

refinancing an existing loan secured by the project, or from distributing the proceeds of such a loan; except that, in conjunction with such refinancing—

(1) the owner shall provide for adequate rehabilitation pursuant to a capital needs assessment to ensure long-term sustainability of the property satisfactory to the lender or bond issuance agency;

(2) any resulting budget-based rent increase shall include debt service on the new financing, commercially reasonable debt service coverage, and replacement reserves as required by the lender; and

(3) for tenants of dwelling units not covered by a project- or tenant-based rental subsidy, any rent increases resulting from the refinancing transaction may not exceed 10 percent per year, except that—

(A) any tenant occupying a dwelling unit as of time of the refinancing may not be required to pay for rent and utilities, for the duration of such tenancy, an amount that exceeds the greater of—

(i) 30 percent of the tenant's income; or

(ii) the amount paid by the tenant for rent and utilities immediately before such refinancing; and

(B) this paragraph shall not apply to any tenant who does not provide the owner with proof of income.

Paragraph (3) may not be construed to limit any rent increases resulting from increased operating costs for a project.

(Pub. L. 100-242, title II, §214, as added Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4251; amended Pub. L. 114-94, div. G, title LXXVII, §77002, Dec. 4, 2015, 129 Stat. 1790.)

AMENDMENTS

2015—Subsec. (c). Pub. L. 114-94 added subsec. (c).

IMPLEMENTATION

Pub. L. 114-94, div. G, title LXXVII, §77003, Dec. 4, 2015, 129 Stat. 1791, provided that: “The Secretary of Housing and Urban Development shall issue any guidance that the Secretary considers necessary to carry out the provisions added by the amendments made by this title [amending this section and section 4112 of this title] not later than the expiration of the 120-day period beginning on the date of the enactment of this Act [Dec. 4, 2015].”

§ 4105. Federal cost limits and limitations on plans of action

(a) Determination of relationship to Federal cost limits

(1) Initial determination

For each eligible low-income housing project appraised under section 4103(a) of this title, the Secretary shall determine whether the aggregate preservation rents for the project determined under paragraph (1) or (2) of section 4104(b) of this title exceed the amount determined by multiplying 120 percent of the fair market rental (established under section 1437f(c) of title 42) for the market area in which the housing is located by the number of dwelling units in the project (according to appropriate unit sizes).

(2) Relevant local markets

If the aggregate preservation rents for a project exceeds the amount determined under paragraph (1), the Secretary shall determine whether such aggregate rents exceed the amount determined by multiplying 120 percent of the prevailing rents in the relevant local market area in which the housing is located by the number of units in the project (according to the appropriate unit sizes). A relevant local market area shall be an area geographically smaller than a market area established by the Secretary under section 1437f(c)(1) of title 42 that is identifiable as a distinct rental market area. The Secretary may rely on the appraisal to determine the relevant local market areas and prevailing rents in such local areas and any other information the Secretary determines is appropriate.

(3) Effect

For purposes of this subchapter, the aggregate preservation rents shall be considered to exceed the Federal cost limits under this subsection only if the aggregate preservation rents exceed the amount determined under paragraph (1) and the amount determined under paragraph (2).

(b) Limitations on action pursuant to Federal cost limits

(1) Housing within Federal cost limits

If the aggregate preservation rents for an eligible low-income housing project do not exceed the Federal cost limit, the owner may not prepay the mortgage on the housing or terminate the insurance contract with respect to the housing, except as permitted under section 4114 of this title. The owner may—

(A) file a plan of action under section 4107 of this title to receive incentives under section 4109 of this title; or

(B) file a second notice of intent under section 4106(d) of this title indicating an intention to transfer the housing under section 4110 of this title and take actions pursuant to such section.

(2) Housing exceeding Federal cost limits

If the aggregate preservation rents for an eligible low-income housing project exceed the Federal cost limit, the owner may—

(A) file a plan of action under section 4107 of this title to receive incentives under section 4109 of this title if the owner agrees to accept incentives under such sections in an amount that shall not exceed the Federal cost limit;

(B) file a second notice of intent under section 4106(d) of this title indicating an intention to transfer the housing under section 4110 of this title and take actions pursuant to such section if the owner agrees to transfer the housing at a price that shall not exceed the Federal cost limit; or

(C) file a second notice of intent under section 4106(d) of this title indicating an intention to prepay the mortgage or voluntarily terminate the insurance, subject to the mandatory sale provisions under section 4111 of this title.

