

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 any agency, corporation, or authority of the United States Government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

**(f) Dollar limitation on economic development activities**

Not more than an aggregate of \$250,000 from amounts made available under sections 12872 and 12873 of this title may be used for economic development activities under sections 12872(b)(6) and 12873(b)(9)<sup>1</sup> of this title for any project.

**(g) Timely homeownership**

Recipients 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 recipient shall utilize written tenant selection policies and criteria that are approved by the Secretary as consistent with the purpose of improving housing opportunities for low-income families. The recipient shall promptly notify in writing any rejected applicant of the grounds for any rejection.

**(h) Records and audit of recipients of assistance**

**(1) In general**

Each recipient shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of assistance received under this part (and any proceeds from financing obtained or sales under subsections (c) and (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.

**(2) Access by Secretary**

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

**(3) Access by Comptroller General**

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 recipient that are pertinent to assistance received under this part.

**(i) Certain entities not eligible**

Any entity that assumes, as determined by the Secretary, a mortgage covering eligible property in connection with the acquisition of the property from an owner under this section must comply with any low-income affordability restrictions for the remaining term of the mortgage. 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.

(Pub. L. 101-625, title IV, § 425, Nov. 28, 1990, 104 Stat. 4168.)

REFERENCES IN TEXT

Sections 12872(b)(6) and 12873(b)(9) of this title, referred to in subsec. (f), were redesignated sections 12872(b)(7) and 12873(b)(10) of this title, respectively, by Pub. L. 102-550, title X, § 1012(i), Oct. 28, 1992, 106 Stat. 3906.

**§ 12876. Definitions**

For purposes of this part:

(1) The term “applicant” means the following entities that may represent the tenants of the housing:

(A) A resident management corporation established in accordance with the requirements of the Secretary under section 1437r of this title.

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

- (B) A resident council.
  - (C) A cooperative association.
  - (D) A public or private nonprofit organization.
  - (E) A public body (including an agency or instrumentality thereof).
  - (F) A public housing agency (including an Indian housing authority).
  - (G) A mutual housing association.
- (2) The term “eligible family” means a family or individual—
- (A) who is a tenant of the eligible property on the date the Secretary approves an implementation grant; or
  - (B) whose income does not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families.
- (3) The term “eligible property” means a multifamily rental property, containing 5 or more units, that is—
- (A) owned or held by the Secretary;
  - (B) financed by a loan or mortgage held by the Secretary or insured by the Secretary;
  - (C) determined by the Secretary to have serious physical or financial problems under the terms of an insurance or loan program administered by the Secretary; or
  - (D) owned or held by the Secretary of Agriculture, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Secretary of Defense, the Secretary of Transportation, the General Services Administration, any other Federal agency, or a State or local government or an agency or instrumentality thereof.
- (4) The term “homeownership program” means a program for homeownership under this part.
- (5) The term “Indian housing authority” has the meaning given such term in section 1437a(b)(11)<sup>1</sup> of this title.
- (6) The term “low-income family” has the meaning given such term in section 1437a(b)(2) of this title.
- (7) The term “public housing agency” has the meaning given such term in section 1437a(b)(6) of this title.
- (8) The term “recipient” means an applicant approved to receive a grant under this title<sup>1</sup> or such other entity specified in the approved application that will assume the obligations of the recipient under this part.
- (9) The term “resident council” means any incorporated nonprofit organization or association that—
- (A) is representative of the tenants of the housing;
  - (B) adopts written procedures providing for the election of officers on a regular basis; and
  - (C) has a democratically elected governing board, elected by the tenants of the housing.
- (10) The term “Secretary” means the Secretary of Housing and Urban Development.

(Pub. L. 101-625, title IV, §426, Nov. 28, 1990, 104 Stat. 4170; Pub. L. 102-550, title I, §181(d), (e), (h), Oct. 28, 1992, 106 Stat. 3735, 3736.)

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

## REFERENCES IN TEXT

Section 1437a(b)(11) of this title, referred to in par. (5), was repealed by Pub. L. 104-330, title V, §501(b)(1)(D), Oct. 26, 1996, 110 Stat. 4041, and a new section 1437a(b)(11), defining “public housing agency plan”, was enacted by Pub. L. 105-276, title V, §506(4), Oct. 21, 1998, 112 Stat. 2524.

This title, referred to in par. (8), 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—Par. (1)(G). Pub. L. 102-550, §181(d), added subpar. (G).

Par. (3)(D). Pub. L. 102-550, §181(e), (h), inserted “the Federal Deposit Insurance Corporation, the Secretary of Defense, the Secretary of Transportation, the General Services Administration, any other Federal agency,” after “Corporation,” and “or an agency or instrumentality thereof” before period at end.

**§ 12877. Exemption**

Eligible property covered by a homeownership program approved under this part shall not be subject to—

(1) the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4101 et seq.], or

(2) the requirements of section 1701z-11 of title 12 applicable to the sale of projects either at foreclosure or after acquisition by the Secretary.

(Pub. L. 101-625, title IV, §427, Nov. 28, 1990, 104 Stat. 4171.)

## REFERENCES IN TEXT

The Low-Income Housing Preservation and Resident Homeownership Act of 1990, referred to in par. (1), is title II of Pub. L. 100-242, as amended by Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, which is classified principally to chapter 42 (§4101 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 12 and Tables.

**§ 12878. Limitation on selection criteria**

In establishing criteria for selecting applicants to receive assistance under this part, the Secretary may not establish any selection criterion or criteria that grant or deny such assistance to an applicant (or have the effect of granting or denying assistance) based on the implementation, continuation, or discontinuation of any public policy, regulation, or law of any jurisdiction in which the applicant or project is located.

(Pub. L. 101-625, title IV, §428, Nov. 28, 1990, 104 Stat. 4171.)

**§ 12879. Implementation**

Not later than the expiration of the 180-day period beginning on the date that funds authorized under this part first become available for obligation, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this part. Such re-