

fordable to low- and very low-income families or persons in the community within which the housing is located and in the area that the housing could reasonably be expected to serve; and

(F) any other information that the Secretary determines is necessary to achieve the purposes of this title.¹

(2) Extension of affordability restrictions

If the plan of action proposes to extend the low-income affordability restrictions of the housing in accordance with section 4109 of this title or transfer the housing to a qualified purchaser in accordance with section 4110 of this title, the plan shall include—

(A) a description of any proposed changes in the status or terms of the mortgage or regulatory agreement;

(B) a description of the Federal incentives requested (including cash flow projections), and analyses of how the owner will address any physical or financial deficiencies and maintain the low-income affordability restrictions of the housing;

(C) a description of any assistance from State or local government agencies, including low-income housing tax credits, that have been offered to the owner or purchaser or for which the owner or purchaser has applied or intends to apply;

(D) a description of any transfer of the property, including the identity of the transferee and a copy of any documents of sale; and

(E) any other information that the Secretary determines is necessary to achieve the purposes of this title.¹

(c) Revisions

An owner may from time to time revise and amend the plan of action as may be necessary to obtain approval of the plan under this subchapter. The owner shall submit any revision to the Secretary and to the tenants of the housing and make available to the Secretary and tenants all documentation supporting any revision, but not including any information that the Secretary determines is proprietary information.

(Pub. L. 100-242, title II, §217, as added Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4254; amended Pub. L. 102-550, title III, §304, Oct. 28, 1992, 106 Stat. 3763.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a)(2) and (b)(1)(F), (2)(E), 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.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102-550, §304(a), inserted after second sentence “Each owner and the Secretary shall also, upon request, make available to the tenants of the housing and to the office of the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located all documentation supporting the plan of action, but not including any information that the Secretary determines is proprietary information.”

Subsec. (c). Pub. L. 102-550, §304(b), inserted before period at end “and make available to the Secretary and tenants all documentation supporting any revision, but not including any information that the Secretary determines is proprietary information”.

§ 4108. Prepayment and voluntary termination

(a) Approval

The Secretary may approve a plan of action that provides for termination of the low-income affordability restrictions through prepayment of the mortgage or voluntary termination of the mortgage insurance contract only upon a written finding that—

(1) implementation of the plan of action will not—

(A) materially increase economic hardship for current tenants, and will not in any event result in (i) a monthly rental payment by any current tenant that exceeds 30 percent 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 includes 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 receipt 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 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

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

² See References in Text note below.