

cent of the monthly adjusted income of the tenant or an increase in the monthly rental payment in any year that exceeds 10 percent (whichever is lower), or (ii) in the case of a current tenant who already pays more than such percentage, an increase in the monthly rental payment in any year that exceeds the increase in the Consumer Price Index or 10 percent (whichever is lower); or

(B) involuntarily displace current tenants (except for good cause) where comparable and affordable housing is not readily available determined without regard to the availability of Federal housing assistance that would address any such hardship or involuntary displacement; and

(2) the supply of vacant, comparable housing is sufficient to ensure that such prepayment will not materially affect—

(A) the availability of decent, safe, and sanitary housing affordable to low-income and very low-income families or persons in the area that the housing could reasonably be expected to serve;

(B) the ability of low-income and very low-income families or persons to find affordable, decent, safe, and sanitary housing near employment opportunities; or

(C) the housing opportunities of minorities in the community within which the housing is located.

(b) Standards and procedure for written findings

(1) Standards

A written finding under subsection (a) shall be based on an analysis of the evidence considered by the Secretary in reaching such finding and shall contain documentation of such evidence.

(2) Procedure and criteria

The Secretary shall, by regulation, develop

(A) a procedure for determining whether the conditions under paragraphs (1) and (2) of subsection (a) exist, (B) requirements for evidence on which such determinations are based, and (C) criteria on which such determinations are based.

(c) Disapproval

If the Secretary determines a plan of action to prepay a mortgage or terminate an insurance contract fails to meet the requirements of subsection (a), the Secretary shall disapprove the plan, the notice of intent filed under section 4102 of this title by such owner shall not be effective for purposes of this subchapter, and the owner may, in order to receive incentives under this subchapter, file a new notice of intent under such section.

(Pub. L. 100-242, title II, §218, as added Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4256; amended Pub. L. 102-550, title III, §305, Oct. 28, 1992, 106 Stat. 3763.)

AMENDMENTS

1992—Subsecs. (b), (c). Pub. L. 102-550 added subsec. (b) and redesignated former subsec. (b) as (c).

§ 4109. Incentives to extend low-income use

(a) Agreements by Secretary

After approving a plan of action from an owner of eligible low-income housing that in-

cludes the owner's plan to extend the low-income affordability restrictions of the housing, the Secretary shall, subject to the availability of appropriations for such purpose, enter into such agreements as are necessary to enable the owner to receive (for each year after the approval of the plan of action) the annual authorized return for the housing determined under section 4104(a) of this title, pay debt service on the federally-assisted mortgage covering the housing, pay debt service on any loan for rehabilitation of the housing, and meet project operating expenses and establish adequate reserves. The Secretary shall take into account the Federal cost limits under section 4105(a) of this title for the housing when providing incentives under subsections¹ (b)(2) and (3) of this section. The Secretary shall take such actions as are necessary to ensure that owners receive the annual authorized return for the housing determined under section 4104(a) of this title during the period in which rent increases are phased in as provided in section 4112(a)(2)(E) of this title, including (in order of preference) (1) allowing the owner access to residual receipt accounts (pursuant to subsection (b)(1) of this section), (2) deferring remittance of excess rent payments, and (3) providing an increase in rents permitted under an existing contract under section 1437f of title 42 (pursuant to subsection (b)(2) of this section).

(b) Permissible incentives

Such agreements may include one or more of the following incentives:

(1) Increased access to residual receipts accounts.

(2) Subject to the availability of amounts provided in appropriations Acts—

(A) an increase in the rents permitted under an existing contract under section 1437f of title 42, or

(B) additional assistance under section 1437f of title 42 or an extension of any project-based assistance attached to the housing; and

(3) An increase in the rents on units occupied by current tenants as permitted under section 4112 of this title.

(4) Financing of capital improvements under section 201 of the Housing and Community Development Amendments of 1978.

(5) Financing of capital improvements through provision of insurance for a second mortgage under section 1715z-6 of this title.

(6) In the case of housing defined in section 4119(1)(A)(iii) of this title, redirection of the Interest Reduction Payment subsidies to a second mortgage.

(7) Access by the owner to a portion of the preservation equity in the housing through provision of insurance for a second mortgage loan insured under section 1715z-6(f)² of this title or a non-insured mortgage loan approved by the Secretary and the mortgagee.

(8) Other incentives authorized in law.

With respect to any housing with a mortgage insured or otherwise assisted pursuant to section

¹ So in original. Probably should be "subsection".

² See References in Text note below.

1715z-1 of this title, the provisions of subsections (f) and (g) of section 1715z-1 of this title notwithstanding, the fair market rental charge for each unit in such housing may be increased in accordance with this subsection, but the owner shall pay to the Secretary all rental charges collected in excess of the basic rental charges, in an amount not greater than the fair market rental charges as such charges would have been established under section 1715z-1(f) of this title absent the requirements of this paragraph.

