

price not greater than the preservation equity of the housing;

(B) pay the debt service on the federally-assisted mortgage covering the housing;

(C) pay the debt service on any loan for the rehabilitation of the housing;

(D) meet project operating expenses and establish adequate reserves for the housing, and in the case of a priority purchaser, meet project oversight costs;

(E) receive a distribution equal to an 8 percent annual return on any actual cash investment (from sources other than assistance provided under this title<sup>2</sup>) made to acquire or rehabilitate the project;

(F) in the case of a priority purchaser, receive a reimbursement of all reasonable transaction expenses associated with the acquisition, loan closing, and implementation of an approved plan of action; and

(G) in the case of an approved resident homeownership program, cover the costs of training for the resident council, homeownership counseling and training, the fees for the nonprofit entity or public agency working with the resident council and costs related to relocation of tenants who elect to move.

### (3) Incentives

#### (A) In general

For all qualified purchasers of housing under this subsection, the Secretary may provide assistance for an approved plan of action in the form of 1 or more of the incentives authorized under section 4109(b) of this title, except that the incentive under such section 4109(b)(7) of this title may include an acquisition loan under section 1715z-6(f)<sup>2</sup> of this title.

#### (B) Priority purchasers

Where the qualified purchaser is a priority purchaser, the Secretary may provide assistance for an approved plan of action (in the form of a grant) for each unit in the housing in an amount, as determined by the Secretary, that does not exceed the present value of the total of the projected published fair market rentals for existing housing (established by the Secretary under section 1437f(c) of title 42) for the next 10 years (or such longer period if additional assistance is necessary to cover the costs referred to in paragraph (2)).

(Pub. L. 100-242, title II, § 220, as added Pub. L. 101-625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4257; amended Pub. L. 102-550, title III, § 307, Oct. 28, 1992, 106 Stat. 3764.)

### Editorial Notes

#### REFERENCES IN TEXT

This title, referred to in subsec. (d)(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

<sup>2</sup> See References in Text note below.

this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

Section 1715z-6(f) of this title, referred to in subsec. (d)(3)(A), was repealed by Pub. L. 104-204, title II, Sept. 26, 1996, 110 Stat. 2885.

#### AMENDMENTS

1992—Subsec. (d)(2). Pub. L. 102-550, § 307(a), inserted “(including all priority purchasers other than resident councils acquiring under the homeownership program authorized by section 4116 of this title)” after “purchasers”.

Subsec. (d)(2)(D). Pub. L. 102-550, § 307(b), inserted before semicolon at end “, and in the case of a priority purchaser, meet project oversight costs”.

Subsec. (d)(2)(E), (F). Pub. L. 102-550, § 307(c), (d), amended subpars. (E) and (F) generally. Prior to amendment, subpars. (E) and (F) read as follows:

“(E) receive an adequate return (as determined by the Secretary) on any actual cash investment made to acquire the project;

“(F) in the case of a priority purchaser, receive an adequate reimbursement for transaction expenses relating to acquisition of the housing, subject to approval by the Secretary; and”.

Subsec. (d)(3)(A). Pub. L. 102-550, § 307(e), struck out “any residual receipts for the housing transferred [sic] to the selling owner shall be deducted from the sale price of the housing under subsection (b) or (c) of this section and” after “except that”.

### § 4111. Mandatory sale for housing exceeding Federal cost limits

#### (a) In general

With respect to any eligible low-income housing for which the aggregate preservation rents determined under section 4104(b) of this title exceed the Federal cost limit, the owner shall offer the housing for sale to qualified purchasers as provided in this section.

#### (b) Right of first refusal to priority purchasers

##### (1) Duration and required sale

For the 12-month period beginning upon the receipt by the Secretary of the second notice of intent under section 4106(d) of this title with respect to such housing, the owner of the housing may offer to sell and may sell the housing only to priority purchasers. If, during such period, a priority purchaser makes a bona fide offer to purchase the housing for a sale price not less than the preservation value of the housing determined under section 4103(b)(2) of this title, the Secretary shall require the owner to sell the housing pursuant to such offer.

##### (2) Expression of interest

During the period under paragraph (1), priority purchasers shall have the opportunity to submit written notice to the owner and the Secretary stating their interest in acquiring the housing. Such written notice shall be in such form and include such information as the Secretary may prescribe.

##### (3) Information from Secretary

Not later than 30 days after receipt of any notice under paragraph (2), the Secretary shall provide such purchaser with information on the assistance available from the Federal Government to facilitate a transfer and the owner shall provide such purchaser with appropriate information on the housing, as determined by the Secretary.

