

the terms of the mortgage (notwithstanding this subchapter), the Secretary approves a plan of action under section 4110 or 4111 of this title, but does not provide the assistance approved in such plan before the earlier of (i) the expiration of the 2-month period beginning on the commencement of the 1st fiscal year beginning after such approval, or (ii) the expiration of the 6-month period beginning on the date of approval.

(C) The Secretary approves a plan of action under section 4110 or 4111 of this title for any eligible low-income housing not covered by subparagraph (B), but does not provide the assistance approved in such plan before the earlier of (i) the expiration of the 2-month period beginning on the commencement of the 1st fiscal year beginning after such approval, or (ii) the expiration of the 9-month period beginning on the date of approval.

(2) An owner who intended to transfer the housing to a qualified purchaser under section 4110 or 4111 of this title, and fully complied with the provisions of such section, did not receive any bona fide offers from any qualified purchasers within the applicable time periods.

In the event that the purchaser under the plan of action is unable to consummate the purchase for reasons other than the failure of the Secretary to provide incentives, an owner may terminate the low-income affordability restrictions through prepayment or voluntary termination subject to the provisions of sections 4110 and 4111 of this title.

(b) Section 1437f rental assistance

When providing rental assistance under section 1437f of title 42, the Secretary may enter into a contract with an owner, contingent upon the future availability of appropriations for the purpose of renewing expiring contracts for rental assistance as provided in appropriations Acts, to extend the term of such rental assistance for such additional period or periods necessary to carry out an approved plan of action. The contract and the approved plan of action shall provide that, if the Secretary is unable to extend the term of such rental assistance or is unable to develop a revised package of incentives providing benefits to the owner comparable to those received under the original approved plan of action, the Secretary, upon the request of the owner, shall take the following actions (subject to the limitations under the following paragraphs):

(1) Modification of commitments

Modify the binding commitments made pursuant to section 4112(a)(2) of this title that are dependent on such rental assistance.

(2) Termination of plan of action

Permit the owner to prepay the mortgage and terminate the plan of action and any implementing use agreements or restrictions, but only if the owner agrees in writing to comply with provisions of section 4113 of this title.

At least 30 days before making a request under this subsection, an owner shall notify the Secretary of the owner's intention to submit the request. The Secretary shall have a period of 90

days following receipt of such notice to take action to extend the rental assistance contract and to continue the binding commitments under section 4112(a)(2) of this title.

(Pub. L. 100-242, title II, §224, as added Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4265.)

§ 4115. Timetable for approval of plan of action

(a) Notification of deficiencies

Not later than 60 days after receipt of a plan of action, the Secretary shall notify the owner in writing of any deficiencies that prevent the plan of action from being approved. If deficiencies are found, such notice shall describe alternative ways in which the plan may be revised to meet the criteria for approval.

(b) Notification of approval

(1) In general

Not later than 180 days after receipt of a plan of action, or such longer period as the owner requests, the Secretary shall notify the owner in writing whether the plan of action, including any revisions, is approved. If approval is withheld, the notice shall describe—

(A) the reasons for withholding approval; and

(B) the actions that could be taken to meet the criteria for approval.

(2) Opportunity to revise

The Secretary shall subsequently give the owner a reasonable opportunity to revise the plan of action and seek approval.

(c) Delayed approval

If the Secretary does not approve a plan of action within the period under subsection (b), the Secretary shall provide incentives and assistance under this subchapter in the amount that the owner would have received if the Secretary had complied with such time limitations. The preceding sentence shall not apply if the plan of action was not approved because of deficiencies. An owner may bring an action in the appropriate Federal district court to enforce this subsection.

(Pub. L. 100-242, title II, §225, as added Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4266.)

§ 4116. Resident homeownership program

(a) Formation of resident council

Tenants seeking to purchase eligible low-income housing in accordance with section 4110 of this title shall organize a resident council for the purpose of developing a resident homeownership program in accordance with standards established by the Secretary. The resident council shall work with a public or private nonprofit organization or a public body (including an agency or instrumentality thereof). Such organization or public body shall have experience to enable it to help the tenants consider their options and to develop the capacity necessary to own and manage the housing, where appropriate, and shall be approved by the Secretary.

