(1) the amount of any actual damages awarded;

(2) the frequency and persistence of failures of compliance;

(3) the resources of the depository institution;

(4) the number of persons adversely affected; and

(5) the extent to which the failure of compliance was intentional.

**(c) Bona fide errors**

**(1) General rule**

A depository institution may not be held liable in any action brought under this section for a violation of this chapter if the depository institution demonstrates by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

**(2) Examples**

Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a depository institution's obligation under this chapter is not a bona fide error.

**(d) Jurisdiction**

Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year after the date of the occurrence of the violation involved.

**(e) Reliance on Board rulings**

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board of Governors of the Federal Reserve System, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

**(f) Authority to establish rules regarding losses and liability among depository institutions**

The Board is authorized to impose on or allocate among depository institutions the risks of loss and liability in connection with any aspect of the payment system, including the receipt, payment, collection, or clearing of checks, and any related function of the payment system with respect to checks. Liability under this subsection shall not exceed the amount of the check giving rise to the loss or liability, and, where there is bad faith, other damages, if any, suffered as a proximate consequence of any act or omission giving rise to the loss or liability.

(Pub. L. 100–86, title VI, § 611, Aug. 10, 1987, 101 Stat. 650.)

EFFECTIVE DATE

Section effective Sept. 1, 1988, see section 613(b) of Pub. L. 100–86, set out as a note under section 4001 of this title.

## CHAPTER 42—LOW-INCOME HOUSING PRESERVATION AND RESIDENT HOMEOWNERSHIP

SUBCHAPTER I—PREPAYMENT OF MORTGAGES INSURED UNDER NATIONAL HOUSING ACT

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CODIFICATION

Subtitles A and B of the Low-Income Housing Preservation and Resident Homeownership Act of 1990, Pub. L. 100–242, title II, as revised generally by Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4249, comprise subchapter I of this chapter. Prior to the general revision by Pub. L. 101–625 subtitles A and B (§§ 201–235) of the Emergency Low Income Housing Preservation Act of 1987, Pub. L. 100–242, title II, Feb. 5, 1988, 101 Stat. 1877, as amended by Pub. L. 100–628, title X, §§ 1021–1027, Nov. 7, 1988, 102 Stat. 3270, 3271; Pub. L. 101–235, title II, §§ 201, 202(a)–(c), 203(b), Dec. 15, 1989, 103 Stat. 2037, 2038; Pub. L. 101–402, § 1, Oct. 1, 1990, 104 Stat. 866; Pub. L. 101–494, §§ 1(c), 2(a), Oct. 31, 1990, 104 Stat. 1185, were set out as a note under section 1715*l* of this title and amended section 1715z–6 of this title.

Subtitle C of the Low-Income Housing Preservation and Resident Homeownership Act of 1990, Pub. L. 100–242, title II, as added by Pub. L. 102–550, title III, § 312, Oct. 28, 1992, 106 Stat. 3765, comprises subchapter II of this chapter. Another subtitle C of title II of Pub. L. 100–242 amended sections 1472, 1485, and 1487 of Title 42, The Public Health and Welfare.

SUBCHAPTER I—PREPAYMENT OF MORTGAGES INSURED UNDER NATIONAL HOUSING ACT

### § 4101. General prepayment limitation

#### (a) Prepayment and termination

An owner of eligible low-income housing may prepay, and a mortgagee may accept prepayment of, a mortgage on such housing only in accordance with a plan of action approved by the Secretary under this subchapter or in accordance with section 4114 of this title. An insurance contract with respect to eligible low-income housing may be terminated pursuant to section 1715t of this title only in accordance with a plan of action approved by the Secretary under this subchapter or in accordance with section 4114 of this title.

#### (b) Foreclosure

A mortgagee may foreclose the mortgage on, or acquire by deed in lieu of foreclosure, any eligible low-income housing project only if the mortgagee also conveys title to the project to the Secretary in connection with a claim for insurance benefits.

#### (c) Effect of unauthorized prepayment

Any prepayment of a mortgage on eligible low-income housing or termination of the mortgage insurance on such housing not in compliance with the provisions of this subchapter shall be null and void and any low-income affordability restrictions on the housing shall continue to apply to the housing.

(Pub. L. 100–242, title II, § 211, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4249.)

EFFECTIVE DATE

Section 605 of Pub. L. 101–625 provided that: ''This subtitle [subtitle A (§§ 601–605) of title VI of Pub. L. 101–625, enacting this chapter, amending sections 1715z–6 and 1715z–15 of this title and section 1437f of Title 42, The Public Health and Welfare, and enacting provisions set out below] shall take effect on the date of the enactment of this Act [Nov. 28, 1990].''

SHORT TITLE

Section 201 of title II of Pub. L. 100–242, as added by Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4249, provided that: ''This title [enacting this chapter, amending section 1715z–15 of this title and sections 1437f, 1472, 1485, and 1487 of Title 42, The Public Health and Welfare, and enacting provisions set out below] may be cited as the 'Low-Income Housing Preservation and Resident Homeownership Act of 1990'.''

APPLICABILITY

Section 235 of Pub. L. 100–242, as added by Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4274, provided that: ''Subject to section 605 of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, set out above], the requirements of this subtitle [subtitle B (§§ 211–235) of title II of Pub. L. 100–242, enacting this subchapter] shall apply to any project that is eligible low-income housing on or after November 1, 1987.''

REGULATIONS

Pub. L. 102–550, title III, § 332, Oct. 28, 1992, 106 Stat. 3773, provided that: ''Except as otherwise provided in this title [enacting sections 4141 to 4147 of this title, amending sections 1715z–1, 1715z–6, 4103, 4105 to 4112, 4116, 4119, 4121, 4122, 4124, and 4125 of this title, enacting provisions set out as notes under this section and sections 1715z–6, 4109, and 4117 of this title, and amending provisions set out as a note under this section], the Secretary of Housing and Urban Development shall issue interim regulations implementing this title and the amendments made by this title not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], which shall take effect upon issuance. The Secretary shall issue final regulations implementing this title and the amendments made by this title after notice and opportunity for public comment regarding the interim regulations, pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment shall not be less than 60 days, and the final regulations shall be issued not later than the expiration of the 60-day period beginning upon the conclusion of the comment period and shall take effect upon issuance.''

LOW-INCOME HOUSING PRESERVATION

Pub. L. 104–204, title II, Sept. 26, 1996, 110 Stat. 2883, provided in part: ''That of the total amount provided under this head, $350,000,000 shall be available for use in conjunction with properties that are eligible for assistance under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) [see Short Title note above] or the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA) [see Codification note set out preceding this section], of which $75,000,000 shall be available for obligation until March 1, 1997 for projects (1) that are subject to a repayment or settlement agreement that was executed between the owner and the Secretary prior to September 1, 1995; (2) whose submissions were delayed as a result of their location in areas that were designated as a Federal disaster area in a Presidential Disaster Declaration; or (3) whose processing was, in fact or in practical effect, suspended, deferred, or interrupted for a period of twelve months or more because of differing interpretations, by the Secretary and an owner or by the Secretary and a State or local rent regulatory agency, concerning the timing of filing eligibility or the effect of a presumptively applicable State or local rent control law or regulation on the determination of preservation value under section 213 of LIHPRHA, as amended [12 U.S.C. 4103], if the owner of such project filed notice of intent to extend the low-income affordability restrictions of the housing, or transfer to a qualified purchaser who would extend such restrictions, on or before November 1, 1993; and of which, up to $100,000,000 may be used for rental assistance to prevent displacement of families residing in projects whose owners prepay their mortgages; and the balance of which shall be available from the effective date of this Act [Sept. 26, 1996] for sales to preferred priority purchasers: *Provided further*, That with the exception of projects described in clauses (1), (2), or (3) of the preceding proviso, the Secretary shall, notwithstanding any other provision of law, suspend further processing of preservation applications which have not heretofore received approval of a plan of action: *Provided further*, That $150,000,000 of amounts recaptured from interest reduction payment contracts for section 236 [12 U.S.C. 1715z–1] projects whose owners prepay their mortgages during fiscal year 1997 shall be rescinded: *Provided further*, That an owner of eligible low-income housing may prepay the mortgage or request voluntary termination of a mortgage insurance contract, so long as said owner agrees not to raise rents for sixty days after such prepayment: *Provided further*, That such developments have been determined to have preservation equity at least equal to the lesser of $5,000 per unit or $500,000 per project or the equivalent of eight times the most recently published monthly fair market rent for the area in which the project is located as the appropriate unit size for all of the units in the eligible project: *Provided further*, That the Secretary may modify the regulatory agreement to permit own-

ers and priority purchasers to retain rental income in excess of the basic rental charge in projects assisted under section 236 of the National Housing Act, for the purpose of preserving the low- and moderate-income character of the housing: *Provided further*, That eligible low-income housing shall include properties meeting the requirements of this paragraph with mortgages that are held by a State agency as a result of a sale by the Secretary without insurance, which immediately before the sale would have been eligible low-income housing under LIHPRHA: *Provided further*, That notwithstanding any other provision of law, subject to the availability of appropriated funds, each low-income family, and moderate-income family who is elderly or disabled or is residing in a low-vacancy area, residing in the housing on the date of prepayment or voluntary termination, and whose rent, as a result of a rent increase occurring no later than one year after the date of the prepayment, exceeds 30 percent of adjusted income, shall be offered tenant-based assistance in accordance with section 8 [42 U.S.C. 1437f] or any successor program, under which the family shall pay no less for rent than it paid on such date: *Provided further*, That any family receiving tenant-based assistance under the preceding proviso may elect (1) to remain in the unit of the housing and if the rent exceeds the fair market rent or payment standard, as applicable, the rent shall be deemed to be the applicable standard, so long as the administering public housing agency finds that the rent is reasonable in comparison with rents charged for comparable unassisted housing units in the market or (2) to move from the housing and the rent will be subject to the fair market rent of the payment standard, as applicable, under existing program rules and procedures: *Provided further*, That the tenant-based assistance made available under the preceding two provisos are in lieu of benefits provided in subsections [sic] 223(b), (c), and (d) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4113(b), (c), (d)]: *Provided further*, That any sales shall be funded using the capital grant available under section 220(d)(3)(A) of LIHPRHA [12 U.S.C. 4110(d)(3)(A)]: *Provided further*, That any extensions shall be funded using a non-interest-bearing capital (direct) loan by the Secretary not in excess of the amount of the cost of rehabilitation approved in the plan of action plus 65 percent of the property's preservation equity and under such other terms and conditions as the Secretary may prescribe: *Provided further*, That any capital grant shall be limited to seven times, and any capital loan limited to six times, the annual fair market rent for the project, as determined using the fair market rent for fiscal year 1997 for the area in which the project is located, using the appropriate apartment sizes and mix in the eligible project, except where, upon the request of a priority purchaser, the Secretary determines that a greater amount is necessary and appropriate to preserve low-income housing: *Provided further*, That section 241(f) of the National Housing Act [12 U.S.C. 1715z–6(f)] is repealed and insurance under such section shall not be offered as an incentive under LIHPRHA and ELIHPA: *Provided further*, That up to $10,000,000 of the amount of $350,000,000 made available by a preceding proviso in this paragraph may be used at the discretion of the Secretary to reimburse owners of eligible properties for which plans of action were submitted prior to the effective date of this Act [Sept. 26, 1996], but were not executed for lack of available funds, with such reimbursement available only for documented costs directly applicable to the preparation of the plan of action as determined by the Secretary, and shall be made available on terms and conditions to be established by the Secretary: *Provided further*, That, notwithstanding any other provision of law, a priority purchaser may utilize assistance under the HOME Investment Partnerships Act [42 U.S.C. 12721 et seq.] or the Low Income Housing Tax Credit [see 26 U.S.C. 42]: *Provided further*, That projects with approved plans of action which exceed the limitations on eligibility for funding imposed by this Act may submit revised plans of action which conform to these limitations by March 1, 1997, and retain the priority for funding otherwise applicable from the original date of approval of their plan of action, subject to securing any additional necessary funding commitments by August 1, 1997.''

