  
8 U.S.C. 3616a(a)) is amended—

9 (A) by redesignating paragraphs (1) and  
10 (2) as subparagraphs (A) and (B), respectively,  
11 and adjusting the margins accordingly;

12 (B) in the matter preceding subparagraph  
13 (A), as so redesignated—

14 (i) by striking “The Secretary” and  
15 inserting the following:

16 “(1) GRANTS, CONTRACTS, AND COOPERATIVE  
17 AGREEMENTS.—The Secretary”; and

18 (ii) by inserting after “discriminatory  
19 housing practices” the following: “or, in  
20 the case of grants, contracts, or coopera-  
21 tive agreements for activities under sub-  
22 paragraph (C), with qualified private, non-  
23 profit fair housing enforcement organiza-  
24 tions that have demonstrated expertise in  
25 managing and implementing regional or

1 national testing programs to address sys-  
2 temic fair housing issues”;

3 (C) in subparagraph (A), as so redesign-  
4 nated, by striking “and” at the end;

5 (D) in subparagraph (B), as so redesign-  
6 nated, by striking “paragraph (1).” and insert-  
7 ing “subparagraph (A); and”; and

8 (E) by adding at the end the following:

9 “(C) programs of regional or national test-  
10 ing and investigations to—

11 “(i)(I) detect and document dif-  
12 ferences in the treatment of persons seek-  
13 ing to rent or purchase housing or obtain  
14 or refinance a home mortgage loan; and

15 “(II) measure patterns of differential  
16 treatment because of the status of a  
17 renter, home buyer, or borrower as a mem-  
18 ber of a protected class under the Fair  
19 Housing Act (42 U.S.C. 3601 et seq.); and

20 “(ii) measure the prevalence, nature,  
21 and extent of discriminatory practices cov-  
22 ered under the Fair Housing Act (42  
23 U.S.C. 3601 et seq.).

24 “(2) ENFORCEMENT ACTIONS.—

1           “(A) IN GENERAL.—The results of any  
2 testing and investigations under paragraph  
3 (1)(C) may be used as the basis for the Sec-  
4 retary, any Federal agency authorized to bring  
5 such an enforcement action, or any State or  
6 local government or agency, public or private  
7 nonprofit organization or institution, or other  
8 aggrieved party within the meaning of the Fair  
9 Housing Act (42 U.S.C. 3601 et seq.) or other  
10 substantially equivalent State or local fair hous-  
11 ing law, or other public or private entity with  
12 which the Secretary has entered into a contract  
13 or cooperative agreement under this section to  
14 commence, undertake, or pursue any investiga-  
15 tion or enforcement action to remedy any dis-  
16 criminatory housing practice (as defined in sec-  
17 tion 802 of the Fair Housing Act (42 U.S.C.  
18 3602)) uncovered as a result of the testing and  
19 investigations.

20           “(B) TESTING.—Testing conducted under  
21 paragraph (1)(C) shall not constitute a viola-  
22 tion of any provision of criminal law or the  
23 Truth in Lending Act (15 U.S.C. 1601 et  
24 seq.).”.

1           (2) TECHNICAL AND CONFORMING AMEND-  
2           MENT.—Section 561(f)(2) of the Housing and Com-  
3           munity Development Act of 1987 (42 U.S.C.  
4           3616a(a)(2)) is amended by striking “subsection  
5           (a)(1)” and inserting “subsection (a)(1)(A)”.

6           (b) REGULATIONS.—

7           (1) IN GENERAL.—Not later than 180 days  
8           after the date of enactment of this Act, the Sec-  
9           retary shall issue regulations that apply the min-  
10          imum tester training standards required under sec-  
11          tion 125.107 of title 24, Code of Federal Regula-  
12          tions (or any successor regulation), to organizations  
13          conducting testing under paragraph (1)(C) of sec-  
14          tion 561(a) of the Housing and Community Develop-  
15          ment Act of 1987 (42 U.S.C. 3616a(a)), as added  
16          by subsection (a)(1)(E) of this section.

17          (2) APPLICABILITY TO ALL TESTING ACTIVI-  
18          TIES.—On and after the date on which the regula-  
19          tions issued under paragraph (1) take effect, the  
20          minimum tester training standards described in that  
21          paragraph shall apply to any testing activities con-  
22          ducted under section 561 of the Housing and Com-  
23          munity Development Act of 1987 (42 U.S.C.  
24          3616a), as amended by subsection (a)(1) of this sec-  
25          tion.

