

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 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

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