Pub. L. 104–134, title I, §101(e) [title II], Apr. 26, 1996, 110 Stat. 1321–257, 1321–267; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327, provided in part that: ''Of the total amount provided under this head, $624,000,000, plus amounts recaptured from interest reduction payment contracts for section 236 [12 U.S.C. 1715z–1] projects whose owners prepay their mortgages during fiscal year 1996 (which amounts shall be transferred and merged with this account), shall be for use in conjunction with properties that are eligible for assistance under the Low Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) [see Short Title note above] or the Emergency Low-Income Housing Preservation Act of 1987 (ELIHPA) [see Codification note set out preceding this section]: *Provided*, That prior to August 15, 1996, funding to carry out plans of action shall be limited to sales of projects to non-profit organizations, tenant-sponsored organizations, and other priority purchasers: *Provided further*, That of the amount made available by this paragraph, up to $10,000,000 shall be available for preservation technical assistance grants pursuant to section 253 of the Housing and Community Development Act of 1987 [12 U.S.C. 4143], as amended: *Provided further*, That with respect to amounts made available by this paragraph, after August 15, 1996, if the Secretary determines that the demand for funding may exceed amounts available for such funding, the Secretary (1) may determine priorities for distributing available funds, including giving priority funding to tenants displaced due to mortgage prepayment and to projects that have not yet been funded but which have approved plans of action; and (2) may impose a temporary moratorium on applications by potential recipients of such funding: *Provided further*, That an owner of eligible low-income housing may prepay the mortgage or request voluntary termination of a mortgage insurance contract, so long as said owner agrees not to raise rents for sixty days after such prepayment: *Provided further*, That an owner of eligible low-income housing who has not timely filed a second notice under section 216(d) [12 U.S.C. 4106(d)] prior to the effective date of this Act [Apr. 26, 1996] may file such notice by April 15, 1996: *Provided further*, That such developments have been determined to have preservation equity at least equal to the lesser of $5,000 per unit or $500,000 per project or the equivalent of eight times the most recently published fair market rent for the area in which the project is located as the appropriate unit size for all of the units in the eligible project: *Provided further*, That the Secretary may modify the regulatory agreement to permit owners and priority purchasers to retain rental income in excess of the basic rental charge in projects assisted under section 236 of the National Housing Act [12 U.S.C. 1715z–1], for the purpose of preserving the low and moderate income character of the housing: *Provided further*, That the Secretary may give priority to funding and processing the following projects provided that the funding is obligated not later than September 15, 1996: (1) projects with approved plans of action to retain the housing that file a modified plan of action no later than August 15, 1996 to transfer the housing; (2) projects with approved plans of action that are subject to a repayment or settlement agreement that was executed between the owner and the Secretary prior to September 1, 1995; (3) projects for which submissions were delayed as a result of their location in areas that were designated as a Federal disaster area in a Presidential Disaster Declaration; and (4) projects whose processing was, in fact, or in practical effect, suspended, deferred, or interrupted for a period of nine months or more because of differing interpretations, by the Secretary and an owner concerning the time of the ability of an uninsured section 236 [12 U.S.C. 1715z–1] property to prepay or by the Secretary and a State or

local rent regulatory agency, concerning the effect of a presumptively applicable State or local rent control law or regulation on the determination of preservation value under section 213 of LIHPRHA, as amended [12 U.S.C. 4103], if the owner of such project filed notice of intent to extend the low-income affordability restrictions of the housing, or transfer to a qualified purchaser who would extend such restrictions, on or before November 1, 1993: *Provided further*, That eligible low-income housing shall include properties meeting the requirements of this paragraph with mortgages that are held by a State agency as a result of a sale by the Secretary without insurance, which immediately before the sale would have been eligible low-income housing under LIHPRHA: *Provided further*, That notwithstanding any other provision of law, subject to the availability of appropriated funds, each unassisted low-income family residing in the housing on the date of prepayment or voluntary termination, and whose rent, as a result of a rent increase occurring no later than one year after the date of the prepayment, exceeds 30 percent of adjusted income, shall be offered tenant-based assistance in accordance with section 8 [42 U.S.C. 1437f] or any successor program, under which the family shall pay no less for rent than it paid on such date: *Provided further*, That any family receiving tenant-based assistance under the preceding proviso may elect (1) to remain in the unit of the housing and if the rent exceeds the fair market rent or payment standard, as applicable, the rent shall be deemed to be the applicable standard, so long as the administering public housing agency finds that the rent is reasonable in comparison with rents charged for comparable unassisted housing units in the market or (2) to move from the housing and the rent will be subject to the fair market rent of the payment standard, as applicable, under existing program rules and procedures: *Provided further*, That rents and rent increases for tenants of projects for which plans of action are funded under section 220(d)(3)(B) of LIHPRHA [12 U.S.C. 4110(d)(3)(B)] shall be governed in accordance with the requirements of the program under which the first mortgage is insured or made (sections 236 or 221(d)(3) BMIR [12 U.S.C. 1715z–1, 4111(d)(3)], as appropriate): *Provided further*, That the immediately foregoing proviso shall apply hereafter to projects for which plans of action are to be funded under such section 220(d)(3)(B) [12 U.S.C. 4110(d)(3)(B)], and shall apply to any project that has been funded under such section starting one year after the date that such project was funded: *Provided further*, That up to $10,000,000 of the amount made available by this paragraph may be used at the discretion of the Secretary to reimburse owners of eligible properties for which plans of action were submitted prior to the effective date of this Act [Apr. 26, 1996], but were not executed for lack of available funds, with such reimbursement available only for documented costs directly applicable to the preparation of the plan of action as determined by the Secretary, and shall be made available on terms and conditions to be established by the Secretary: *Provided further*, That, notwithstanding any other provision of law, effective October 1, 1996, the Secretary shall suspend further processing of preservation applications which do not have approved plans of action.''

For similar provisions see Pub. L. 104–120, § 2(b), Mar. 28, 1996, 110 Stat. 834.

CONDITIONS OF ASSISTANCE

Pub. L. 102–550, title III, § 314, Oct. 28, 1992, 106 Stat. 3770, provided that:

''(a) ELIHPA OF 1987.—The Secretary may not require, as a condition of eligibility for or receipt of technical assistance made available under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Public Law 102–139 [105 Stat. 736, see Tables for classification]) (including any phase of a grant), that an applicant participate in a training program sponsored or conducted by the Department of Housing and Urban Development for acquisition of eligible low income housing under the provisions of the Emergency Low Income Housing Preservation Act of 1987 [see Codification note above], and may not provide any preference or priority for such assistance for any applicant based on participation in such a program.

''(b) LIHPRHA OF 1990.—The Secretary may require, as a condition of eligibility for or receipt of technical assistance made available under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Public Law 102–139) (including any phase of a grant), that an applicant participate in a training program sponsored or conducted by the Department of Housing and Urban Development for acquisition of eligible low-income housing under this title [enacting sections 4141 to 4147 of this title, amending sections 1715z–1, 1715z–6, 4103, 4105 to 4112, 4116, 4119, 4121, 4122, 4124, and 4125 of this title, enacting provisions set out as notes under this section and sections 1715z–6, 4109, and 4117 of this title, and amending provisions set out as a note under this section], and may provide preference or priority for such assistance for applicants based on participation in such a program, but only if the program is made available on a nationwide basis not later than March 1, 1993.''

TRANSITION PROVISIONS

Section 604 of Pub. L. 101–625, as amended by Pub. L. 102–550, title III, § 313, Oct. 28, 1992, 106 Stat. 3769, provided that:

''(a) HOUSING ELIGIBLE FOR ELECTION.—Any owner of housing that becomes eligible low-income housing before January 1, 1991 and who, before such date, filed a notice of intent under section 222 of the Emergency Low Income Housing Preservation Act of 1987 [formerly set out in a note under section 1715*l* of this title] (as such section existed before the date of the enactment of this Act [Nov. 28, 1990]) or under section 212 of such Act [12 U.S.C. 4102] (as amended by section 601(a)) may elect to be subject to (1) the provisions of such Act as in effect before the date of the enactment of this Act, or (2) the provisions of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [see Short Title note above], after the date of the enactment of this Act. The Secretary shall establish procedures for owners to make the election under the preceding sentence. An owner that elects to be subject to the provisions of the Emergency Low Income Housing Preservation Act of 1987 shall comply with section 212(b), section 217(a)(2), and section 217(c) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4102(b) and 4107(a)(2), (c)].

''(b) RIGHT OF CONVERSION TO NEW SYSTEM.—Any owner who has filed a plan of action on or before October 11, 1990, shall have the right to convert to the system of incentives and restrictions under this subtitle [subtitle A of title VI of Pub. L. 101–625, see Effective Date note above], with such adjustments as the Secretary determines to be appropriate to compensate for the value of any incentives the owner received under the Emergency Low Income Housing Preservation Act of 1987 [see Codification note preceding this section]. Owners filing plans after such date shall not have any right under this subsection.

