

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;¹

(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; and²

(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 date the plan of action is approved, whichever date results in the highest proportion of very low-income families, except that this limitation shall not prohibit a higher proportion of very low-income families from occupying the housing; and

(ii) in approving rents under this paragraph, the Secretary shall take into account any additional incentives provided under this subchapter;

(G) future rent adjustments shall be—

(i) made by applying an annual factor (to be determined by the Secretary) to the portion of rent attributable to operating expenses for the housing and, where the owner is a priority purchaser, to the portion of rent attributable to project oversight costs; and

(ii) subject to a procedure, established by the Secretary, for owners to apply for rent increases not adequately compensated by annual adjustment under clause (i), under which the Secretary may increase rents in excess of the amount determined under clause (i) only if the Secretary determines such increases are necessary to reflect extraordinary necessary expenses of owning and maintaining the housing; and

(H) any savings from reductions in operating expenses due to management efficiencies shall be deposited in project reserves for replacement and the owner shall have periodic access to such reserves, to the extent the Secretary determines that the level of reserves is adequate and that the housing is maintained in accordance with the standards established under subsection (d); and

(3) no incentives under section 4109 of this title (other than to purchasers under section 4110 of this title) may be provided until the Secretary determines the project meets housing standards under subsection (d), except that incentives under such section and other incentives designed to correct deficiencies in the project may be provided.

(b) Implementation

Any agreement to maintain the low-income affordability restrictions for the remaining useful life of the housing may be made through execution of a new regulatory agreement, modifications to the existing regulatory agreement or mortgage, or, in the case of the prepayment of a mortgage or voluntary termination of mortgage insurance, a recorded instrument.

¹ See References in Text note below.

² So in original. The word “and” probably should not appear.

(c) Determination of remaining useful life**(1) “Remaining useful life” defined**

For purposes of this title,¹ the term “remaining useful life” means, with respect to eligible low-income housing, the period during which the physical characteristics of the housing remain in a condition suitable for occupancy, assuming normal maintenance and repairs are made and major systems and capital components are replaced as becomes necessary.

(2) Standards

The Secretary shall, by rule under section 553 of title 5, establish standards for determining when the useful life of an eligible low-income housing project has expired. The determination shall be made on the record after opportunity for a hearing.

(3) Owner petition

The Secretary shall establish a procedure under which owners of eligible low-income housing may petition the Secretary for a determination that the useful life of such housing has expired. The procedure shall not permit such a petition before the expiration of the 50-year period beginning upon the approval of a plan of action under this subchapter with respect to such housing. In making a determination pursuant to a petition under this paragraph, the Secretary shall presume that the useful life of the housing has not expired, and the owner shall have the burden of proof in establishing such expiration. The Secretary may not determine that the useful life of any housing has expired if such determination results primarily from failure to make regular and reasonable repairs and replacement, as became necessary.

(4) Tenant and community comment and appeal

In making a determination regarding the useful life of any housing pursuant to a petition submitted under paragraph (3), the Secretary shall provide for comment by tenants of the housing and interested persons and organizations with respect to the petition. The Secretary shall also provide the tenants and interested persons and organizations with an opportunity to appeal a determination under this subsection.

(d) Housing standards**(1) Establishment and inspection**

The Secretary shall, by regulation, establish standards regarding the physical condition in which any eligible low income housing project receiving incentives under this subchapter shall be maintained. The Secretary shall inspect each such project not less than annually to ensure that the project is in compliance with such standards.

(2) Sanctions**(A) In general**

The Secretary shall take any action appropriate to require the owner of any housing not in compliance with such standards to bring such housing into compliance with the standards, including—

(i) directing the mortgagee, with respect to an equity take-out loan under section 1715z-6(f)¹ of this title, to withhold the disbursement to the owner of any escrowed loan proceeds and requiring that such proceeds be used for repair of the housing; and

(ii) reduce the amount of the annual authorized return, as determined by the Secretary, for the period ending upon a determination by the Secretary that the project is in compliance with the standards and requiring that such amounts be used for repair.