**(c) Right of refusal for other qualified purchasers**

If no bona fide offer to purchase any eligible low-income housing subject to this section that meets the requirements of subsection (b) is made during the period under such subsection, during the 3-month period beginning upon the expiration of the 12-month period under subsection (b)(1), the owner of the housing may offer to sell and may sell the housing only to qualified purchasers. If, during such period, a qualified purchaser makes a bona fide offer to purchase the housing for a sale price not less than the preservation value of the housing determined under section 4103(b)(2) of this title, the Secretary shall require the owner to sell the housing pursuant to such offer.

**(d) Assistance**

**(1) Federal cost limit**

Subject to the availability of amounts approved in appropriations Acts, the Secretary shall, for approvable plans of action, provide to qualified purchasers assistance under section 1437f of title 42 sufficient to produce a gross income potential equal to the amount determined by multiplying 120 percent of the prevailing rents in the relevant local market area in which the housing is located by the number of units in the project (according to appropriate unit sizes), and any other incentives authorized under section 4109(b) of this title that would have been provided to a qualified purchaser under section 4110 of this title.

**(2) Additional assistance**

From amounts made available under section 4124(b) of this title, the Secretary may make grants to assist in the completion of sales and transfers under this section to any qualified purchasers. Any grant under this paragraph shall be in an amount not exceeding the difference between the preservation value for the housing (determined under section 4103(b)(2) of this title) and the level of assistance under paragraph (1) of this subsection.

**(3) Securing State and local funding**

The Secretary shall assist any qualified purchaser of such housing in securing funding and other assistance (including tax and assessment reductions) from State and local governments to facilitate a sale under this section.

(Pub. L. 100-242, title II, § 221, as added Pub. L. 101-625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4259; amended Pub. L. 102-550, title III, § 317(a)(3), Oct. 28, 1992, 106 Stat. 3772.)

**Editorial Notes**

AMENDMENTS

1992—Subsec. (c). Pub. L. 102-550 substituted “than” for “that” before “the preservation”.

**§ 4112. Criteria for approval of plan of action involving incentives**

**(a) In general**

The Secretary may approve a plan of action for extension of the low-income affordability restrictions on any eligible low-income housing or

transfer the housing to a qualified purchaser (other than a resident council) only upon finding that—

(1) due diligence has been given to ensuring that the package of incentives is, for the Federal Government, the least costly alternative that is consistent with the full achievement of the purposes of this title;<sup>1</sup>

(2) binding commitments have been made to ensure that—

(A) the housing will be retained as housing affordable for very low-income families or persons, low-income families or persons, and moderate-income families or persons for the remaining useful life of such housing (as determined under subsection (c));

(B) throughout such period, adequate expenditures will be made for maintenance and operation of the housing and that the project meets housing standards established by the Secretary under subsection (d), as determined by inspections conducted under such subsection by the Secretary;

(C) current tenants will not be involuntarily displaced (except for good cause);

(D) any increase in rent contributions for current tenants will be to a level that does not exceed 30 percent of the adjusted income of the tenant or the published existing fair market rent for comparable housing established under section 1437f(c) of title 42, whichever is lower, except that the rent contributions of any tenants occupying the housing at the time of any increase may not be reduced by reason of this subparagraph (except with respect to tenants receiving section 8 [42 U.S.C. 1437f] assistance in accordance with subparagraph (E)(ii) of this paragraph);

(E)(i) any resulting increase in rents for current tenants (except for increases made necessary by increased operating costs)—

(I) shall be phased in equally over a period of not less than 3 years, if such increase is 30 percent or more; and

(II) shall be limited to not more than 10 percent per year if such increase is more than 10 percent but less than 30 percent; and

(ii) assistance under section 1437f of title 42 shall be provided, to the extent available under appropriation Acts, if necessary to mitigate any adverse effect on current income-eligible very low- and low-income tenants; and<sup>2</sup>

(F)(i) rents for units becoming available to new tenants shall be at levels approved by the Secretary that will ensure, to the extent practicable, that the units will be available and affordable to the same proportions of very low-income families or persons, low-income families or persons, and moderate-income families or persons (including families or persons whose incomes are 95 percent or more of area median income) as resided in the housing as of January 1, 1987 (based on the area median income limits established by the Secretary in February 1987), or the

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

<sup>2</sup> So in original. The word “and” probably should not appear.