(Pub. L. 100-242, title II, § 219, as added Pub. L. 101-625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4256; amended Pub. L. 102-550, title III, § 306, Oct. 28, 1992, 106 Stat. 3764.)

REFERENCES IN TEXT

Section 201 of the Housing and Community Development Amendments of 1978, referred to in subsec. (b)(4), is section 201 of Pub. L. 95-557, title II, Oct. 31, 1978, 92 Stat. 2084, which enacted section 1715z-1a of this title and amended section 1715z-1 of this title.

Section 1715z-6(f) of this title, referred to in subsec. (b)(7), was repealed by Pub. L. 104-204, title II, Sept. 26, 1996, 110 Stat. 2885.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550 inserted “(for each year after the approval of the plan of action)” after “receive” and inserted at end “The Secretary shall take such actions as are necessary to ensure that owners receive the annual authorized return for the housing determined under section 4104(a) of this title during the period in which rent increases are phased in as provided in section 4112(a)(2)(E) of this title, including (in order of preference) (1) allowing the owner access to residual receipt accounts (pursuant to subsection (b)(1) of this section), (2) deferring remittance of excess rent payments, and (3) providing an increase in rents permitted under an existing contract under section 1437f of title 42 (pursuant to subsection (b)(2) of this section).”

STUDY OF PROJECTS ASSISTED UNDER FLEXIBLE SUBSIDY PROGRAM

Pub. L. 102-550, title III, § 318, Oct. 28, 1992, 106 Stat. 3772, provided that:

“(a) **STUDY.**—The Secretary shall conduct a study of housing projects that (1) are assisted under section 236 of the National Housing Act [12 U.S.C. 1715z-1] or the proviso of section 221(d)(5) of such Act [12 U.S.C. 1715(d)(5)], and (2) have received or are receiving assistance under section 201 of the Housing and Community Development Amendments of 1978 [see References in Text note above], to determine the cost of providing such projects with incentives under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [see Short Title note set out under section 4101 of this title]. The study shall examine any projects portions of which assisted under such section 236 that are assisted primarily by State agencies.

“(b) **REPORT.**—The Secretary shall submit a report to the Congress regarding any findings and conclusions of the study under subsection (a) not later than the expiration of the 1-year period beginning on the date of the enactment of this Act [Oct. 28, 1992].”

§ 4110. Incentives for transfer to qualified purchasers

(a) In general

With respect to any eligible low-income housing for which an owner has submitted a second notice of intent under section 4106(d) of this title to transfer the housing to a qualified purchaser, the owner shall offer the housing for transfer to qualified purchasers as provided in

this section. The Secretary shall issue regulations describing the means by which potential qualified purchasers shall be notified of the availability of the housing for sale. The Secretary shall take into account the Federal cost limits under section 4105(a) of this title for the housing when providing incentives under section 4109(b)(2) and (b)(3) of this title (pursuant to subsection (d)(3) of this section).

(b) Right of first offer to priority purchasers

(1) Negotiation period

For the 12-month period beginning on the receipt by the Secretary of a second notice of intent under section 4106(d) of this title with respect to such housing, the owner may offer to sell and negotiate a sale of the housing only with priority purchasers. The negotiated sale price may not exceed the preservation value of the housing determined under section 4103(b)(2) of this title. The owner or the purchaser shall submit a plan of action under section 4107 of this title for any sale under this subsection, which shall include any request for assistance under this section, upon the acceptance of any bona fide offer meeting the requirements of this paragraph.

(2) Expression of interest

During such period, priority purchasers may submit written notice to the Secretary stating their interest in acquiring the housing. Such notice shall be made in the form and include such information as the Secretary may prescribe.

(3) Information

Within 30 days of receipt of an expression of interest by a priority purchaser, the Secretary shall provide such purchaser with information on the assistance available from the Federal Government to facilitate a transfer and the owner shall provide appropriate information on the housing, as determined by the Secretary.

(c) Right of refusal for other qualified purchasers

If no bona fide offer to purchase any eligible low-income housing subject to this section that meets the requirements of subsection (b) is made and accepted during the period under such subsection, during the 3-month period beginning upon the expiration of the 12-month period under subsection (b)(1), the owner of the housing may offer to sell and may sell the housing only to qualified purchasers. The negotiated sale price may not exceed the preservation value of the housing determined under section 4103(b)(2) of this title. The owner or purchaser shall submit a plan of action under section 4107 of this title for any sale under this subsection, which shall include any request for assistance under this section, upon the acceptance of any bona fide offer meeting the requirements of this paragraph.¹

(d) Assistance

(1) Approval

If the qualified purchaser is a resident council, the Secretary may not approve a plan of

¹ So in original. Probably should be “subsection.”