''(c) EFFECTIVENESS OF REPEALED PROVISIONS.—Notwithstanding the amendment made by section 601(a) [enacting this chapter], the provisions of the Emergency Low Income Housing Preservation Act of 1987 (as in effect immediately before the date of the enactment of this Act [Nov. 28, 1990]) shall apply with respect to any housing for which the election under subsection (a)(1) is made. With respect to housing for which such an election is made—

''(1) in making incentives under section 224 of such Act [formerly set out in a note under section 1715*l* of this title] available to such housing, the Secretary—

''(A) shall, for approvable plans of action, provide assistance sufficient to enable a nonprofit organization that has purchased or will purchase an eligible low income housing project to meet project oversight costs; and

''(B) may not refuse to offer incentives referred to in such section to any owner who filed a notice of intent under section 222 of such Act before October 15, 1991, based solely on the date of filing of the plan of action for the housing; and

''(2) the provisions of section 233(1)(A)(i) of such Act [formerly set out in a note under section 1715*l* of this title] shall not apply, and the term 'eligible low income housing' shall, for purposes of such Act, shall [sic] include housing financed by a loan or mortgage that is insured or held by the Secretary or a State or State agency under section 221(d)(3) of the National Housing Act [12 U.S.C. 1715*l*(d)(3)] and receiving loan management assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] due to a conversion from section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s].

''(d) REGULATIONS.—Not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Nov. 28, 1990], the Secretary of Housing and Urban Development shall, subject to the provisions of section 553 of title 5, United States Code, publish proposed rules to implement this subtitle and the amendments made by this subtitle. Not later than 45 days after the expiration of the period under the preceding sentence the Secretary shall issue interim or final rules to implement such provisions.''

### § 4102. Notice of intent

#### (a) Filing with Secretary

An owner of eligible low-income housing that intends to terminate the low-income affordability restrictions through prepayment or voluntary termination in accordance with section 4108 of this title, extend the low-income affordability restrictions of the housing in accordance with section 4109 of this title, or transfer the housing to a qualified purchaser in accordance with section 4110 of this title, shall file with the Secretary a notice indicating such intent in the form and manner as the Secretary shall prescribe.

#### (b) Filing with State or local government, tenants, and mortgagee

The owner, upon filing a notice of intent under this section, shall simultaneously file the notice of intent with the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located and with the mortgagee, and shall inform the tenants of the housing of the filing.

#### (c) Ineligibility for filing

An owner shall not be eligible to file a notice of intent under this section if the mortgage covering the housing—

(1) falls into default on or after November 28, 1990; or

(2)(A) fell into default before, but is current as of, November 28, 1990; and

(B) the owner does not agree to recompense the appropriate Insurance Fund, in the amount the Secretary determines appropriate, for any losses sustained by the Fund as a result of any work-out or other arrangement agreed to by the Secretary and the owner with respect to the defaulted mortgage.

The Secretary shall carry out this subsection in a manner consistent with the provisions of section 1701z–11 of this title.

(Pub. L. 100–242, title II, § 212, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4249.)

### § 4103. Appraisal and preservation value of eligible low-income housing

#### (a) Appraisal

Upon receiving notice of intent regarding an eligible low-income housing project indicating an intent to extend the low-income affordability restrictions under section 4109 of this title or transfer the housing under section 4110 of this title, the Secretary shall provide for determination of the preservation value of the housing, as follows:

##### (1) Appraisers

The preservation value shall be determined by 2 independent appraisers, one of whom shall be selected by the Secretary and one of whom shall be selected by the owner. The appraisals shall be conducted not later than 4 months after filing the notice of intent under section 4102 of this title, and the owner shall submit to the Secretary the appraisal made by the owner's selected appraiser not later than 90 days after receipt of the notice under paragraph (2). If the 2 appraisers fail to agree on the preservation value, and the Secretary and the owner also fail to agree on the preservation value, the Secretary and the owner shall jointly select and jointly compensate a third appraiser, whose appraisal shall be binding on the parties.

##### (2) Notice

Not later than 30 days after the filing of a notice of intent to seek incentives under section 4109 of this title or transfer the property under section 4110 of this title, the Secretary shall provide written notice to the owner filing the notice of intent of—

(A) the need for the owner to acquire an appraisal of the property under paragraph (1);

(B) the rules and guidelines for such appraisals;

(C) the filing deadline for submission of the appraisal under paragraph (1);

(D) the need for an appraiser retained by the Secretary to inspect the housing and project financial records; and

(E) any delegation to the appropriate State agency by the Secretary of responsibilities regarding the appraisal.

##### (3) Timeliness

The Secretary may approve a plan of action to receive incentives under section 4109 or 4110 of this title only based upon an appraisal conducted in accordance with this subsection that is not more than 30 months old.

#### (b) Preservation value

For purposes of this subchapter, the preservation value of eligible low-income housing appraised under this section shall be—

(1) for purposes of extending the low-income affordability restrictions and receiving incentives under section 4109 of this title, the fair market value of the property based on the highest and best use of the property as residential rental housing; and

(2) for purposes of transferring the property under section 4110 or 4111 of this title, the fair

market value of the housing based on the highest and best use of the property.

**(c) Guidelines**

The Secretary shall provide written guidelines for appraisals of preservation value, which shall assume repayment of the existing federally assisted mortgage, termination of the existing low-income affordability restrictions, simultaneous termination of any Federal rental assistance, and costs of compliance with any State or local laws of general applicability. The guidelines may permit reliance upon assessments of rehabilitation needs and other conversion costs determined by an appropriate State agency, as determined by the Secretary. The guidelines shall instruct the appraiser to use the greater of actual project operating expenses at the time of the appraisal (based on the average of the actual project operating expenses during the preceding 3 years) or projected operating expenses after conversion in determining preservation value. The guidelines established by the Secretary shall not be inconsistent with customary appraisal standards. The guidelines shall also meet the following requirements:

**(1) Residential rental value**

In the case of preservation value determined under subsection (b)(1) of this section, the guidelines shall assume conversion of the housing to market-rate rental housing and shall establish methods for (A) determining rehabilitation expenditures that would be necessary to bring the housing up to quality standards required to attract and sustain a market rate tenancy upon conversion, and (B) assessing other costs that the owner could reasonably be expected to incur if the owner converted the property to market-rate multifamily rental housing.

**(2) Highest and best use value**

In the case of preservation value determined under subsection (b)(2) of this section, the guidelines shall assume conversion of the housing to highest and best use for the property and shall establish methods for (A) determining any rehabilitation expenditures that would be necessary to convert the housing to such use, and (B) assessing other costs that the owner could reasonably be expected to incur if the owner converted the property to its highest and best use.

(Pub. L. 100–242, title II, § 213, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4250; amended Pub. L. 102–550, title III, § 302, Oct. 28, 1992, 106 Stat. 3763.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–550 inserted ''simultaneous termination of any Federal rental assistance,'' before ''and costs'' in first sentence.

## § 4104. Annual authorized return and preservation rents

**(a) Annual authorized return**

Pursuant to an appraisal under section 4103 of this title, the Secretary shall determine the annual authorized return on the appraised housing, which shall be equal to 8 percent of the preservation equity (as such term is defined in section 4119(8) of this title).

**(b) Preservation rents**

The Secretary shall also determine the aggregate preservation rents under this subsection for each project appraised under section 4103 of this title. The aggregate preservation rents shall be used solely for the purposes of comparison with Federal cost limits under section 4105 of this title. Actual rents received by an owner (or a qualified purchaser) shall be determined pursuant to section 4109, 4110, or 4111 of this title. The aggregate preservation rents shall be established as follows:

**(1) Extension of affordability limits**

The aggregate preservation rent for purposes of receiving incentives pursuant to extension of the low-income affordability restrictions under section 4109 of this title shall be the gross potential income for the project, determined by the Secretary, that would be required to support the following costs:

(A) The annual authorized return determined under subsection (a) of this section.

(B) Debt service on any rehabilitation loan for the housing.

(C) Debt service on the federally-assisted mortgage for the housing.

(D) Project operating expenses.

(E) Adequate reserves.

**(2) Sale**

The aggregate preservation rent for purposes of receiving incentives pursuant to sale under section 4110 or 4111 of this title shall be the gross income for the project determined by the Secretary, that would be required to support the following costs:

(A) Debt service on the loan for acquisition of the housing.

(B) Debt service on any rehabilitation loan for the housing.

(C) Debt service on the federally-assisted mortgage for the housing.

(D) Project operating expenses.

(E) Adequate reserves.

(Pub. L. 100–242, title II, § 214, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4251.)

## § 4105. Federal cost limits and limitations on plans of action

**(a) Determination of relationship to Federal cost limits**

**(1) Initial determination**

For each eligible low-income housing project appraised under section 4103(a) of this title, the Secretary shall determine whether the aggregate preservation rents for the project determined under paragraph (1) or (2) of section 4104(b) of this title exceed the amount determined by multiplying 120 percent of the fair market rental (established under section 1437f(c) of title 42) for the market area in which the housing is located by the number of dwelling units in the project (according to appropriate unit sizes).

**(2) Relevant local markets**

If the aggregate preservation rents for a project exceeds the amount determined under

paragraph (1), the Secretary shall determine whether such aggregate rents exceed 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 the appropriate unit sizes). A relevant local market area shall be an area geographically smaller than a market area established by the Secretary under section 1437f(c)(1) of title 42 that is identifiable as a distinct rental market area. The Secretary may rely on the appraisal to determine the relevant local market areas and prevailing rents in such local areas and any other information the Secretary determines is appropriate.

**(3) Effect**

For purposes of this subchapter, the aggregate preservation rents shall be considered to exceed the Federal cost limits under this subsection only if the aggregate preservation rents exceed the amount determined under paragraph (1) and the amount determined under paragraph (2).

**(b) Limitations on action pursuant to Federal cost limits**

**(1) Housing within Federal cost limits**

If the aggregate preservation rents for an eligible low-income housing project do not exceed the Federal cost limit, the owner may not prepay the mortgage on the housing or terminate the insurance contract with respect to the housing, except as permitted under section 4114 of this title. The owner may—

(A) file a plan of action under section 4107 of this title to receive incentives under section 4109 of this title; or

(B) file a second notice of intent under section 4106(d) of this title indicating an intention to transfer the housing under section 4110 of this title and take actions pursuant to such section.