(b) Other program requirements and limitations**(1) Sales to residents**

As a condition of approval of a plan of action involving homeownership program under this subchapter, the resident council shall prepare a workable plan acceptable to the Secretary for giving all residents an opportunity to become owners, which plan shall identify—

(A) the price at which the resident council intends to transfer ownership interests in, or shares representing, units in the housing;

(B) the factors that will influence the establishment of such price;

(C) how such price compares to the estimated appraised value of the ownership interests or shares;

(D) the underwriting standard the resident council plans to use (or reasonably expects a public or private lender to use) for potential tenant purchasers;

(E) the financing arrangements the tenants are expected to pursue or be provided; and

(F) a workable schedule of sale (subject to the limitations of paragraph (8)) based on estimated tenant incomes.

(2) Approval of method of conversion and limitation on conditions of approval

The Secretary shall approve the method for converting the housing to homeownership, which may involve acquisition of ownership interests in, or shares representing, the units in a project under any arrangement determined by the Secretary to be appropriate, such as cooperative ownership (including limited equity cooperative ownership) and fee simple ownership (including condominium ownership). The Secretary may not require the prepayment of the mortgage on eligible low-income housing for the approval of a plan of action involving a homeownership program for the housing.

(3) Required conditions

The Secretary shall require that the form of homeownership impose appropriate conditions, including conditions to assure that—

(A) the number of initial owners that are very low-income, lower income, or moderate-income persons at initial occupancy meet standards required or approved by the Secretary;

(B) occupancy charges payable by the owners meet requirements established by the Secretary;

(C) the aggregate incomes of initial and subsequent owners and other sources of funds for the project are sufficient to permit occupancy charges to cover the full operating costs of the housing and any debt service;

(D) each initial owner occupies the unit it acquires; and

(E) the low-income affordability restrictions shall continue to apply to any rental units in the housing for any period during which such units remain rental units.

(4) Use of proceeds from sales to eligible families

The entity that transfers ownership interests in, or shares representing, units to eligi-

ble families, or another entity specified in the approved application, may use 50 percent of the proceeds, if any, from the initial sale for costs of the homeownership program, including improvements to the project, operating and replacement reserves for the project, additional homeownership opportunities in the project, and other project-related activities approved by the Secretary. The remaining 50 percent of such proceeds shall be returned to the Secretary for use under section 4110 of this title, subject to availability under appropriations Acts. Such entity shall keep, and make available to the Secretary, all records necessary to calculate accurately payments due the Secretary under this paragraph.

(5) Restrictions on resale by homeowners**(A) In general****(i) Transfer permitted**

A homeowner under a homeownership program may transfer the homeowner's ownership interest in, or shares representing, the unit, except that a homeownership program may establish restrictions on the resale of units under the program.

(ii) Right to purchase

Where a resident management corporation, resident council, or cooperative has jurisdiction over the unit, the corporation, council, or cooperative shall have the right to purchase the ownership interest in, or shares representing, the unit from the homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer.

(iii) Promissory note required

The homeowner shall execute a promissory note equal to the difference, if any, between the market value and the purchase price, payable to the Secretary, together with a mortgage securing the obligation of the note.

(B) 6 years or less

In the case of a transfer within 6 years of the acquisition under the program, the homeownership program shall provide for appropriate restrictions to assure that an eligible family may not receive any undue profit. The plan shall provide for limiting the family's consideration for its interest in the property to the total of—

(i) the contribution to equity paid by the family;

(ii) the value, as determined by such means as the Secretary shall determine through regulation, of any improvements installed at the expense of the family during the family's tenure as owner; and

(iii) the appreciated value determined by an inflation allowance at a rate which may be based on a cost-of-living index, an income index, or market index as determined by the Secretary through regulation and agreed to by the purchaser and the entity that transfers ownership interests in, or shares representing, units to eligible families (or another entity specified in the approved application), at the time of ini-

tial sale, and applied against the contribution to equity.