1 **SEC. 4. FAIR HOUSING INITIATIVES PROGRAM.**

2 (a) AMENDMENTS TO PROGRAM.—Section 561 of the  
3 Housing and Community Development Act of 1987 (42  
4 U.S.C. 3616a) is amended—

5 (1) in subsection (b)—

6 (A) in paragraph (1), by striking “private  
7 nonprofit” and inserting “qualified”; and

8 (B) in paragraph (2), in the matter pre-  
9 ceding subparagraph (A), by striking “private  
10 nonprofit” and inserting “qualified”;

11 (2) in subsection (c), by adding at the end the  
12 following:

13 “(3) PROGRAM-EARNED INCOME.—No restric-  
14 tion on the use of program-earned income received  
15 by a qualified fair housing enforcement organization  
16 shall apply after the grant period for the organiza-  
17 tion ends.”;

18 (3) in subsection (d)—

19 (A) in paragraph (1)—

20 (i) in subparagraph (C), by striking  
21 “and” at the end;

22 (ii) in subparagraph (D), by striking  
23 the period and inserting “; and”; and

24 (iii) by inserting after subparagraph  
25 (D) the following:

26 “(E) websites and other media outlets.”;

1 (B) in paragraph (2), by striking “or other  
2 public or private entities” and inserting “or  
3 other public or private nonprofit entities”;

4 (C) in paragraph (3), by striking “or other  
5 public or private entities” and inserting “or  
6 other public or private nonprofit entities”; and

7 (D) by adding at the end the following:

8 “(4) LIMITATION.—Notwithstanding any other  
9 provision of this section, a State or local agency cer-  
10 tified by the Secretary under section 810(f) of the  
11 Fair Housing Act (42 U.S.C. 3610(f)) may receive  
12 assistance under this subsection only to carry out  
13 activities eligible for assistance under this subsection  
14 in areas in which no qualified fair housing enforce-  
15 ment organization is available to carry out those ac-  
16 tivities.

17 “(5) ELIGIBILITY.—Notwithstanding any other  
18 provision of this section, if an award of funding  
19 under subsection (b) for multiple fiscal years has  
20 been made to a qualified fair housing enforcement  
21 organization, the organization shall be, subject only  
22 to the availability of amounts provided in appropria-  
23 tion Acts, eligible to receive funding under this sub-  
24 section for each fiscal year covered by the award  
25 under subsection (b).”;

1 (4) in subsection (e)—

2 (A) in paragraph (1)—

3 (i) by inserting “CONGRESSIONAL NO-  
4 TIFICATION.—” after “(1)”; and

5 (ii) by striking “Banking, Finance  
6 and Urban Affairs” and inserting “Finan-  
7 cial Services”; and

8 (B) by adding at the end the following:

9 “(2) PRIORITY.—In providing assistance under  
10 this section with respect to a metropolitan statistical  
11 area for which there are multiple applications for as-  
12 sistance, the Secretary shall give priority to applica-  
13 tions submitted by qualified fair housing enforce-  
14 ment organizations that have experience in con-  
15 ducting fair housing enforcement activities.”;

16 (5) by striking subsection (g) and inserting the  
17 following:

18 “(g) AUTHORIZATION OF APPROPRIATIONS.—

19 “(1) IN GENERAL.—There are authorized to be  
20 appropriated to carry out this section—

21 “(A) \$58,000,000 for each of fiscal years  
22 2022 through 2026, of which—

23 “(i) \$55,000,000 shall be available for  
24 any activities under this section other than

1 programs under subsection (a)(1)(C), of  
2 which—

3 “(I) not less than \$38,000,000  
4 shall be for private enforcement initia-  
5 tives authorized under subsection (b);

6 “(II) not less than \$1,500,000  
7 shall be for the fair housing organiza-  
8 tions initiative under subsection (c);

9 “(III) not less than \$10,000,000  
10 shall be for the education and out-  
11 reach initiative under subsection (d),  
12 of which—

13 “(aa) not less than  
14 \$8,000,000 shall be for local edu-  
15 cation and outreach activities;  
16 and

17 “(bb) not less than  
18 \$2,000,000 shall be for national  
19 media activities; and

20 “(IV) any remaining amounts  
21 shall be used for any program activi-  
22 ties authorized under this section; and

23 “(ii) \$3,000,000 shall be available  
24 only for programs under subsection  
25 (a)(1)(C); and