(B) Continued compliance

To ensure continued compliance with the standards for a project subject to any action under subparagraph (A), the Secretary may also limit access of the owner to such amounts and use of such amounts for not more than the 2-year period beginning upon the determination that the project is in compliance with the standards.

(C) Removal of assistance

If, upon inspection, the Secretary determines that any eligible low income housing project has failed to comply with the standards established under this subsection for 2 consecutive years, the Secretary may take 1 or more of the following actions:

(i) Subject to availability of amounts provided in appropriations Acts, provide assistance under sections 1437f(b) and 1437f(o) of title 42 (other than project-based assistance attached to the housing) for any tenant eligible for such assistance who desires to terminate occupancy in the housing. For each unit in the housing vacated pursuant to the provision of assistance under this clause, the Secretary may, notwithstanding any other law or contract for assistance, cancel the provision of project-based assistance attached to the housing for 1 dwelling unit, if the housing is receiving such assistance.

(ii) In the case of housing for which an equity take-out loan has been made under section 1715z-6(f)¹ of this title, declare such loan to be in default and accelerate the maturity date of the loan.

(iii) Declare any rehabilitation loan insured or provided by the Secretary (with respect to the housing) to be in default and accelerate the maturity date of the loan.

(iv) Suspend payments under or terminate any contract for project-based rental assistance under section 1437f of title 42.

(v) Take any other action authorized by law or the project regulatory agreement to ensure that the housing will be brought into compliance with the standards established under this subsection.

(e) Distribution and residual receipts**(1) Authority**

After December 4, 2015, the owner of a property subject to a plan of action or use agreement pursuant to this section shall be entitled to distribute—

(A) annually, all surplus cash generated by the property, but only if the owner is in ma-

terial compliance with such use agreement including compliance with prevailing physical condition standards established by the Secretary; and

(B) notwithstanding any conflicting provision in such use agreement, any funds accumulated in a residual receipts account, but only if the owner is in material compliance with such use agreement and has completed, or set aside sufficient funds for completion of, any capital repairs identified by the most recent third party capital needs assessment.

(2) Operation of property

An owner that distributes any amounts pursuant to paragraph (1) shall—

(A) continue to operate the property in accordance with the affordability provisions of the use agreement for the property for the remaining useful life of the property;

(B) as required by the plan of action for the property, continue to renew or extend any project-based rental assistance contract for a term of not less than 20 years; and

(C) if the owner has an existing multi-year project-based rental assistance contract for less than 20 years, have the option to extend the contract to a 20-year term.

(Pub. L. 100-242, title II, § 222, as added Pub. L. 101-625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4260; amended Pub. L. 102-550, title III, §§ 308, 317(a)(4), Oct. 28, 1992, 106 Stat. 3764, 3772; Pub. L. 103-327, title II, Sept. 28, 1994, 108 Stat. 2316; Pub. L. 114-94, div. G, title LXXVII, § 77001, Dec. 4, 2015, 129 Stat. 1790.)

Editorial Notes

REFERENCES IN TEXT

This title, referred to in subssecs. (a)(1) and (c)(1), 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)(2)(A)(i), (C)(ii), was repealed by Pub. L. 104-204, title II, Sept. 26, 1996, 110 Stat. 2885.

CODIFICATION

Amendment by Pub. L. 103-327 is based on section 601(a)-(d) of title VI of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103-327.

AMENDMENTS

2015—Subsec. (e). Pub. L. 114-94 added subsec. (e).

1994—Subsec. (a)(2)(D). Pub. L. 103-327 temporarily amended subpar. (D) to read as follows: “monthly rent contributions by current and future tenants, including tenants receiving assistance under section 1437f of title 42, shall not exceed the lesser of—

“(i) 30 percent of the adjusted income of the tenant;

or

“(ii) 90 percent of the actual rent paid for a comparable unit in comparable unassisted housing in the market area in which the eligible low-income housing is located;

except that the rent contributions of tenants (other than tenants receiving assistance under section 1437f of title 42) occupying the housing at the time of any increase may not be reduced under this subparagraph.”