Such an entity may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(C) 6–20 years

In the case of a transfer during the period beginning 6 years after the acquisition and ending 20 years after the acquisition, the homeownership program shall provide for the recapture by the Secretary or the program of an amount equal to the amount of the declining balance on the note described in subparagraph (A)(iii).

(D) Use of recaptured funds

Any net sales proceeds that may not be retained by the homeowner under the plan approved pursuant to this paragraph shall be paid to the HOME Investment Trust Fund for the unit of general local government in which the housing is located. If the housing is located in a unit of general local government that is not a participating jurisdiction (as such term is defined in section 12704 of title 42), any such net sales proceeds shall be paid to the HOME Investment Trust Fund for the State in which the housing is located. With respect to any proceeds transferred to a HOME Investment Trust Fund under this subparagraph, the Secretary shall take such actions as are necessary to ensure that the proceeds shall be immediately available for eligible activities to expand the supply of affordable housing under section 12742 of title 42. The Secretary shall require the maintenance of any records necessary to calculate accurately payments due under this paragraph.

(6) Protection of nonpurchasing families

(A) Eviction

No tenant residing in a dwelling unit in a property on the date the Secretary approves a plan of action may be evicted by reason of a homeownership program approved under this subchapter.

(B) Rental assistance

If a tenant decides not to purchase a unit, or is not qualified to do so, the Secretary shall ensure that rental assistance under section 1437f of title 42 is available for use by each otherwise qualified tenant (that meets the eligibility requirements under such section) in that or another property. Any system for preferences established under section 1437f(d)(1)(A) or 1437f(o)(6)(A) of title 42 shall not apply to the provision of assistance to such families.

(C) Relocation assistance

The resident council shall also inform each such tenant that if the tenant chooses to move, the owner will pay relocation assistance in accordance with the approved homeownership program.

(7) Qualified management

As a condition of approval of a homeownership program under this subchapter, the resi-

dent council shall have demonstrated its abilities to manage eligible properties by having done so effectively and efficiently for a period of not less than 3 years or by entering into a contract with a qualified management entity that meets such standards as the Secretary may prescribe to ensure that the property will be maintained in a decent, safe, and sanitary condition.

(8) Timely homeownership

Except in the case of limited equity cooperatives, resident councils shall transfer ownership of the property to tenants within a specified period of time that the Secretary determines to be reasonable. During the interim period when the property continues to be operated and managed as rental housing, the resident council shall utilize written tenant selection policies and criteria that are approved by the Secretary as consistent with the purpose of providing housing for very low-income families. The resident council shall promptly notify in writing any rejected applicant of the grounds for any rejection.

(9) Records and audit of resident councils

(A) Maintenance

Each resident council shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such resident council of the proceeds of assistance received under this subchapter (including any proceeds from sales under paragraphs (4) and (5)(D)), the total cost of the homeownership program in connection with which such assistance is given or used, and the amount and nature of that portion of the program supplied by other sources, and such other sources as will facilitate an effective audit.

(B) Access

The Secretary shall have access for the purpose of audit and examination to any books, documents, papers, and records of the resident council that are pertinent to assistance received under this subchapter.

(C) Audit

The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall also have access for the purpose of audit and examination to any books, documents, papers, and records of the resident council that are pertinent to assistance received under this subchapter.

(10) Assumption conditions

Any entity that assumes a mortgage covering low-income housing in connection with the acquisition of the housing from an owner under this section must comply with any low-income affordability restrictions for the remaining useful life of the housing as determined under section 4112(c) of this title.

(Pub. L. 100–242, title II, §226, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4267; amended Pub. L. 102–550, title III, §309, Oct. 28, 1992, 106 Stat. 3765; Pub. L. 105–276, title V, §514(b)(2)(A), Oct. 21, 1998, 112 Stat. 2548.)

AMENDMENTS

1998—Subsec. (b)(6)(B). Pub. L. 105-276, which directed the substitution of “Any system for preferences established under section 1437f(d)(1)(A) or 1437f(o)(6)(A)” for “The requirement for giving preferences to certain categories of eligible families under sections 1437f(d)(1)(A) and 1437f(o)(3)” in second sentence, was executed by making the substitution for text which included the word “preference” rather than “preferences” to reflect the probable intent of Congress.