1           “(B) \$70,000,000 for each of fiscal years  
2           2027 through 2032, of which—

3           “(i) \$65,000,000 shall be available for  
4           any activities under this section other than  
5           programs under subsection (a)(1)(C), of  
6           which—

7           “(I) not less than \$44,000,000  
8           shall be for private enforcement initia-  
9           tives authorized under subsection (b);

10          “(II) not less than \$1,500,000  
11          shall be for the fair housing organiza-  
12          tions initiative under subsection (c);

13          “(III) not less than \$12,500,000  
14          shall be for the education and out-  
15          reach initiative under subsection (d),  
16          of which—

17                 “(aa) not less than  
18                 \$10,000,000 shall be for local  
19                 education and outreach activities;  
20                 and

21                 “(bb) not less than  
22                 \$2,500,000 shall be for national  
23                 media activities; and

1                   “(IV) any remaining amounts  
2                   shall be used for any program activi-  
3                   ties authorized under this section; and

4                   “(ii) \$5,000,000 shall be available  
5                   only for programs under subsection  
6                   (a)(1)(C).

7                   “(2) AVAILABILITY.—Any amount appropriated  
8                   under this section shall remain available until ex-  
9                   pended to carry out the provisions of this section.

10                   “(3) AWARD OF FUNDING.—

11                   “(A) NOTICE.—Not later than 90 days  
12                   after the date of enactment of any Act making  
13                   amounts available to carry out this section, the  
14                   Secretary shall issue a Notice of Funding Avail-  
15                   ability with respect to the amounts.

16                   “(B) AWARD.—Not later than 180 days  
17                   after the date of enactment of any Act making  
18                   amounts available to carry out this section, the  
19                   Secretary shall award the amounts.”;

20                   (6) in subsection (h)(1), in the matter following  
21                   subparagraph (C), by inserting “and meets the cri-  
22                   teria described in subparagraphs (A) and (C)” be-  
23                   fore the period at the end; and

24                   (7) in subsection (j)—

1 (A) in the matter preceding paragraph (1),  
2 by inserting “regarding that fiscal year,” after  
3 “comprehensive report”;

4 (B) in paragraph (2), by striking “and the  
5 use of such funds during the preceding fiscal  
6 year” and inserting “, the use of such funds,  
7 and outcomes such as the number of housing  
8 units made available and accessible to protected  
9 classes under the Fair Housing Act (42 U.S.C.  
10 3601 et seq.)”;

11 (C) in paragraph (3), by striking “during  
12 the preceding fiscal year”; and

13 (D) in paragraph (4), by striking “during  
14 the preceding fiscal year”.

15 (b) STUDY.—

16 (1) IN GENERAL.—The Secretary shall conduct  
17 a study to determine—

18 (A) the feasibility, efficiency, and effective-  
19 ness of converting the Fair Housing Initiatives  
20 Program under section 561 of the Housing and  
21 Community Development Act of 1987 (42  
22 U.S.C. 3616a), as amended by this Act, into a  
23 noncompetitive entitlement program to provide  
24 general operating funding to qualified fair hous-

1           ing enforcement organizations, as defined in  
2           subsection (h) of that section;

3           (B) the appropriate levels of funding for  
4           such a program, taking into consideration the  
5           number of such qualified fair housing enforce-  
6           ment organizations; and

7           (C) the factors that should be considered  
8           in providing for an equitable distribution to  
9           qualified fair housing enforcement organiza-  
10          tions.

11          (2) REPORT.—Not later than 1 year after the  
12          date of enactment of this Act, the Secretary shall  
13          submit a report to Congress setting forth the results  
14          of the study conducted under paragraph (1), which  
15          shall include any recommendations regarding such  
16          conversion of the program.

17 **SEC. 5. SENSE OF CONGRESS.**

18          It is the sense of Congress that the Secretary  
19          should—

20               (1) fully comply with the requirements of sec-  
21               tion 561(d) of the Housing and Community Develop-  
22               ment Act of 1987 (42 U.S.C. 3616a(d)), as amend-  
23               ed by this Act, to establish, design, and maintain a  
24               national education and outreach program to provide

1 a centralized, coordinated effort for the development  
2 and dissemination of—

3 (A) materials and information about the  
4 fair housing rights of individuals who seek to  
5 rent, purchase, sell, or facilitate the sale of a  
6 home; and

