

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) 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 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

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

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 homeownership 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 judi-

cially 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

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

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.

(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.)

#### 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.

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