

necessary, replace a selection of model programs designed to carry out the purposes of this subchapter;

(2) make available to participating jurisdictions alternative model programs, which shall include suggested guidelines, procedures, forms, legal documents and such other elements as the Secretary determines to be appropriate;

(3) assure, insofar as is feasible, the availability of an appropriate variety of model programs designed for local market conditions, housing problems, project characteristics, and managerial capacities as they differ among participating jurisdictions;

(4) negotiate and enter into agreements with agencies of the Federal Government, participating jurisdictions, private financial institutions, government-sponsored mortgage finance corporations, nonprofit organizations, and other entities to provide such services, products, or financing as may be required for the implementation of a model program;

(5) provide detailed information on model programs as requested by participating jurisdictions, private financial institutions, developers, nonprofit organizations, and other interested parties; and

(6) encourage the use of such model programs to achieve efficiency, economies of scale, and effectiveness in the investment of funds made available under this part through third-party training, printed materials, and such other means of support as the Secretary determines will achieve the purpose of this subchapter.

(b) Adoption of programs

Except as provided in section 12753(2) of this title, each participating jurisdiction shall have the discretion to adopt one or more model programs, adapt one or more model programs to its own requirements, design additional forms of assistance by itself or in cooperation with other participating jurisdictions, and suggest additional model programs for adoption by the Secretary as the participating jurisdiction may deem appropriate, and the Secretary may assist a participating jurisdiction in adopting, adapting, or designing one or more model programs.

(c) Part D programs

The selection of model programs to be made available for adoption or adaptation shall include programs meeting the criteria set forth in part D.

(Pub. L. 101-625, title II, §213, Nov. 28, 1990, 104 Stat. 4100.)

§ 12744. Income targeting

Each participating jurisdiction shall invest funds made available under this part within each fiscal year so that—

(1) with respect to rental assistance and rental units—

(A) not less than 90 percent of (i) the families receiving such rental assistance are families whose incomes do not exceed 60 percent of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, (ex-

cept that the Secretary may establish income ceilings higher or lower than 60 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction cost or fair market rent, or unusually high or low family income) at the time of occupancy or at the time funds are invested, whichever is later, or (ii) the dwelling units assisted with such funds are occupied by families having such incomes; and

(B) the remainder of (i) the families receiving such rental assistance are households that qualify as low-income families (other than families described in subparagraph (A)) at the time of occupancy or at the time funds are invested, whichever is later, or (ii) the dwelling units assisted with such funds are occupied by such households;

(2) with respect to homeownership assistance, 100 percent of such funds are invested with respect to dwelling units that are occupied by households that qualify as low-income families; and

(3) all such funds are invested with respect to housing that qualifies as affordable housing under section 12745 of this title.

(Pub. L. 101-625, title II, §214, Nov. 28, 1990, 104 Stat. 4101; Pub. L. 103-233, title II, §202, Apr. 11, 1994, 108 Stat. 364; Pub. L. 105-276, title V, §599B(a), Oct. 21, 1998, 112 Stat. 2660.)

Editorial Notes

AMENDMENTS

1998—Par. (2). Pub. L. 105-276 struck out “at the time of occupancy or at the time funds are invested, whichever is later” before “; and”.

1994—Par. (1)(A). Pub. L. 103-233, §202(1), substituted “(i) the families receiving such rental assistance are” for “such funds are invested with respect to dwelling units that are occupied by”, “, or” for “, and” before cl. (ii), and added cl. (ii).

Par. (1)(B). Pub. L. 103-233, §202(2), substituted “(i) the families receiving such rental assistance are” for “such funds are invested with respect to dwelling units that are occupied by” and added cl. (ii).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-276, title V, §599B(c), Oct. 21, 1998, 112 Stat. 2660, provided that: “The amendments made by this section [amending this section and section 12745 of this title] are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

§ 12745. Qualification as affordable housing**(a) Rental housing****(1) Qualification**

Housing that is for rental shall qualify as affordable housing under this subchapter only if the housing—

(A) bears rents not greater than the lesser of (i) the existing fair market rent for comparable units in the area as established by the Secretary under section 1437f of this title, or (ii) a rent that does not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for number of bedrooms in the unit, except that the Secretary may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes;

(B) has not less than 20 percent of the units (i) occupied by very low-income families who pay as a contribution toward rent (excluding any Federal or State rental subsidy provided on behalf of the family) not more than 30 percent of the family's monthly adjusted income as determined by the Secretary, or (ii) occupied by very low-income families and bearing rents not greater than the gross rent for rent-restricted residential units as determined under section 42(g)(2) of title 26;

(C) is occupied only by households that qualify as low-income families;

(D) is not refused for leasing to a holder of a voucher or certificate of eligibility under section 1437f of this title because of the status of the prospective tenant as a holder of such voucher or certificate of eligibility;

(E) will remain affordable, according to binding commitments satisfactory to the Secretary, for the remaining useful life of the property, as determined by the Secretary, without regard to the term of the mortgage or to transfer of ownership, or for such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this Act, except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if such action (i) recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability in the case of foreclosure or transfer in lieu of foreclosure, and (ii) is not for the purpose of avoiding low income affordability restrictions, as determined by the Secretary; and

(F) if newly constructed, meets the energy efficiency standards promulgated by the Secretary in accordance with section 12709 of this title.

(2) Adjustment of qualifying rent

The Secretary may adjust the qualifying rent established for a project under subpara-

graph (A) of paragraph (1), only if the Secretary finds that such adjustment is necessary to support the continued financial viability of the project and only by such amount as the Secretary determines is necessary to maintain continued financial viability of the project.

(3) Increases in tenant income

Housing shall qualify as affordable housing despite a temporary noncompliance with subparagraph (B) or (C) of paragraph (1) if such noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to the Secretary are being taken to ensure that all vacancies are filled in accordance with paragraph (1) until such noncompliance is corrected. Tenants who no longer qualify as low-income families shall pay as rent the lesser of the amount payable by the tenant under State or local law or 30 percent of the family's adjusted monthly income, as recertified annually. The preceding sentence shall not apply with respect to funds made available under this Act for units that have been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of title 26.

(4) Mixed-income project

Housing that accounts for less than 100 percent of the dwelling units in a project shall qualify as affordable housing if such housing meets the criteria of this section.

(5) Mixed-use project

Housing in a project that is designed in part for uses other than residential use shall qualify as affordable housing if such housing meets the criteria of this section.

(6) Waiver of qualifying rent**(A) In general**

For the purpose of providing affordable housing appropriate for families described in subparagraph (B), the Secretary may, upon the application of the project owner, waive the applicability of subparagraph (A) of paragraph (1) with respect to a dwelling unit if—

(i) the unit is occupied by such a family, on whose behalf tenant-based assistance is provided under section 1437f of this title;

(ii) the rent for the unit is not greater than the existing fair market rent for comparable units in the area, as established by the Secretary under section 1437f of this title; and

(iii) the Secretary determines that the waiver, together with waivers under this paragraph for other dwelling units in the project, will result in the use of amounts described in clause (iii)¹ in an effective manner that will improve the provision of affordable housing for such families.

(B) Eligible families

A family described in this subparagraph is a family that consists of at least one elderly person (who is the head of household) and one or more of such person's grand² chil-

¹ So in original.

² So in original. Probably should be "grandchildren".