**(2) Housing exceeding Federal cost limits**

If the aggregate preservation rents for an eligible low-income housing project exceed the Federal cost limit, the owner may—

(A) file a plan of action under section 4107 of this title to receive incentives under section 4109 of this title if the owner agrees to accept incentives under such sections in an amount that shall not exceed the Federal cost limit;

(B) file a second notice of intent under section 4106(d) of this title indicating an intention to transfer the housing under section 4110 of this title and take actions pursuant to such section if the owner agrees to transfer the housing at a price that shall not exceed the Federal cost limit; or

(C) file a second notice of intent under section 4106(d) of this title indicating an intention to prepay the mortgage or voluntarily terminate the insurance, subject to the mandatory sale provisions under section 4111 of this title.

(Pub. L. 100–242, title II, § 215, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4252; amended Pub. L. 102–550, title III, § 317(a)(1), Oct. 28, 1992, 106 Stat. 3772.)

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–550 made technical amendment to reference to section 1437f(c)(1) of title 42 to reflect correction of corresponding provision of original act.

## § 4106. Information from Secretary

**(a) Information to owners terminating affordability restrictions**

The Secretary shall provide each owner who submits a notice of intent to terminate the low-income affordability restrictions on the housing under section 4108 of this title with information under this section not later than 6 months after receipt of the notice of intent. The information shall include a description of the criteria for such termination specified under section 4108 of this title and the documentation required to satisfy such criteria.

**(b) Information to owners extending low-income affordability restrictions**

The Secretary shall provide each owner who submits notice of intent to extend the low-income affordability restrictions on the housing under section 4109 of this title or transfer the housing under section 4110 of this title to a qualified purchaser with information under this subsection not later than 9 months after receipt of the notice of intent. The information shall include any information necessary for the owner to prepare a plan of action under section 4107 of this title, including the following:

**(1) Preservation values**

A statement of the preservation value of the housing determined under paragraphs (1) and (2) of section 4103(b) of this title.

**(2) Preservation rent**

A statement of the preservation rent for the housing as calculated under section 4104(b) of this title.

**(3) Federal cost limits**

A statement of the applicable Federal cost limits for the market area (or relevant local market area, if applicable) in which the housing is located, which shall explain the limitations under sections 4109 and 4110 of this title of the amount of assistance that the Secretary may provide based on such cost limits.

**(4) Federal cost limit analysis**

A statement of whether the aggregate preservation rents exceed the Federal cost limits and a direction to the owner to file a plan of action under section 4107 of this title or submit a second notice of intent under subsection (d) of this section, whichever is applicable.

**(c) Availability to tenants**

The Secretary shall make any information provided to the owner under subsections (a) and (b) of this section available to the tenants of the housing, together with other information relating to the rights and opportunities of the tenants.

**(d) Second notice of intent**

**(1) Filing**

Each owner of eligible low-income housing that elects to transfer housing under section

4110 of this title shall submit to the Secretary, in such form and manner as the Secretary prescribes, notice of intent to sell the housing under section 4110 of this title. To be eligible to prepay the mortgage or voluntarily terminate the insurance contract on the mortgage, an owner of housing for which the preservation rents exceed the Federal cost limits under section 4105(b) of this title shall submit to the Secretary notice of such intent. The provisions of sections 4111 and 4113 of this title shall apply to any owner submitting a notice under the preceding sentence.

**(2) Timing**

A second notice of intent under this subsection shall be submitted not later than 30 days after receipt of information from the Secretary under this section. If an owner fails to submit such notice within such period, the notice of intent submitted by the owner under section 4102 of this title shall be void and ineffective for purposes of this subchapter.

**(3) Filing with the State or local government, tenants, and mortgagee**

Upon filing a second notice of intent under this subsection, the owner shall simultaneously file such notice of the intent with the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located and with the mortgagee, and shall inform the tenants of the housing of the filing.

(Pub. L. 100–242, title II, § 216, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4253; amended Pub. L. 102–550, title III, §§ 303, 317(a)(2), Oct. 28, 1992, 106 Stat. 3763, 3772.)

AMENDMENTS

1992—Subsec. (b)(4). Pub. L. 102–550, § 317(a)(2), substituted ''exceed'' for ''exceeds''.

Subsec. (d)(3). Pub. L. 102–550, § 303, added par. (3).

## § 4107. Plan of action

**(a) Submission to Secretary**

**(1) Timing**

Not later than 6 months after receipt of the information from the Secretary under section 4106 of this title an owner seeking to terminate the low-income affordability restrictions through prepayment of the mortgage or voluntary termination under section 4108 of this title, or to extend the low-income affordability restriction on the housing under section 4109 of this title, shall submit a plan of action to the Secretary in such form and manner as the Secretary shall prescribe. Any owner or purchaser seeking a transfer of the housing under section 4110 or 4111 of this title shall submit a plan of action under this section to the Secretary upon acceptance of a bona fide offer under section 4110(b) or (c) of this title or upon making of any bona fide offer under section 4111 of this title.

**(2) Copies to tenants**

Each owner submitting a plan of action under this section to the Secretary shall also submit a copy to the tenants of the housing. The owner shall simultaneously submit the plan of action to the office of the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located. Each owner and the Secretary 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. An appropriate agency of such State or local government shall review the plan and advise the tenants of the housing of any programs that are available to assist the tenants in carrying out the purposes of this title.[1]

**(3) Failure to submit**

If the owner does not submit a plan of action to the Secretary within the 6-month period referred to in paragraph (1) (or the applicable longer period), the notice of intent shall be ineffective for purposes of this subchapter and the owner may not submit another notice of intent under section 4102 of this title until 6 months after the expiration of such period.

**(b) Contents**

**(1) Termination of affordability restrictions**

If the plan of action proposes to terminate the low-income affordability restrictions through prepayment or voluntary termination in accordance with section 4108 of this title, the plan shall include—

(A) a description of any proposed changes in the status or terms of the mortgage or regulatory agreement;

(B) a description of any proposed changes in the low-income affordability restrictions;

(C) a description of any change in ownership that is related to prepayment or voluntary termination;

(D) an assessment of the effect of the proposed changes on existing tenants;

(E) an analysis of the effect of the proposed changes on the supply of housing affordable to low- and very low-income families or persons in the community within which the housing is located and in the area that the housing could reasonably be expected to serve; and

(F) any other information that the Secretary determines is necessary to achieve the purposes of this title.[1]

**(2) Extension of affordability restrictions**

If the plan of action proposes to extend the low-income affordability restrictions of the housing in accordance with section 4109 of this title or transfer the housing to a qualified purchaser in accordance with section 4110 of this title, the plan shall include—

(A) a description of any proposed changes in the status or terms of the mortgage or regulatory agreement;

(B) a description of the Federal incentives requested (including cash flow projections), and analyses of how the owner will address

[1] See References in Text note below.

any physical or financial deficiencies and maintain the low-income affordability restrictions of the housing;

(C) a description of any assistance from State or local government agencies, including low-income housing tax credits, that have been offered to the owner or purchaser or for which the owner or purchaser has applied or intends to apply;

(D) a description of any transfer of the property, including the identity of the transferee and a copy of any documents of sale; and

(E) any other information that the Secretary determines is necessary to achieve the purposes of this title.[1]

**(c) Revisions**

An owner may from time to time revise and amend the plan of action as may be necessary to obtain approval of the plan under this subchapter. The owner shall submit any revision to the Secretary and to the tenants of the housing 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.

(Pub. L. 100–242, title II, § 217, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4254; amended Pub. L. 102–550, title III, § 304, Oct. 28, 1992, 106 Stat. 3763.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a)(2) and (b)(1)(F), (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.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–550, § 304(a), inserted after second sentence ''Each owner and the Secretary 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) of this section 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) of this section 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) of this section, 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 in-

cludes 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 subsections[1] (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.)

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)."

STUDY OF PROJECTS ASSISTED UNDER FLEXIBLE SUBSIDY PROGRAM

Section 318 of Pub. L. 102–550 provided that:

"(a) STUDY.—The Secretary shall conduct a study of housing projects that (1) are assisted under section 236 of the National Housing Act [12 U.S.C. 1715z–1] or the proviso of section 221(d)(5) of such Act [12 U.S.C. 1715*l*(d)(5)], and (2) have received or are receiving assistance under section 201 of the Housing and Community Development Amendments of 1978 [see References in Text note above], to determine the cost of providing such projects with incentives under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [see Short Title note set out under section 4101 of this title]. The study shall examine any projects portions of which assisted under such section 236 that are assisted primarily by State agencies.

"(b) REPORT.—The Secretary shall submit a report to the Congress regarding any findings and conclusions of the study under subsection (a) not later than the expiration of the 1-year period beginning on the date of the enactment of this Act [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 regula-

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

[2] See References in Text note below.

tions describing the means by which potential qualified purchasers shall be notified of the 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) of this section 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) of this section, 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 homeownership 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 title[2]) 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 (es-

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

[2] See References in Text note below.

tablished 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.)

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 transfered [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) of this section 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) of this section, 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.)

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) of this section);

(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) of this section, 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[2]

(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) of this section; 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) of this section, 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. Word ''and'' probably should not appear.

**(c) Determination of remaining useful life**

**(1) "Remaining useful life" defined**

For purposes of this title,[3] 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)[3] 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)[4] 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.

(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,

[3] See References in Text note below.

[4] See References in Text note below.

317(a)(4), Oct. 28, 1992, 106 Stat. 3764, 3772; Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

REFERENCES IN TEXT

This title, referred to in subsecs. (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

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.''

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Title II of Pub. L. 103–327, 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 title II of Pub. L. 103–327, 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 or[1] 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 necessary, 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 person, or discriminate against any person in the terms, conditions, or privileges of rental of a dwelling (or in the provision of services or facilities in connection therewith), because the person receives assistance under section 1437f of title 42.

### (e) Regional pools

In providing assistance under this section, the Secretary shall allocate the assistance on a regional basis through the regional offices of the Department of Housing and Urban Development. The Secretary shall allocate assistance under this section in a manner so that the total number of assisted units in each such region available for occupancy by, and affordable to, lower income families and persons does not decrease because of the prepayment or payment of a mortgage on eligible low-income housing or the termination of an insurance contract on such housing.

### (f) Enhanced voucher assistance for certain tenants

#### (1) Authority

In lieu of benefits under subsections (b), (c), and (d) of this section, and subject to the availability of appropriated amounts, each family described in paragraph (2) shall be offered enhanced voucher assistance under section 1437f(t) of title 42.