See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (a)(2)(E)(ii). Pub. L. 103-327, which directed the temporary amendment of par. (1)(E)(ii) by substituting a period for “; and” and inserting at end “For any section 8 assistance provided under this subchapter, whether through the extension of an existing contract or the provision of a new contract for assistance, the Secretary shall have the discretion to adjust contract rents within the limits established under section 4105 of this title, irrespective of the comparable rent requirements set forth in section 1437f(c) of title 42. Notwithstanding any provision of law to the contrary, any conflict pertaining to the computation of contract rents arising from differences between this subchapter and section 1437f of title 42 shall, subject to the prior approval of the Secretary, be resolved in favor of this subchapter; and”, was executed by making the amendments to par. (2)(E)(ii) to reflect the probable intent of Congress. See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (a)(2)(E)(iii). Pub. L. 103-327 temporarily added cl. (iii) which read as follows:

“(iii)(I) to retain the tenant occupancy profile required by subparagraph (F)(i), tenants that are determined by the Secretary to be low-income tenants at initial income certification upon occupancy, or at the time of implementation of a plan of action (whichever occurs last), shall pay for rent an amount that is not less than the lesser of—

“(aa) 30 percent of 45 percent of median income for the area (as determined by the Secretary and adjusted for family size); or

“(bb) 90 percent of the actual rent paid for a comparable unit in comparable unassisted housing in the market area in which the eligible low-income housing is located.

Subject to subclause (II), payment of this minimum rent shall be a condition of continued occupancy and eligibility for section 8 assistance.

“(II) Notwithstanding the rents required under subclause (I), a tenant who occupies a unit designated for occupancy by low-income persons and families, and who becomes a very low-income tenant, shall be provided with the next available unit designated for occupancy by very low-income persons and families, and, until such unit becomes available, shall pay for rent not more than the amount chargeable as rent under section 1437a(a) of title 42. Such tenant shall not be evicted for nonpayment of rent if the rent amounts set forth in this subclause are paid. The costs resulting from the difference between rents required under subclause (I) and the rents permitted under this subclause shall be incorporated into the section 8 contract for units designated for occupancy by low-income persons or families; and”. See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (a)(2)(F). Pub. L. 103-327, which directed the temporary amendment of par. (1)(F) by substituting “to the extent practicable, the units becoming available to new tenants shall be” for “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” in cl. (i), adding cl. (ii), and redesignating former cl. (ii) as (iii), was executed by making the amendments to par. (2)(F) to reflect the probable intent of Congress. Cl. (ii) read as follows: “in order to maintain the proportions of very low- and low-income families and persons required by clause (i), owners shall be required to apply any required Federal preference rules only with respect to tenants within each low- or very low-income category, in accordance with the approved tenant profile; and”. See Effective and Termination Dates of 1994 Amendment note below.

1992—Subsec. (a)(2)(A). Pub. L. 102-550, § 317(a)(4)(A), substituted “low-income” for “low income” after “families or persons,”.

Subsec. (a)(2)(G)(i). Pub. L. 102-550, § 308(b), substituted “, where the owner is a priority purchaser, to

the portion of rent attributable to project oversight costs” for “by making changes in the annual authorized return under section 4104 of this title”.

Subsec. (c)(2). Pub. L. 102-550, §317(a)(4)(B), substituted “a hearing” for “an hearing”.

Subsec. (d)(2)(B). Pub. L. 102-550, §317(a)(4)(C), inserted “the” after “that”.

Subsec. (d)(2)(C)(ii). Pub. L. 102-550, §317(a)(4)(D), substituted “in default” for “default”.

Subsec. (e). Pub. L. 102-550, §308(a), struck out subsec. (e) which read as follows: “(e) WINDFALL PROFITS.—The Secretary shall submit a report to the Congress not later than 90 days after November 28, 1990, evaluating the availability, quality, and reliability of data to measure the accessibility of decent, affordable housing in all areas where properties are eligible to submit a notice of intent to prepay under section 4102 of this title. To prevent payment of windfall profits, the Secretary may make available incentive payments under section 4109 or 4110 of this title only to owners in those rental markets where there is an inadequate supply of decent, affordable housing, if the Secretary determines that adequate data can be obtained to permit objective and fair implementation or where necessary to accomplish the other public policy objectives under this chapter. The Secretary shall implement this subsection in a manner consistent with the process established by this chapter.”