7 (B) materials and information about the  
8 fair housing responsibilities of industry profes-  
9 sionals providing products and services covered  
10 under the Fair Housing Act (42 U.S.C. 3601 et  
11 seq.);

12 (2) expend for the education and outreach pro-  
13 grams described in paragraph (1) all amounts ap-  
14 propriated for those programs;

15 (3) fully reinstate the regulations promulgated  
16 on July 16, 2015 (80 Fed. Reg. 42271), regarding  
17 the fair housing obligations of each recipient of Fed-  
18 eral housing and community development funds to  
19 affirmatively further fair housing, as that term is  
20 used in the Fair Housing Act (42 U.S.C. 3601 et  
21 seq.); and

22 (4) fully comply with the requirements of sec-  
23 tion 810(a) of the Fair Housing Act (42 U.S.C.  
24 3610(a)).

1 **SEC. 6. GRANTS TO PUBLIC AND PRIVATE ENTITIES TO**  
2 **STUDY HOUSING DISCRIMINATION.**

3 (a) GRANT PROGRAM.—The Secretary shall carry out  
4 a competitive matching grant program to assist public and  
5 private nonprofit organizations in—

6 (1) conducting comprehensive studies that ex-  
7 amine—

8 (A) the causes of housing discrimination  
9 and segregation;

10 (B) the effects of housing discrimination  
11 and segregation on education, poverty, economic  
12 development, health, and other socioeconomic  
13 factors; or

14 (C) the incidences, causes, and effects of  
15 housing discrimination based on veteran and  
16 military status; and

17 (2) implementing pilot projects that test solu-  
18 tions that will help prevent or alleviate housing dis-  
19 crimination and segregation.

20 (b) ELIGIBILITY.—To be eligible to receive a grant  
21 under this section, a public or private nonprofit organiza-  
22 tion shall—

23 (1) submit an application to the Secretary that  
24 contains—

1 (A) the issues the applicant will address  
2 and a justification for the need to address those  
3 issues;

4 (B) the applicant's experience in formu-  
5 lating or carrying out programs or activities de-  
6 scribed in this section;

7 (C) the geographical area and period of  
8 time to be studied; and

9 (D) a certification that the applicant has  
10 consulted with a qualified fair housing enforce-  
11 ment organization in the design of its proposed  
12 area of study; and

13 (2) agree to provide matching non-Federal  
14 funds for 10 percent of the total amount of the  
15 grant, which matching funds may include monetary  
16 donations and items donated on an in-kind contribu-  
17 tion basis.

18 (c) PARTNERSHIPS WITH ACADEMIC INSTITU-  
19 TIONS.—A public or private nonprofit organization apply-  
20 ing for a grant under this section may partner with an  
21 academic or educational organization or institution for the  
22 purpose of carrying out activities assisted with the grant  
23 amounts.

24 (d) REPORT.—

1           (1) IN GENERAL.—The Secretary shall submit  
2           a report to Congress on a biennial basis that pro-  
3           vides a detailed summary of the results of the com-  
4           prehensive studies and pilot projects carried out  
5           under subsection (a), together with any rec-  
6           ommendations or proposals for legislative or admin-  
7           istrative actions to address any issues raised by the  
8           studies and pilot projects.

9           (2) CONCURRENT SUBMISSION.—The Secretary  
10          may submit the reports required under paragraph  
11          (1) as part of the reports prepared in accordance  
12          with paragraphs (2) and (6) of section 808(e) of the  
13          Fair Housing Act (42 U.S.C. 3608(e)) and section  
14          561(j) of the Housing and Community Development  
15          Act of 1987 (42 U.S.C. 3616a(j)).

16          (e) AUTHORIZATION OF APPROPRIATIONS.—There  
17          are authorized to be appropriated to carry out this section  
18          \$5,000,000 for each of fiscal years 2021 through 2025.

19       **SEC. 7. LIMITATION ON USE OF FUNDS.**

20          (a) DEFINITION.—In this section, the term “lob-  
21          bying” means an activity the costs of which are unallow-  
22          able under paragraph 25 of attachment B to Circular A-  
23          122 of the Office of Management and Budget, entitled  
24          “Cost Principles for Non-Profit Organizations”.

1       (b) PROHIBITION.—None of the funds made available  
2 under this Act, or the amendments made by this Act, may  
3 be used for any political activities, political advocacy, or  
4 lobbying, or for expenses for travel to engage in political  
5 activities or preparation of or provision of advice on tax  
6 returns.

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