#### (2) Eligible families

A family described in this paragraph is a family that is—

(A)(i) a low-income family; or

(ii) a moderate-income family that is: (I) an elderly family; (II) a disabled family; or (III) residing in a low-vacancy area; and

(B) residing in eligible low-income housing on the date of the prepayment of the mort-

[1] So in original. Probably should be ''of''.

gage or voluntary termination of the insurance contract.

(Pub. L. 100–242, title II, §223, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4264; amended Pub. L. 105–276, title V, §550(d), Oct. 21, 1998, 112 Stat. 2610; Pub. L. 106–74, title V, §538(c), Oct. 20, 1999, 113 Stat. 1123.)

AMENDMENTS

1999—Subsec. (f). Pub. L. 106–74 added subsec. (f).

1998—Subsec. (a). Pub. L. 105–276 substituted ''tenant-based assistance under section 1437f of title 42'' for ''assistance under the certificate and voucher programs under sections 1437f(b) and 1437f(*o*)''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of Title 42, The Public Health and Welfare.

### §4114. Permissible prepayment or voluntary termination and modification of commitments

#### (a) In general

Notwithstanding any limitations on prepayment or voluntary termination under this subchapter, an owner may terminate the low-income affordability restrictions through prepayment or voluntary termination, subject to compliance with the provisions of section 4113 of this title, under one of the following circumstances:

(1)(A) The Secretary approves a plan of action under section 4109(a) of this title, but does not provide the assistance approved in such plan during the 15-month period beginning on the date of approval.

(B) After the date that the housing would have been eligible for prepayment pursuant to the terms of the mortgage (notwithstanding this subchapter), the Secretary approves a plan of action under section 4110 or 4111 of this title, but does not provide the assistance approved in such plan before the earlier of (i) the expiration of the 2-month period beginning on the commencement of the 1st fiscal year beginning after such approval, or (ii) the expiration of the 6-month period beginning on the date of approval.

(C) The Secretary approves a plan of action under section 4110 or 4111 of this title for any eligible low-income housing not covered by subparagraph (B), but does not provide the assistance approved in such plan before the earlier of (i) the expiration of the 2-month period beginning on the commencement of the 1st fiscal year beginning after such approval, or (ii) the expiration of the 9-month period beginning on the date of approval.

(2) An owner who intended to transfer the housing to a qualified purchaser under section 4110 or 4111 of this title, and fully complied with the provisions of such section, did not receive any bona fide offers from any qualified purchasers within the applicable time periods.

In the event that the purchaser under the plan of action is unable to consummate the purchase for reasons other than the failure of the Secretary to provide incentives, an owner may terminate the low-income affordability restrictions through prepayment or voluntary termination subject to the provisions of sections 4110 and 4111 of this title.

#### (b) Section 1437f rental assistance

When providing rental assistance under section 1437f of title 42, the Secretary may enter into a contract with an owner, contingent upon the future availability of appropriations for the purpose of renewing expiring contracts for rental assistance as provided in appropriations Acts, to extend the term of such rental assistance for such additional period or periods necessary to carry out an approved plan of action. The contract and the approved plan of action shall provide that, if the Secretary is unable to extend the term of such rental assistance or is unable to develop a revised package of incentives providing benefits to the owner comparable to those received under the original approved plan of action, the Secretary, upon the request of the owner, shall take the following actions (subject to the limitations under the following paragraphs):

##### (1) Modification of commitments

Modify the binding commitments made pursuant to section 4112(a)(2) of this title that are dependent on such rental assistance.

##### (2) Termination of plan of action

Permit the owner to prepay the mortgage and terminate the plan of action and any implementing use agreements or restrictions, but only if the owner agrees in writing to comply with provisions of section 4113 of this title.

At least 30 days before making a request under this subsection, an owner shall notify the Secretary of the owner's intention to submit the request. The Secretary shall have a period of 90 days following receipt of such notice to take action to extend the rental assistance contract and to continue the binding commitments under section 4112(a)(2) of this title.

(Pub. L. 100–242, title II, §224, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4265.)

### §4115. Timetable for approval of plan of action

#### (a) Notification of deficiencies

Not later than 60 days after receipt of a plan of action, the Secretary shall notify the owner in writing of any deficiencies that prevent the plan of action from being approved. If deficiencies are found, such notice shall describe alternative ways in which the plan may be revised to meet the criteria for approval.

#### (b) Notification of approval

##### (1) In general

Not later than 180 days after receipt of a plan of action, or such longer period as the owner requests, the Secretary shall notify the owner in writing whether the plan of action, including any revisions, is approved. If approval is withheld, the notice shall describe—

(A) the reasons for withholding approval; and

(B) the actions that could be taken to meet the criteria for approval.

**(2) Opportunity to revise**

The Secretary shall subsequently give the owner a reasonable opportunity to revise the plan of action and seek approval.

**(c) Delayed approval**

If the Secretary does not approve a plan of action within the period under subsection (b) of this section, the Secretary shall provide incentives and assistance under this subchapter in the amount that the owner would have received if the Secretary had complied with such time limitations. The preceding sentence shall not apply if the plan of action was not approved because of deficiencies. An owner may bring an action in the appropriate Federal district court to enforce this subsection.

(Pub. L. 100–242, title II, § 225, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4266.)

## § 4116. Resident homeownership program

**(a) Formation of resident council**

Tenants seeking to purchase eligible low-income housing in accordance with section 4110 of this title shall organize a resident council for the purpose of developing a resident homeownership program in accordance with standards established by the Secretary. The resident council shall work with a public or private nonprofit organization or a public body (including an agency or instrumentality thereof). Such organization or public body shall have experience to enable it to help the tenants consider their options and to develop the capacity necessary to own and manage the housing, where appropriate, and shall be approved by the Secretary.

**(b) Other program requirements and limitations**

**(1) Sales to residents**

As a condition of approval of a plan of action involving homeownership program under this subchapter, the resident council shall prepare a workable plan acceptable to the Secretary for giving all residents an opportunity to become owners, which plan shall identify—

(A) the price at which the resident council intends to transfer ownership interests in, or shares representing, units in the housing;

(B) the factors that will influence the establishment of such price;

(C) how such price compares to the estimated appraised value of the ownership interests or shares;

(D) the underwriting standard the resident council plans to use (or reasonably expects a public or private lender to use) for potential tenant purchasers;

(E) the financing arrangements the tenants are expected to pursue or be provided; and

(F) a workable schedule of sale (subject to the limitations of paragraph (8)) based on estimated tenant incomes.

**(2) Approval of method of conversion and limitation on conditions of approval**

The Secretary shall approve the method for converting the housing to homeownership, which may involve acquisition of ownership interests in, or shares representing, the units in a project under any arrangement determined by the Secretary to be appropriate, such as cooperative ownership (including limited equity cooperative ownership) and fee simple ownership (including condominium ownership). The Secretary may not require the prepayment of the mortgage on eligible low-income housing for the approval of a plan of action involving a homeownership program for the housing.

**(3) Required conditions**

The Secretary shall require that the form of homeownership impose appropriate conditions, including conditions to assure that—

(A) the number of initial owners that are very low-income, lower income, or moderate-income persons at initial occupancy meet standards required or approved by the Secretary;

(B) occupancy charges payable by the owners meet requirements established by the Secretary;

(C) the aggregate incomes of initial and subsequent owners and other sources of funds for the project are sufficient to permit occupancy charges to cover the full operating costs of the housing and any debt service;

(D) each initial owner occupies the unit it acquires; and

(E) the low-income affordability restrictions shall continue to apply to any rental units in the housing for any period during which such units remain rental units.

**(4) 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, may use 50 percent of the proceeds, if any, from the initial sale for costs of the homeownership program, including improvements to the project, operating and replacement reserves for the project, additional homeownership opportunities in the project, and other project-related activities approved by the Secretary. The remaining 50 percent of such proceeds shall be returned to the Secretary for use under section 4110 of this title, subject to availability under appropriations Acts. Such entity shall keep, and make available to the Secretary, all records necessary to calculate accurately payments due the Secretary under this paragraph.

**(5) Restrictions on resale by homeowners**

**(A) In general**

**(i) 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.

**(ii) 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.

**(iii) Promissory note required**

The homeowner shall execute a promissory note equal to the difference, if any, between the market value and the purchase price, payable to the Secretary, together with a mortgage securing the obligation of the note.

**(B) 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—

(i) the contribution to equity paid by the family;

(ii) 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

(iii) 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.

**(C) 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 subparagraph (A)(iii).

**(D) Use of recaptured funds**

Any net sales proceeds that may not be retained by the homeowner under the plan approved pursuant to this paragraph shall be paid to the HOME Investment Trust Fund for the unit of general local government in which the housing is located. If the housing is located in a unit of general local government that is not a participating jurisdiction (as such term is defined in section 12704 of title 42), any such net sales proceeds shall be paid to the HOME Investment Trust Fund for the State in which the housing is located. With respect to any proceeds transferred to a HOME Investment Trust Fund under this subparagraph, the Secretary shall take such actions as are necessary to ensure that the proceeds shall be immediately available for eligible activities to expand the supply of affordable housing under section 12742 of title 42. The Secretary shall require the maintenance of any records necessary to calculate accurately payments due under this paragraph.

**(6) Protection of nonpurchasing families**

**(A) Eviction**

No tenant residing in a dwelling unit in a property on the date the Secretary approves a plan of action may be evicted by reason of a homeownership program approved under this subchapter.

**(B) Rental assistance**

If a tenant decides not to purchase a unit, or is not qualified to do so, the Secretary shall ensure that rental assistance under section 1437f of title 42 is available for use by each otherwise qualified tenant (that meets the eligibility requirements under such section) in that or another property. Any system for preferences established under section 1437f(d)(1)(A) or 1437f(*o*)(6)(A) of title 42 shall not apply to the provision of assistance to such families.

**(C) Relocation assistance**

The resident council shall also inform each such tenant that if the tenant chooses to move, the owner will pay relocation assistance in accordance with the approved homeownership program.

**(7) Qualified management**

As a condition of approval of a homeownership program under this subchapter, the resident council shall have demonstrated its abilities to manage eligible properties by having done so effectively and efficiently for a period of not less than 3 years or by entering into a contract with a qualified management entity that meets such standards as the Secretary may prescribe to ensure that the property will be maintained in a decent, safe, and sanitary condition.

