

sisted 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), 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), 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.)

**Editorial Notes**

**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).
- (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.

**(c) Future financing**

Neither this section, nor any plan of action or use agreement implementing this section, shall restrict an owner from obtaining a new loan or refinancing an existing loan secured by the project, or from distributing the proceeds of such a loan; except that, in conjunction with such refinancing—

(1) the owner shall provide for adequate rehabilitation pursuant to a capital needs assessment to ensure long-term sustainability of the property satisfactory to the lender or bond issuance agency;

(2) any resulting budget-based rent increase shall include debt service on the new financing, commercially reasonable debt service coverage, and replacement reserves as required by the lender; and

(3) for tenants of dwelling units not covered by a project- or tenant-based rental subsidy, any rent increases resulting from the refinancing transaction may not exceed 10 percent per year, except that—

(A) any tenant occupying a dwelling unit as of time of the refinancing may not be required to pay for rent and utilities, for the duration of such tenancy, an amount that exceeds the greater of—

- (i) 30 percent of the tenant's income; or
- (ii) the amount paid by the tenant for rent and utilities immediately before such refinancing; and

(B) this paragraph shall not apply to any tenant who does not provide the owner with proof of income.

Paragraph (3) may not be construed to limit any rent increases resulting from increased operating costs for a project.

(Pub. L. 100-242, title II, § 214, as added Pub. L. 101-625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4251; amended Pub. L. 114-94, div. G, title LXXVII, § 77002, Dec. 4, 2015, 129 Stat. 1790.)

#### Editorial Notes

##### AMENDMENTS

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

#### Statutory Notes and Related Subsidiaries

##### IMPLEMENTATION

Pub. L. 114-94, div. G, title LXXVII, § 77003, Dec. 4, 2015, 129 Stat. 1791, provided that: “The Secretary of Housing and Urban Development shall issue any guidance that the Secretary considers necessary to carry out the provisions added by the amendments made by this title [amending this section and section 4112 of this title] not later than the expiration of the 120-day period beginning on the date of the enactment of this Act [Dec. 4, 2015].”

#### § 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 sub-

section 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.)

#### Editorial Notes

##### 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