

and (ii) acquisition (I) of the property, by an entity for transfer to eligible families, and (II) by eligible families of ownership interests in, or shares representing, units in the project;

(H) the proposed sales price, the basis for such price determination, and terms to an entity, if any, that will purchase the property for resale to eligible families;

(I) the proposed sales prices, if any, and terms to eligible families;

(J) any proposed restrictions on the resale of units under a homeownership program;

(K) identification and description of the entity that will operate and manage the property;

(L) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located (or, during the first 12 months after November 28, 1990, that the application is consistent with such other existing State or local housing plan or strategy that the Secretary shall determine to be appropriate); and

(M) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

#### (d) <sup>4</sup> Selection criteria

The Secretary shall establish selection criteria for assistance under this section, which shall include—

(1) the qualifications or potential capabilities of the applicant;

(2) the feasibility of the homeownership program;

(3) the extent of tenant interest in the development of a homeownership program for the property;

(4) the potential for developing an affordable homeownership program and the suitability of the property for homeownership;

(5) national geographic diversity among housing for which applicants are selected to receive assistance;

(6) the extent to which a sufficient supply of affordable rental housing of the type assisted under this title<sup>5</sup> exists in the locality, so that the implementation of the homeownership program will not appreciably reduce the number of such rental units available to residents currently residing in such units or eligible for residency in such units; and

(7) such other factors as the Secretary determines to be appropriate for purposes of carrying out the program established by the<sup>6</sup> part in an effective and efficient manner.

<sup>4</sup> So in original. Two subsecs. (d) have been enacted.

<sup>5</sup> See References in Text note below.

<sup>6</sup> So in original. Probably should be "this".

#### (e) Approval

The Secretary shall notify each applicant, not later than 6 months after the date of the submission of the application, whether the application is approved or not approved. The Secretary may approve the application for an implementation grant with a statement that the application for the section 8 [42 U.S.C. 1437f] assistance for residents of the project not purchasing units is conditionally approved, subject to the availability of appropriations in subsequent fiscal years.

(Pub. L. 101-625, title IV, § 423, Nov. 28, 1990, 104 Stat. 4163; Pub. L. 102-550, title X, § 1012(i)(2), Oct. 28, 1992, 106 Stat. 3906.)

#### REFERENCES IN TEXT

Section 12872 of this title, referred to in subsec. (b)(6), was in the original "section 322" and was translated as reading "section 422", meaning section 422 of Pub. L. 101-625, to reflect the probable intent of Congress. Section 322 of Pub. L. 101-625 amended section 1708 of Title 12, Banks and Banking.

Section 12874 of this title and section 12874(b) of this title, referred to in subsec. (d)(2)(D), were in the original "section 324" and "section 324(b)", respectively, and were translated as reading "section 424" and "section 424(b)", respectively, meaning section 424 of Pub. L. 101-625, to reflect the probable intent of Congress. Section 324 of Pub. L. 101-625, which proposed an amendment to section 1709 of Title 12, never took effect pursuant to section 351 of Pub. L. 101-625. Such section 324 did not contain a subsec. (b).

The Fair Housing Act, referred to in subsec. (d)(2)(M), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (d)(2)(M), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (d)(2)(M), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

This title, referred to in subsec. (d)(6), means title IV of Pub. L. 101-625, known as the Homeownership and Opportunity Through HOPE Act, and probably should have been "this subtitle", meaning subtitle B (§§ 421-431) of title IV of Pub. L. 101-625, which is classified principally to this part. For complete classification of title IV of Pub. L. 101-625 to the Code, see Short Title note set out under section 1437aaa of this title and Tables.

#### AMENDMENTS

1992—Subsec. (b)(4) to (14). Pub. L. 102-550 added par. (4) and redesignated former pars. (4) to (13) as (5) to (14), respectively.

#### § 12874. Homeownership program requirements

##### (a) In general

A homeownership program under this part shall provide for acquisition by eligible families of ownership interest in, or shares representing, the units in an eligible property 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), for occupancy by the eligible families.

**(b) Affordability**

A homeownership program under this part shall provide for the establishment of sales prices (including principal, insurance, taxes, and interest and closing costs) for initial acquisition of the property, and for sales to eligible families, such that the eligible family shall not be required to expend more than 30 percent of the adjusted income of the family per month to complete a sale under the homeownership program.

**(c) Plan**

A homeownership program under this part shall provide, and include a plan, for—

- (1) identifying and selecting eligible families to participate in the homeownership program;
- (2) providing relocation assistance to families who elect to move;
- (3) ensuring continued affordability by tenants, homebuyers, and homeowners in the property; and
- (4) providing ongoing training and counseling for homebuyers and homeowners.

**(d) Acquisition and rehabilitation limitation**

Acquisition or rehabilitation of a property under a homeownership program under this part may not consist of acquisition or rehabilitation of less than all of the units in the property. The provisions of this subsection may be waived upon a finding by the Secretary that the sale of less than all the buildings in a project is feasible and will not result in a hardship to any tenants of the project who are not included in the homeownership program.