**(8) Timely homeownership**

Except in the case of limited equity cooperatives, resident councils 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 resident council shall utilize written tenant selection policies and criteria that are approved by the Secretary as consistent with the purpose of providing housing for very low-income families. The resident council shall promptly notify in writing any rejected applicant of the grounds for any rejection.

**(9) Records and audit of resident councils**

**(A) Maintenance**

Each resident council shall keep such records as may be reasonably necessary to

fully disclose the amount and the disposition by such resident council of the proceeds of assistance received under this subchapter (including any proceeds from sales under paragraphs (4) and (5)(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.

**(B) Access**

The Secretary shall have access for the purpose of audit and examination to any books, documents, papers, and records of the resident council that are pertinent to assistance received under this subchapter.

**(C) Audit**

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 resident council that are pertinent to assistance received under this subchapter.

**(10) Assumption conditions**

Any entity that assumes a mortgage covering low-income housing in connection with the acquisition of the housing from an owner under this section must comply with any low-income affordability restrictions for the remaining useful life of the housing as determined under section 4112(c) of this title.

(Pub. L. 100–242, title II, § 226, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4267; amended Pub. L. 102–550, title III, § 309, Oct. 28, 1992, 106 Stat. 3765; Pub. L. 105–276, title V, § 514(b)(2)(A), Oct. 21, 1998, 112 Stat. 2548.)

AMENDMENTS

1998—Subsec. (b)(6)(B). Pub. L. 105–276, which directed the substitution of ''Any system for preferences established under section 1437f(d)(1)(A) or 1437f(*o*)(6)(A)'' for ''The requirement for giving preferences to certain categories of eligible families under sections 1437f(d)(1)(A) and 1437f(*o*)(3)'' in second sentence, was executed by making the substitution for text which included the word ''preference'' rather than ''preferences'' to reflect the probable intent of Congress.

1992—Subsec. (b)(2). Pub. L. 102–550, § 309(1), inserted ''and limitation on conditions of approval'' in heading and inserted at end of text ''The Secretary may not require the prepayment of the mortgage on eligible low-income housing for the approval of a plan of action involving a homeownership program for the housing.''

Subsec. (b)(3)(E). Pub. L. 102–550, § 309(2), added subpar. (E).

Subsec. (b)(8). Pub. L. 102–550, § 309(3), substituted ''Except in the case of limited equity cooperatives, resident'' for ''Resident''.

Subsec. (b)(10). Pub. L. 102–550, § 309(4), struck out '', as determined by the Secretary,'' after ''entity that assumes'', substituted ''4112(c)'' for ''4112(d)'', and struck out at end ''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.''

## § 4117. Delegated responsibility to State agencies

### (a) In general

In addition to any responsibilities delegated under section 4103(c) of this title, the Secretary shall delegate some or all responsibility for implementing this subchapter to a State housing agency if such agency submits a preservation plan acceptable to the Secretary.

### (b) Approval

State preservation plans shall be submitted in such form and in accordance with such procedures as the Secretary shall establish. The Secretary may approve plans that contain—

(1) an inventory of low-income housing located within the State that is or will be eligible low-income housing under this subchapter within 5 years;

(2) a description of the agency's experience in the area of multifamily financing and restructuring;

(3) a description of the administrative resources that the agency will commit to the processing of plans of action in accordance with this subchapter;

(4) a description of the administrative resources that the agency will commit to the monitoring of approved plans of action in accordance with this subchapter;

(5) an independent analysis of the performance of the multifamily housing inventory financed or otherwise monitored by the agency;

(6) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of title 42 that the proposed activities are consistent with the approved housing strategy of the State within which the eligible low-income housing is located; and

(7) such other certifications or information that the Secretary determines to be necessary or appropriate to achieve the purposes of this subchapter.

### (c) Implementation agreements

The Secretary may enter into any agreements necessary to implement an approved State preservation plan, which may include incentives that are authorized under other provisions of this subchapter.

(Pub. L. 100–242, title II, § 227, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4270.)

REGULATIONS

Pub. L. 102–550, title III, § 315, Oct. 28, 1992, 106 Stat. 3770, provided that: ''The Secretary of Housing and Urban Development shall issue interim regulations implementing section 227 of the Housing and Community Development Act of 1987 (as amended by section 601(a) of the Cranston-Gonzalez National Affordable Housing Act) [12 U.S.C. 4117] not later than the expiration of the 30-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], which shall take effect upon issuance. The Secretary shall issue final regulations implementing such section 227 after notice and opportunity for public comment regarding the interim regulations, pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment shall not be less than 60 days, and the final regulations shall be issued not later than the expiration of the 60-day period beginning upon the conclusion of the comment period and shall take effect upon issuance.''

### § 4118. Consultations with other interested parties

The Secretary shall confer with any appropriate State or local government agency to confirm any State or local assistance that is available to achieve the purposes of this title[1] and shall give consideration to the views of any such agency when making determinations under this subchapter. The Secretary shall also confer with appropriate interested parties that the Secretary believes could assist in the development of a plan of action that best achieves the purposes of this subchapter.

(Pub. L. 100–242, title II, § 228, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4271.)

REFERENCES IN TEXT

This title, referred to in text, 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.

### § 4119. Definitions

For purposes of this subchapter:

(1) The term ''eligible low-income housing'' means any housing financed by a loan or mortgage—

(A) that is—

(i) insured or held by the Secretary under section 1715*l*(d)(3) of this title and receiving loan management assistance under section 1437f of title 42 due to a conversion from section 1701s of this title;

(ii) insured or held by the Secretary and bears interest at a rate determined under the proviso of section 1715*l*(d)(5) of this title;

(iii) insured, assisted, or held by the Secretary or a State or State agency under section 1715z–1 of this title; or

(iv) held by the Secretary and formerly insured under a program referred to in clause (i), (ii), or (iii); and

(B) that, under regulation or contract in effect before February 5, 1988, is or will within 24 months become eligible for prepayment without prior approval of the Secretary.

(2) The term ''Federal cost limit'' means, for any eligible low-income housing, the amount determined under section 4105(a) of this title.

(3) The term ''low-income affordability restrictions'' means limits imposed by regulation or regulatory agreement on tenant rents, rent contributions, or income eligibility in eligible low-income housing.

(4) The terms ''low-income families or persons'' and ''very low-income families or persons'' mean families or persons whose incomes do not exceed the respective levels established for low-income families and very low-income families, respectively, under section 1437a(b)(2) of title 42.

(5) The term ''moderate-income families or persons'' means families or persons whose incomes are between 80 percent and 95 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families.

(6) The term ''nonprofit organization'' means any private, nonprofit organization that—

(A) is organized or chartered under State or local laws;

(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(C) complies with standards of financial accountability acceptable to the Secretary; and

(D) has among its principal purposes significant activities related to the provision of decent housing that is affordable to very low-, low-, and moderate-income families.

(7) The term ''owner'' means the current or subsequent owner or owners of eligible low-income housing.

(8) The term ''preservation equity'' means, for any eligible low-income housing—

(A) for purposes of determining the authorized return under section 4104(a) of this title and providing incentives to extend the low-income affordability restrictions on the housing under section 4109 of this title—

(i) the preservation value of the housing determined under section 4103(b)(1) of this title; less

(ii) any debt secured by the property; and

(B) for purposes of determining incentives under section[1] 4110 and 4111 of this title and determining the amount of an acquisition loan under the provisions of section 1715z–6(f)(3)[2] of this title—

(i) the preservation value of the housing determined under section 4103(b)(2) of this title; less

(ii) the outstanding balance of the federally-assisted mortgage or mortgages for the housing.

(9) The term ''preservation value'' means, for any eligible low-income housing, the applicable value determined under paragraph (1) or (2) of section 4103(b) of this title.

(10) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(11) The term ''resident council'' means any incorporated nonprofit organization or association that—

(A) is representative of the residents 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 residents of the housing.

(Pub. L. 100–242, title II, § 229, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4271; amended Pub. L. 102–550, title III, §§ 310, 317(a)(5), Oct. 28, 1992, 106 Stat. 3765, 3772; Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

[1] See References in Text note below.

[1] So in original. Probably should be ''sections''.

[2] See References in Text note below.

REFERENCES IN TEXT

Section 1715z–6(f) of this title, referred to in par. (8)(B), 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(e) 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

1994—Par. (4). Pub. L. 103–327 temporarily amended par. (4) to read as follows:

''(4)(A) The term 'low-income tenants' means families or persons with incomes that exceed 50 percent of the median income for the area (as determined by the Secretary with adjustments for family size) but do not exceed 80 percent of the median income for the area (as determined by the Secretary with adjustments for family size).

''(B) The term 'very low-income tenants' means families or persons with incomes that are less than or equal to 50 percent of the median income for the area (as determined by the Secretary with adjustments for family size).'' See Effective and Termination Dates of 1994 Amendment note below.

1992—Par. (1)(A)(i). Pub. L. 102–550, § 310, substituted ''receiving loan management assistance under section 1437f of title 42 due to a conversion from section 1701s of this title'' for ''assisted under section 1701s of this title or section 1437f of title 42''.

Par. (11)(A). Pub. L. 102–550, § 317(a)(5), substituted ''residents'' for ''resident''.

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Amendment by Pub. L. 103–327 effective only during fiscal year 1995, see provision of title II of Pub. L. 103–327 set out as a note under section 4112 of this title.

### § 4120. Notice to tenants

Where a provision of this subchapter requires that information or material be given to tenants of the housing, the requirement may be met by (1) posting a copy of the information or material in readily accessible locations within each affected building, or posting notices in each such location describing the information or material and specifying a location, as convenient to the tenants as is reasonably practical, where a copy may be examined, and (2) supplying a copy of the information or material to a representative of the tenants.

(Pub. L. 100–242, title II, § 230, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4273.)

### § 4121. Definitions of qualified and priority purchaser and related party rule

#### (a) Priority purchaser

The term ''priority purchaser'' means (A) a resident council organized to acquire the housing in accordance with a resident homeownership program that meets the requirements of section 4121[1] of this title; and (B) any nonprofit organization or State or local agency that agrees to maintain low-income affordability restrictions for the remaining useful life of the housing (as determined under section 4112(d)[2] of this title).

[1] So in original. Probably should be section ''4116''.

[2] So in original. Probably should be section ''4112(c)''.

#### (b) Qualified purchaser

The term ''qualified purchaser'' means any entity that agrees to maintain low-income affordability restrictions for the remaining useful life of the housing (as determined under section 4112(c) of this title), and includes for-profit entities and priority purchasers.