1992—Subsec. (b)(2). Pub. L. 102-550, §309(1), inserted “and limitation on conditions of approval” in heading and inserted at end of text “The Secretary may not require the prepayment of the mortgage on eligible low-income housing for the approval of a plan of action involving a homeownership program for the housing.”

Subsec. (b)(3)(E). Pub. L. 102-550, §309(2), added subpar. (E).

Subsec. (b)(8). Pub. L. 102-550, §309(3), substituted “Except in the case of limited equity cooperatives, resident” for “Resident”.

Subsec. (b)(10). Pub. L. 102-550, §309(4), struck out “, as determined by the Secretary,” after “entity that assumes”, substituted “4112(c)” for “4112(d)”, and struck out at end “This requirement shall only apply to an entity, such as a cooperative association, that, as determined by the Secretary, intends to own the housing on a permanent basis.”

§ 4117. Delegated responsibility to State agencies

(a) In general

In addition to any responsibilities delegated under section 4103(c) of this title, the Secretary shall delegate some or all responsibility for implementing this subchapter to a State housing agency if such agency submits a preservation plan acceptable to the Secretary.

(b) Approval

State preservation plans shall be submitted in such form and in accordance with such procedures as the Secretary shall establish. The Secretary may approve plans that contain—

(1) an inventory of low-income housing located within the State that is or will be eligible low-income housing under this subchapter within 5 years;

(2) a description of the agency’s experience in the area of multifamily financing and restructuring;

(3) a description of the administrative resources that the agency will commit to the processing of plans of action in accordance with this subchapter;

(4) a description of the administrative resources that the agency will commit to the monitoring of approved plans of action in accordance with this subchapter;

(5) an independent analysis of the performance of the multifamily housing inventory financed or otherwise monitored by the agency;

(6) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of title 42 that the proposed activities are consistent with the approved housing strategy of the State within which the eligible low-income housing is located; and

(7) such other certifications or information that the Secretary determines to be necessary or appropriate to achieve the purposes of this subchapter.

(c) Implementation agreements

The Secretary may enter into any agreements necessary to implement an approved State pres-

ervation plan, which may include incentives that are authorized under other provisions of this subchapter.

(Pub. L. 100-242, title II, §227, as added Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4270.)

REGULATIONS

Pub. L. 102-550, title III, §315, Oct. 28, 1992, 106 Stat. 3770, provided that: “The Secretary of Housing and Urban Development shall issue interim regulations implementing section 227 of the Housing and Community Development Act of 1987 (as amended by section 601(a) of the Cranston-Gonzalez National Affordable Housing Act) [12 U.S.C. 4117] not later than the expiration of the 30-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], which shall take effect upon issuance. The Secretary shall issue final regulations implementing such section 227 after notice and opportunity for public comment regarding the interim regulations, pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment shall not be less than 60 days, and the final regulations shall be issued not later than the expiration of the 60-day period beginning upon the conclusion of the comment period and shall take effect upon issuance.”

§ 4118. Consultations with other interested parties

The Secretary shall confer with any appropriate State or local government agency to confirm any State or local assistance that is available to achieve the purposes of this title¹ and shall give consideration to the views of any such agency when making determinations under this subchapter. The Secretary shall also confer with appropriate interested parties that the Secretary believes could assist in the development of a plan of action that best achieves the purposes of this subchapter.

(Pub. L. 100-242, title II, §228, as added Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4271.)

REFERENCES IN TEXT

This title, referred to in text, means title II of Pub. L. 100-242, as amended by Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

§ 4119. Definitions

For purposes of this subchapter:

(1) The term “eligible low-income housing” means any housing financed by a loan or mortgage—

(A) that is—

(i) insured or held by the Secretary under section 1715(d)(3) of this title and receiving loan management assistance under section 1437f of title 42 due to a conversion from section 1701s of this title;

(ii) insured or held by the Secretary and bears interest at a rate determined under the proviso of section 1715(d)(5) of this title;

¹ See References in Text note below.