Statutory Notes and Related Subsidiaries

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Pub. L. 103-327, title II, Sept. 28, 1994, 108 Stat. 2316, provided in part that: “Section 601 [amending this section and section 4119 of this title and enacting provisions set out below] of title VI of S. 2281 (103d Cong., 2d Sess[.]), as reported to the Senate on July 13 (legislative day, July 11), 1994 (S. Rep. 103-307), is hereby incorporated into this Act [Pub. L. 103-327], and such section 601 is deemed enacted into law upon enactment of this Act [Sept. 28, 1994]: *Provided*, That the provisions of such section 601 shall be effective only during fiscal year 1995.”

Section 601(f) of title VI of S. 2281, One-Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103-327, title II [title VI, §601(f)], Sept. 28, 1994, 108 Stat. 2316, provided in part, that:

“(1) IN GENERAL.—Except as provided in paragraph (2), this section [amending this section and section 4119 of this title] shall take effect on the date of enactment of this Act [Sept. 28, 1994].

“(2) EXCEPTION.—If an owner of eligible low-income housing has a plan of action that has been approved by the Secretary and that is being implemented as of the date of enactment of this Act [Sept. 28, 1994], subsections (a), (b), (c), and (d) [amending this section] shall not apply to current tenants of such housing until the first date on which the next annual rent adjustments are made following the date of enactment of this Act.”

§ 4113. Assistance for displaced tenants

(a) Section 1437f assistance

Each low-income family that is displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low income housing shall, subject to the availability or¹ amounts provided under appropriations Acts, receive tenant-based assistance under section 1437f of title 42. To the extent sufficient amounts are made available under appropriations Acts, in each fiscal year the Secretary shall reserve from amounts made available under section 4124(a) of this title or, if nec-

essary, under section 1437c(c) of title 42, such amounts as the Secretary determines are necessary to provide assistance payments for low-income families displaced during the fiscal year.

(b) Relocation assistance

The Secretary shall coordinate with public housing agencies to ensure that any very low- or low-income family displaced from eligible low-income housing as the result of the prepayment of the mortgage (or termination of the mortgage insurance contract) on such housing is able to acquire a suitable, affordable dwelling unit in the area of the housing from which the family is displaced. The Secretary shall require the owner of such housing to pay 50 percent of the moving expenses of each family relocated, except that such percentage shall be increased to the extent that State or local law of general applicability requires a higher payment by the owner.

(c) Continued occupancy

(1) In general

Each owner that prepays the mortgage (or terminates the mortgage insurance contract) on eligible low-income housing shall, as provided in paragraph (3), allow the tenants occupying units in such housing on the date of the submission of notice of intent under section 4102 of this title to remain in the housing for a period of 3 years, at rent levels (except for increases necessary for increased operating costs) existing at the time of prepayment.

(2) Provision of assistance by owner

In any case in which the Secretary requires an owner to allow tenants to occupy units under paragraph (1), an owner may fulfill the requirements of such paragraph by providing such assistance necessary for the tenant to rent a decent, safe, and sanitary unit in another project for the same period and at a rental cost to the tenant not in excess of the rental amount the tenant would have been required to pay in the housing of the owner, except that the tenant must freely agree to waive the right to occupy the unit in the owner's housing.

(3) Applicability to low-vacancy areas and special needs tenants

The provisions of this subsection shall apply only to—

(A) eligible low income housing located in a low-vacancy area (as such term is defined by the Secretary); and

(B) tenants in any eligible low-income housing in any area who have special needs restricting their ability to relocate (including elderly tenants and tenants with disabilities), as determined under regulations established by the Secretary.

(d) Required acceptance of section 1437f assistance

An owner who prepays the mortgage (or terminates the mortgage insurance contract) on eligible low-income housing and maintains the housing for residential rental occupancy may not refuse to rent, refuse to negotiate for the rental of, or otherwise make unavailable or deny the rent of a dwelling unit in such property to any

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