#### (c) Related parties

Except as provided in subsection (d) of this section, the terms ''qualified purchaser'' and ''priority purchaser'' do not include any entity that, either directly or indirectly, is wholly or partially owned or controlled by the owner of the housing being transferred under this subchapter, is under whole or partial common control with such owner, or has any financial interest in such owner or in which such owner has any financial interest. The Secretary shall issue any regulations appropriate to implement the preceding sentence.

#### (d) Management exception

A qualified purchaser shall not be precluded from retaining as a property management entity a company that is owned or controlled by the selling owner or a principal thereof if retention of the management company is neither a condition of sale nor part of consideration paid for sale and the property management contract is negotiated by the qualified purchaser on an arm's length basis.

(Pub. L. 100–242, title II, § 231, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4273; amended Pub. L. 102–550, title III, § 317(a)(6), Oct. 28, 1992, 106 Stat. 3772.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–550 substituted ''4112(c)'' for ''4112(d)''.

### § 4122. Preemption of State and local laws

#### (a) In general

No State or political subdivision of a State may establish, continue in effect, or enforce any law or regulation that—

(1) restricts or inhibits the prepayment of any mortgage described in section 4119(1) of this title (or the voluntary termination of any insurance contract pursuant to section 1715t of this title) on eligible low income housing;

(2) restricts or inhibits an owner of such housing from receiving the authorized annual return provided under section 4104 of this title;

(3) is inconsistent with any provision of this subchapter, including any law, regulation, or other restriction that limits or impairs the ability of any owner of eligible low income housing to receive incentives authorized under this subchapter (including authorization to increase rental rates, transfer the housing, obtain secondary financing, or use the proceeds of any of such incentives); or

(4) in its applicability to low-income housing is limited only to eligible low-income housing for which the owner has prepaid the mortgage or terminated the insurance contract.

Any law, regulation, or restriction described under paragraph (1), (2), (3), or (4) shall be ineffective and any eligible low-income housing ex-

empt from the law, regulation, or restriction, only to the extent that it violates the provisions of this subsection.

**(b) Effect**

This section shall not prevent the establishment, continuing in effect, or enforcement of any law or regulation of any State or political subdivision of a State not inconsistent with the provisions of this subchapter, such as any law or regulation relating to building standards, zoning limitations, health, safety, or habitability standards for housing, rent control, or conversion of rental housing to condominium or cooperative ownership, to the extent such law or regulation is of general applicability to both housing receiving Federal assistance and nonassisted housing. This section shall not preempt, annul, or alter any contractual restrictions or obligations existing before November 28, 1990, that prevent or limit an owner of eligible low-income housing from prepaying the mortgage on the housing (or terminating the insurance contract on the housing).

(Pub. L. 100–242, title II, § 232, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4273; amended Pub. L. 102–550, title III, § 311, Oct. 28, 1992, 106 Stat. 3765.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–550 substituted ", such as any law or regulation" for "and" after "subchapter".

### § 4123. Severability

If any provision of this subchapter, or the application of such provision with respect to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to any other person or circumstance, shall not be affected by such holding.

(Pub. L. 100–242, title II, § 233, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4274.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1815, as amended, known as the Housing and Community Development Act of 1987. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note under section 5301 of Title 42, The Public Health and Welfare, and Tables.

### § 4124. Authorization of appropriations

**(a) In general**

There are authorized to be appropriated for assistance and incentives authorized under this subchapter $638,252,784 for fiscal year 1993 and $665,059,401 for fiscal year 1994.

**(b) Grants**

Subject to approval in appropriation Acts, not more than $50,000,000 of the amounts made available under subsection (a) of this section for fiscal year 1993, and not more than $50,000,000 of the amounts made available under subsection (a) of this section for fiscal year 1994, shall be available for grants under section 4111(d)(2) of this title.

(Pub. L. 100–242, title II, § 234, as added Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4274; amended Pub. L. 102–550, title III, § 301, Oct. 28, 1992, 106 Stat. 3762.)

AMENDMENTS

1992—Pub. L. 102–550 amended section generally. Prior to amendment, section read as follows:

"(a) GENERAL.—There are authorized to be appropriated for assistance and incentives authorized under this chapter $425,000,000 for fiscal year 1991 and $858,000,000 for fiscal year 1992.

"(b) GRANTS.—Of the amounts made available under subsection (a) of this section, not more than $100,000,000 for each of fiscal years 1991 and 1992 shall be available for grants under section 4111(d)(2) of this title, subject to approval in appropriations Acts."

### § 4125. State preservation project assistance

**(1) In general**

Upon application by a State or local housing authority (including public housing agencies), the Secretary of Housing and Urban Development may make available, from sources of assistance appropriated to preserve the low and moderate income status of projects with expiring Federal use restrictions, assistance to such State or local housing authorities for use in preventing the loss of housing affordable for low and moderate income families that is assisted under a State program under the terms of which the owner may prepay a State assisted or subsidized mortgage on such housing. The application of the State or local housing authority shall demonstrate to the Secretary that the total amount of incentives provided to the owner to induce the owner to preserve the low and moderate income status of the project shall not exceed the level of incentives which may be provided to a similarly situated project with expiring Federal use restrictions under subtitle B of title II of the Housing and Community Development Act of 1987 [12 U.S.C. 4101 et seq.].

**(2) Section 1437f**

Any assistance under section 1437f of title 42 made available pursuant to this section may be used (i) to supplement any assistance available on existing section 8 [42 U.S.C. 1437f] contracts, or (ii) to provide additional assistance to structures to ensure that all units occupied by tenants who are lower income families (as such term is defined in section 1437a(b) of title 42) pay rents not exceeding 30 percent of their adjusted incomes. Any project receiving assistance hereunder shall be subject to standards, inspections and sanctions established by the Secretary under section 222(d) of the Housing and Community Development Act of 1987 [12 U.S.C. 4112(d)]. Any such section 8 [42 U.S.C. 1437f] assistance shall be provided for a term and at the fair market rent levels or such higher levels used as applicable for eligible low-income housing that receives incentives under subtitle B of title II of the Housing and Community Development Act of 1987 [12 U.S.C. 4101 et seq.].

**(3) Restriction**

Assistance may be provided under this section only to State and local housing authorities that require any housing receiving such assistance to remain affordable for lower and moderate income tenants for the period during which assistance under this section is received.

(Pub. L. 101–625, title VI, § 613(b), Nov. 28, 1990, 104 Stat. 4280; Pub. L. 102–550, title III, § 317(b), Oct. 28, 1992, 106 Stat. 3772.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1987, referred to in pars. (1) and (2), is Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1815, as amended. Subtitle B of title II of the Act is classified generally to this subchapter (§ 4101 et seq.). For complete classification of this Act to the Code, see Short Title of 1988 Amendment note under section 5301 of Title 42, The Public Health and Welfare, and Tables.

CODIFICATION

Section was enacted as part of the Cranston-Gonzalez National Affordable Housing Act, and not as part of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 which comprises this chapter.

AMENDMENTS

1992—Par. (2). Pub. L. 102–550 substituted ''222(d)'' for ''224(e)''.

## SUBCHAPTER II—TECHNICAL ASSISTANCE AND CAPACITY BUILDING

### § 4141. Authority

The Secretary of Housing and Urban Development may provide technical assistance and capacity building to further the preservation program established under this title.[1]

(Pub. L. 100–242, title II, § 251, as added Pub. L. 102–550, title III, § 312, Oct. 28, 1992, 106 Stat. 3766.)

REFERENCES IN TEXT

This title, referred to in text, 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.

### § 4142. Purposes

The purposes of this subchapter are—

(1) to promote the ability of residents of eligible low-income housing to meaningfully participate in the preservation process established by this title[1] and affect decisions about the future of their housing;

(2) to promote the ability of community-based nonprofit housing developers and resident councils to acquire, rehabilitate, and competently own and manage eligible housing as rental or cooperative housing for low- and moderate-income people; and

(3) to assist the Secretary in discharging the obligation under section 4110 of this title to notify potential qualified purchasers of the availability of properties for sale and to otherwise facilitate the coordination and oversight of the preservation program established under this title.[1]

(Pub. L. 100–242, title II, § 252, as added Pub. L. 102–550, title III, § 312, Oct. 28, 1992, 106 Stat. 3766.)

[1] See References in Text note below.

[1] See References in Text note below.

REFERENCES IN TEXT

This title, referred to in pars. (1) and (3), 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.

### § 4143. Grants for building resident capacity and funding predevelopment costs

**(a) In general**

Assistance made available under this section shall be used for direct assistance grants to resident organizations and community-based nonprofit housing developers and resident councils to assist the acquisition of specific projects (including the payment of reasonable administrative expenses to participating intermediaries).

**(b) Allocation**

30 percent of the assistance made available under this section shall be used for resident capacity grants in accordance with subsection (d) of this section. The remainder shall be used for predevelopment grants in connection with specific projects in accordance with subsection (e) of this section.

**(c) Limitation on grant amounts**

A resident capacity grant under subsection (d) of this section may not exceed $30,000 per project and a grant under subsection (e) of this section for predevelopment costs may not exceed $200,000 per project, exclusive of any fees paid to a participating intermediary by the Secretary for administering the program.

**(d) Resident capacity grants**

**(1) Use**

Resident capacity grants under this subsection shall be available to eligible applicants to cover expenses for resident outreach, incorporation of a resident organization or council, conducting democratic elections, training, leadership development, legal and other technical assistance to the board of directors, staff and members of the resident organization or council.

**(2) Eligible housing**

Grants under this subsection may be provided with respect to eligible low-income housing for which the owner has filed a notice of intent under subchapter I of this chapter or title II of the Emergency Low Income Housing Preservation Act of 1987 (pursuant to section 604 of the Cranston-Gonzalez National Affordable Housing Act).

**(e) Predevelopment grants**

**(1) Use**

Predevelopment grants under this subsection shall be made available to community-based nonprofit housing developers and resident councils to cover the cost of organizing a purchasing entity and pursuing an acquisition, including third party costs for training, development consulting, legal, appraisal, accounting, environmental, architectural and engineering, application fees, and sponsor's staff and overhead costs.

**(2) Eligible housing**

Such grants may only be made available with respect to any eligible low-income housing project for which the owner has filed an initial notice of intent to transfer the housing to a qualified purchaser in accordance with section 4110 of this title, or has filed a notice of intent and entered into a binding agreement to sell the housing to a resident organization or nonprofit organization.