**(e) Financing**

**(1) In general**

The application shall identify and describe the proposed financing for (A) any rehabilitation, and (B) acquisition (i) of the project, where applicable, by an entity for transfer to eligible families, and (ii) by eligible families of ownership interests in, or shares representing, units in the project. Financing may include use of the implementation grant, sale for cash, or other sources of financing (subject to applicable requirements), including conventional mortgage loans and mortgage loans insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.].

**(2) Prohibition against pledges**

Property transferred under this part shall not be pledged as collateral for debt or otherwise encumbered except when the Secretary determines that—

- (A) such encumbrance will not threaten the long-term availability of the property for occupancy by low-income families;
- (B) neither the Federal Government nor the public housing agency will be exposed to undue risks related to action that may have to be taken pursuant to paragraph (3);
- (C) any debt obligation can be serviced from project income, including operating assistance; and

(D) the proceeds of such encumbrance will be used only to meet housing standards in accordance with subsection (f) of this section or to make such additional capital improvements as the Secretary determines to be consistent with the purposes of this part.

**(3) Opportunity to cure**

Any lender that provides financing in connection with a homeownership program under this part shall give the public housing agency, resident management corporation, individual owner, or other appropriate entity a reasonable opportunity to cure a financial default before foreclosing on the property, or taking other action as a result of the default.

**(f) Housing quality standards**

The application shall include a plan ensuring that the unit—

- (1) will be free from any defects that pose a danger to health or safety before transfer of an ownership interest in, or shares representing, a unit to an eligible family; and
- (2) will, not later than 2 years after the transfer to an eligible family, meet minimum housing standards established by the Secretary for the purpose of this title.<sup>1</sup>

**(g) Protection of nonpurchasing families**

**(1) In general**

No tenant residing in a dwelling unit in a property on the date the Secretary approves an application for an implementation grant may be evicted by reason of a homeownership program approved under this part.

**(2) Rental assistance**

If a tenant decides not to purchase a unit, or is not qualified to do so, the Secretary shall, subject to the availability of appropriations, ensure that rental assistance under section 1437f of this title is available for use by each otherwise qualified tenant in that or another property.

**(3) Relocation assistance**

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

(Pub. L. 101-625, title IV, § 424, Nov. 28, 1990, 104 Stat. 4166.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (e)(1), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the Act is classified principally to subchapter II (§1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

This title, referred to in subsec. (f)(2), is title IV of Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4148, known as the Homeownership and Opportunity Through HOPE Act, which enacted this subchapter and subchapter II-A (§1437aaa et seq.) of chapter 8 of this title, amended sections 1437c, 1437f, 1437i, 1437p, 1437r, and 1437s of this title and section 1709 of Title 12, and enacted provisions set out as notes under sections 1437c, 1437aa, and 1437aaa of this title. For complete classification of title

<sup>1</sup> See References in Text note below.

IV to the Code, see Short Title note set out under section 1437aaa of this title and Tables.

Section 1437f of this title, referred to in subsec. (g)(2), was in the original "section 8", and was translated as reading "section 8 of the United States Housing Act of 1937" to reflect the probable intent of Congress.

### § 12875. Other program requirements

#### (a) Preferences

In selecting eligible families for homeownership, the recipient shall give a first preference to otherwise qualified current tenants and a second preference to otherwise qualified eligible families who have completed participation in an economic self-sufficiency program specified by the Secretary.

#### (b) Cost limitations

The Secretary may establish cost limitations on eligible activities under this part, subject to the provisions of this part.

#### (c) Use of proceeds from sales to eligible families

The entity that transfers ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, shall use the proceeds, if any, from the initial sale for costs of the homeownership program, including operating expenses, improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by the Secretary.

#### (d) Restrictions on resale by homeowners

##### (1) In general

##### (A) 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.

##### (B) 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. If such an entity does not have jurisdiction over the unit or elects not to purchase and if the prospective buyer is not a low-income family, the public housing agency or the implementation grant recipient shall have the right to purchase the ownership interest in, or shares representing, the unit for the same amount.

##### (C) Promissory note required

The homeowner shall execute a promissory note equal to the difference between the market value and the purchase price, payable to the public housing agency or other entity designated in the homeownership plan, together with a mortgage securing the obligation of the note.

##### (2) 6 years or less

In the case of a transfer within 6 years of the acquisition under the program, the home-

ownership 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—

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

(B) 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

(C) 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 initial 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.

##### (3) 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 paragraph (1)(C).

##### (4) Use of recaptured funds

Fifty percent of any portion of the net sales proceeds that may not be retained by the homeowner under the plan approved pursuant to this subsection shall be paid to the entity that transferred ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, for use for improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by the Secretary. The remaining 50 percent shall be returned to the Secretary for use under this part, subject to limitations contained in appropriations Acts. Such entity shall keep and make available to the Secretary all records necessary to calculate accurately payments due the Secretary under this subsection.

##### (e) Third party rights

The requirements under this part regarding quality standards, resale, or transfer of the ownership interest of a homeowner shall be judicially enforceable against the grant recipient with respect to actions involving rehabilitation, and against purchasers of property under this subsection or their successors in interest with respect to other actions by affected low-income families, resident management corporations, resident councils, public housing agencies, and