(Pub. L. 100-242, title II, §215, as added Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4252; amended Pub. L. 102-550, title III, §317(a)(1), Oct. 28, 1992, 106 Stat. 3772.)

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102-550 made technical amendment to reference to section 1437f(c)(1) of title 42 to reflect correction of corresponding provision of original act.

§ 4106. Information from Secretary

(a) Information to owners terminating affordability restrictions

The Secretary shall provide each owner who submits a notice of intent to terminate the low-income affordability restrictions on the housing under section 4108 of this title with information under this section not later than 6 months after receipt of the notice of intent. The information shall include a description of the criteria for such termination specified under section 4108 of this title and the documentation required to satisfy such criteria.

(b) Information to owners extending low-income affordability restrictions

The Secretary shall provide each owner who submits notice of intent to extend the low-income affordability restrictions on the housing under section 4109 of this title or transfer the housing under section 4110 of this title to a qualified purchaser with information under this subsection not later than 9 months after receipt of the notice of intent. The information shall include any information necessary for the owner to prepare a plan of action under section 4107 of this title, including the following:

(1) Preservation values

A statement of the preservation value of the housing determined under paragraphs (1) and (2) of section 4103(b) of this title.

(2) Preservation rent

A statement of the preservation rent for the housing as calculated under section 4104(b) of this title.

(3) Federal cost limits

A statement of the applicable Federal cost limits for the market area (or relevant local market area, if applicable) in which the housing is located, which shall explain the limitations under sections 4109 and 4110 of this title of the amount of assistance that the Secretary may provide based on such cost limits.

(4) Federal cost limit analysis

A statement of whether the aggregate preservation rents exceed the Federal cost limits and a direction to the owner to file a plan of action under section 4107 of this title or submit a second notice of intent under subsection (d), whichever is applicable.

(c) Availability to tenants

The Secretary shall make any information provided to the owner under subsections (a) and (b) available to the tenants of the housing, together with other information relating to the rights and opportunities of the tenants.

(d) Second notice of intent

(1) Filing

Each owner of eligible low-income housing that elects to transfer housing under section 4110 of this title shall submit to the Secretary, in such form and manner as the Secretary prescribes, notice of intent to sell the housing under section 4110 of this title. To be eligible to prepay the mortgage or voluntarily terminate the insurance contract on the mortgage, an owner of housing for which the preservation rents exceed the Federal cost limits under section 4105(b) of this title shall submit to the Secretary notice of such intent. The provisions of sections 4111 and 4113 of this title shall apply to any owner submitting a notice under the preceding sentence.

(2) Timing

A second notice of intent under this subsection shall be submitted not later than 30 days after receipt of information from the Secretary under this section. If an owner fails to submit such notice within such period, the notice of intent submitted by the owner under section 4102 of this title shall be void and ineffective for purposes of this subchapter.

(3) Filing with the State or local government, tenants, and mortgagee

Upon filing a second notice of intent under this subsection, the owner shall simultaneously file such notice of the intent with the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located and with the mortgagee, and shall inform the tenants of the housing of the filing.

(Pub. L. 100-242, title II, §216, as added Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4253; amended Pub. L. 102-550, title III, §§303, 317(a)(2), Oct. 28, 1992, 106 Stat. 3763, 3772.)

AMENDMENTS

1992—Subsec. (b)(4). Pub. L. 102-550, §317(a)(2), substituted “exceed” for “exceeds”.
Subsec. (d)(3). Pub. L. 102-550, §303, added par. (3).

§ 4107. Plan of action

(a) Submission to Secretary

(1) Timing

Not later than 6 months after receipt of the information from the Secretary under section 4106 of this title an owner seeking to terminate the low-income affordability restrictions through prepayment of the mortgage or voluntary termination under section 4108 of this title, or to extend the low-income affordability restriction on the housing under section 4109 of this title, shall submit a plan of action to the Secretary in such form and manner as the Secretary shall prescribe. Any owner or purchaser seeking a transfer of the housing under section 4110 or 4111 of this title shall submit a plan of action under this section to the Secretary upon acceptance of a bona fide offer under section 4110(b) or (c) of this title or upon making of any bona fide offer under section 4111 of this title.

(2) Copies to tenants

Each owner submitting a plan of action under this section to the Secretary shall also