

§ 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
 - (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.)

Editorial Notes

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).”

Statutory Notes and Related SubsidiariesSTUDY OF PROJECTS ASSISTED UNDER FLEXIBLE
SUBSIDY PROGRAM

Pub. L. 102-550, title III, §318, Oct. 28, 1992, 106 Stat. 3772, directed the Secretary to conduct a study of certain housing projects assisted under 12 U.S.C. 1715z-1 or the proviso of 12 U.S.C. 1715(d)(5) and submit a report to the Congress regarding any findings and conclusions of the study not later than the expiration of the 1-year period beginning on Oct. 28, 1992.

§ 4110. Incentives for transfer to qualified purchasers**(a) In general**

With respect to any eligible low-income housing for which an owner has submitted a second notice of intent under section 4106(d) of this title to transfer the housing to a qualified purchaser, the owner shall offer the housing for transfer to qualified purchasers as provided in this section. The Secretary shall issue regulations describing the means by which potential qualified purchasers shall be notified of the

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

² See References in Text note below.

availability of the housing for sale. The Secretary shall take into account the Federal cost limits under section 4105(a) of this title for the housing when providing incentives under section 4109(b)(2) and (b)(3) of this title (pursuant to subsection (d)(3) of this section).

(b) Right of first offer to priority purchasers

(1) Negotiation period

For the 12-month period beginning on the receipt by the Secretary of a second notice of intent under section 4106(d) of this title with respect to such housing, the owner may offer to sell and negotiate a sale of the housing only with priority purchasers. The negotiated sale price may not exceed the preservation value of the housing determined under section 4103(b)(2) of this title. The owner or the purchaser shall submit a plan of action under section 4107 of this title for any sale under this subsection, which shall include any request for assistance under this section, upon the acceptance of any bona fide offer meeting the requirements of this paragraph.

(2) Expression of interest

During such period, priority purchasers may submit written notice to the Secretary stating their interest in acquiring the housing. Such notice shall be made in the form and include such information as the Secretary may prescribe.

(3) Information

Within 30 days of receipt of an expression of interest by a priority purchaser, 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 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 and accepted 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. The negotiated sale price may not exceed the preservation value of the housing determined under section 4103(b)(2) of this title. The owner or purchaser shall submit a plan of action under section 4107 of this title for any sale under this subsection, which shall include any request for assistance under this section, upon the acceptance of any bona fide offer meeting the requirements of this paragraph.¹

(d) Assistance

(1) Approval

If the qualified purchaser is a resident council, the Secretary may not approve a plan of action for assistance under this section unless the council's proposed resident homeowner-

ship program meets the requirements under section 4116 of this title. For all other qualified purchasers, the Secretary may not approve the plan unless the Secretary finds that the criteria for approval under section 4112 of this title have been satisfied.

(2) Amount

Subject to the availability of amounts approved in appropriations Acts, the Secretary shall, for approvable plans of action, provide assistance sufficient to enable qualified purchasers (including all priority purchasers other than resident councils acquiring under the homeownership program authorized by section 4116 of this title) to—

(A) acquire the eligible low-income housing from the current owner for a purchase 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 title²) 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)² 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

¹ So in original. Probably should be "subsection."

² See References in Text note below.

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 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.)