**(3) Phase-in of grant payments**

Grant payments under this subsection shall be made in phases, based on performance benchmarks established by the Secretary in consultation with intermediaries selected under section 4145(b) of this title.

**(f) Grant applications**

Grant applications for assistance under subsections (d) and (e) of this section shall be received monthly on a rolling basis and approved or rejected on at least a quarterly basis by intermediaries selected under section 4145(b) of this title.

**(g) Appeal**

If an application for assistance under subsections[1] (d) or (e) of this section is denied, the applicant shall have the right to appeal the denial to the Secretary and receive a binding determination within 30 days of the appeal.

(Pub. L. 100–242, title II, § 253, as added Pub. L. 102–550, title III, § 312, Oct. 28, 1992, 106 Stat. 3766.)

REFERENCES IN TEXT

Title II of the Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (d)(2), probably means title II of Pub. L. 100–242, Feb. 5, 1988, 102 Stat. 1877, prior to being amended generally by Pub. L. 101–625, § 601(a), which was known as the Emergency Low Income Housing Preservation Act of 1987 and which was classified principally as a note under section 1715*l* of this title. Title II of Pub. L. 100–242 was amended generally by Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4249, and is now 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 604 of the Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (d)(2), is section 604 of Pub. L. 101–625, which is set out as a note under section 4101 of this title.

## § 4144. Grants for other purposes

The Secretary may provide grants under this subchapter—

(1) to resident-controlled or community-based nonprofit organizations with experience in resident education and organizing for the purpose of conducting community, city or county wide outreach and training programs to identify and organize residents of eligible low-income housing; and

(2) to State and local government agencies and nonprofit intermediaries for the purpose of carrying out such activities as the Secretary deems appropriate to further the preservation program established under this title.[1]

[1] So in original. Probably should be ''subsection''.

[1] See References in Text note below.

(Pub. L. 100–242, title II, § 254, as added Pub. L. 102–550, title III, § 312, Oct. 28, 1992, 106 Stat. 3767.)

REFERENCES IN TEXT

This title, referred to in par. (2), 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.

## § 4145. Delivery of assistance through intermediaries

**(a) In general**

The Secretary shall approve and disburse assistance under section 4143 of this title through eligible intermediaries selected by the Secretary under subsection (b) of this section. If the Secretary does not receive an acceptable proposal from an intermediary offering to administer assistance under this section in a given State, the Secretary shall administer the program in such State directly.

**(b) Selection of eligible intermediaries**

**(1) In general**

The Secretary shall develop criteria to select eligible intermediaries, through a competitive process, to administer assistance under this subchapter. The process shall include provision for a reasonable administrative fee.

**(2) Priority**

With respect to all forms of grants available under section 4143 of this title, such criteria shall give priority to applications from eligible intermediaries with demonstrated expertise or experience with the program established under this title[1] or under the Emergency Low Income Housing Preservation Act of 1987.

**(3) Criteria**

The criteria developed under this subsection shall—

(A) not assign any preference or priority to applications from eligible intermediaries based on their previous participation in administering or receiving Federal grants or loans (but may exclude applicants who have failed to perform under prior contracts of a similar nature);

(B) require an applicant to prepare a proposal that demonstrates adequate staffing, qualifications, prior experience, and a plan for participation; and

(C) permit an applicant to serve as the administrator of assistance made available under section 4143(d) or (e) of this title, based on the applicant's suitability and interest.

**(4) Geographic coverage**

The Secretary may select more than 1 State or regional intermediary for a single State or region. The number of intermediaries chosen

[1] See References in Text note below.

for each State or region may be based on the number of eligible low-income housing projects in the State or region, provided there is no duplication of geographic coverage by intermediaries in the administration of the direct assistance grant program.

**(5) National nonprofit intermediaries**

National nonprofit intermediaries shall be selected to administer the assistance made available under section 4143 of this title only with respect to States or regions for which no other eligible intermediary, acceptable to the Secretary, has submitted a proposal to participate.

**(6) Preference**

With respect to assistance made available under section 4144 of this title, preference shall be given to eligible regional, State, and local intermediaries, over national nonprofit organizations.

**(c) Conflicts of interest**

Eligible intermediaries selected under subsection (b) of this section to disburse assistance under section 4143 of this title shall certify that they will serve only as delegated program administrators, charged with the responsibility for reviewing and approving grant applications on behalf of the Secretary. Selected intermediaries shall—

(1) establish appropriate procedures for grant administration and fiscal management, pursuant to standards established by the Secretary; and

(2) receive a reasonable administrative fee, except that they may not provide other services to grant recipients with respect to projects that are the subject of the grant application and may not receive payment, directly or indirectly, from the proceeds of grants they have approved.

**(d) "Eligible intermediary" defined**

For purposes of this section, the term ''eligible intermediary'' means a State, regional, or national organization (including a quasi-public organization) or a State or local housing agency that—

(1) has as a central purpose the preservation of existing affordable housing and the prevention of displacement;

(2) does not receive direct Federal appropriations for operating support;

(3) in the case of a national nonprofit organization, has been in existence for at least 5 years prior to the date of application and has been classified by the Internal Revenue Service as an exempt organization under section 501(c)(3) of title 26;

(4) in the case of a regional or State nonprofit organization, has been in existence for at least 3 years prior to the date of application and has been classified by the Internal Revenue Service as an exempt organization under section 501(c)(3) of title 26 or is otherwise a tax-exempt entity;

(5) has a record of service to low-income individuals or community-based nonprofit housing developers in multiple communities and, with respect to intermediaries administering assistance under section 4143 of this title, has experience with the allocation or administration of grant or loan funds; and

(6) meets standards of fiscal responsibility established by the Secretary.

(Pub. L. 100–242, title II, § 255, as added Pub. L. 102–550, title III, § 312, Oct. 28, 1992, 106 Stat. 3767.)

REFERENCES IN TEXT

This title, referred to in subsec. (b)(2), 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.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (b)(2), is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, as amended, which was classified principally as a note under section 1715*l* of this title. Title II of Pub. L. 100–242 was amended generally by Pub. L. 101–625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4249, and is now 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.

## § 4146. Definitions

For purposes of this subchapter—

(1) the term ''community-based nonprofit housing developer'' means a nonprofit community development corporation that—

(A) has been classified by the Internal Revenue Service as an exempt organization under section 501(c)(3) of title 26;

(B) has been in existence for at least 2 years prior to the date of the grant application;

(C) has a record of service to low- and moderate-income people in the community in which the project is located;

(D) is organized at the neighborhood, city, county or multi-county level; and

(E) in the case of a corporation acquiring eligible housing under subchapter I of this chapter, agrees to form a purchaser entity that conforms to the definition of a community-based nonprofit organization under such subchapter and agrees to use its best efforts to secure majority tenant consent to the acquisition of the project for which grant assistance is requested; and

(2) the terms ''eligible low-income housing'', ''nonprofit organization'', ''owner'', and ''resident council'' have the meanings given such terms in section 4119 of this title.

(Pub. L. 100–242, title II, § 256, as added Pub. L. 102–550, title III, § 312, Oct. 28, 1992, 106 Stat. 3769.)

## § 4147. Funding

The Secretary shall use not more than $25,000,000 of the amounts made available under section 4124(a) of this title for fiscal year 1993, and not more than $25,000,000 of the amounts made available under section 4124(a) of this title for fiscal year 1994, to carry out this subchapter.

Of any amounts made available to carry out this subchapter in any appropriation Act, 90 percent shall be set aside for use in accordance with section 4143 of this title and 10 percent shall be set aside for use in accordance with subsection[1] 4144 of this title.

(Pub. L. 100–242, title II, § 257, as added Pub. L. 102–550, title III, § 312, Oct. 28, 1992, 106 Stat. 3769.)

## CHAPTER 43—ACTIONS AGAINST PERSONS COMMITTING BANK FRAUD CRIMES

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## SUBCHAPTER I—DECLARATIONS PROVIDING NEW CLAIMS TO UNITED STATES

### § 4201. Filing of confidential declarations by private persons

#### (a) In general

Any person may file a declaration of a violation giving rise to an action for civil penalties under section 1833a of this title affecting a depository institution insured by the Federal Deposit Insurance Corporation or any other agency or entity of the United States.

#### (b) Place of filing

A declaration under subsection (a) of this section shall be filed with the Attorney General of the United States or with an agent designated by the Attorney General for receiving declarations under this section.

(Pub. L. 101–647, title XXV, § 2561, Nov. 29, 1990, 104 Stat. 4894.)

SHORT TITLE

Section 2560 of Pub. L. 101–647 provided that: ''This subtitle [subtitle H (§§ 2560–2594) of title XXV of Pub. L. 101–647, enacting this chapter and section 3059A of Title 18, Crimes and Criminal Procedure, and amending section 1831k of this title] may be cited as the 'Financial Institutions Anti-Fraud Enforcement Act of 1990'.''

### § 4202. Contents of declarations

A declaration filed pursuant to section 4201 of this title shall—

(1) set forth the name and address of the declarant and the basis for the declarant's knowledge of the facts alleged;

(2) allege under oath or affirmation specific facts, relating to a particular transaction or transactions, which constitute a prima facie case of a violation giving rise to an action for civil penalties under section 1833a of this title affecting a depository institution insured by the Federal Deposit Insurance Corporation or any other agency or entity of the United States;

(3) contain at least 1 new factual element necessary to establish a prima facie case that was unknown to the Government at the time of filing; and

(4) set forth all facts supporting the allegation of a violation described in paragraph (2) known to the declarant, along with the names of material witnesses and the nature and location of documentary evidence known to the declarant.

(Pub. L. 101–647, title XXV, § 2562, Nov. 29, 1990, 104 Stat. 4894.)

### § 4203. Confidentiality of declarations

#### (a) Period of confidentiality

A declarant and the declarant's agents shall not disclose the existence or filing of a declaration filed pursuant to section 4201 of this title until—

(1) the declarant receives notice that the Attorney General has concluded that an action should not be pursued under section 4206(b) of this title;

(2) the declarant receives notice of an award pursuant to section 4206(c) of this title; or

(3) the declarant is granted a contract to pursue an action under section 4205(b) or 4207 of this title.

#### (b) Maintenance of confidentiality to prevent prejudice

(1) Notwithstanding any other law, the contents of a declaration shall not be disclosed by

[1] So in original. Probably should be ''section''.